

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN INDIA

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	<p>Yes</p>
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The following study will be focused on the federal regulatory frameworks for PPPs in India. States can and have developed PPP regulations.</p> <p>(i) General Financial Rules 2017 (GFR) supplemented by Delegation of Financial Powers Rules, 1978 (DFPR): Comprehensive rules and directives cover the subject of PPP. These include the General Financial Rules (GFR), 2017 and the Delegation of Financial Powers Rules, 1978 (DFPR) as amended up to date. The GFR provides a broad legal framework and contains the general rules on procurement applicable to all Ministries and Departments.</p> <p>(ii) Public Procurement Bill: To streamline the process of procurement, the government further introduced the Public Procurement Bill 2012 before the Parliament for the Legislature's approval. The government refined the said Bill during 2015, which is not yet available in the public domain. It seeks to regulate public procurement to ensure transparency, accountability and probity in the process. The Bill covers procurement for goods, services, works, procurements by PPPs, special purpose vehicles (SPVs) for execution of contracts awarded through the procurement process, and others as notified by the Central Government.</p> <p>(iii) For PPP projects, the Department of Economic Affairs has notified Model Request for Qualification on May 18, 2009 and Model Request for Proposal on July 14, 2009 through office memoranda which contain specific procedures for PPP projects. Further, procuring authorities also release model concession agreements that contain the basic terms and conditions for PPP projects in their respective sectors.</p> <p>(iv) Sector-specific regulations for PPPs exist, those will however not be taken into account in the following analysis.</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>General Financial Rules 2017 are available at: http://www.finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2017.pdf</p> <p>Public procurement Bill 2012: http://sps.iitd.ac.in/PDF/PPB.pdf</p> <p>Model RFQ published by the Ministry of Finance Notification No. 24(1)/PF-II/2006 dated 18th May, 2009 provides details on the stages of the procurement process. Available at: https://www.pppinindia.gov.in/documents/20181/36970/Model+Request+for+Qualification+for+PPP+Projects/a77f85bf-a4e6-4bd2-a901-78730f0942e6</p> <p>Model RFP contained in the Ministry of Finance Notification No. 24(23)/PF.II/2008 dated 14th July 2009 available at: https://www.pppinindia.gov.in/documents/20181/36970/Model+Request+for+Proposal+for+PPP+Projects/e24dffce-f9b8-4438-85ea-76a86c927199.</p> <p>Model Concession Agreements for national highways, major ports and, storage of food grains are available at: https://www.pppinindia.gov.in/standardized-bidding-documents</p> <p>We may also refer to the PPP Toolkit for Improving PPP Decision-Making Processes ("Toolkit") and Guidelines issued by the Ministry of Finance:</p>

	https://www.pppinindia.gov.in/toolkit/ https://www.pppinindia.gov.in/documents/20181/21751/PPPAC_GuideLines_2013.pdf/d6232a0e-9776-4067-9c17-3778983d6cff
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>Yes</p>
Please describe:	<p>General Financial Rules 2017: It was released by Union Finance Minister on 7th March 2017. The revised GFRs replace the earlier rules of 2005</p>
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	<p>Yes</p>
Please describe:	<p>A meeting under the chair of Finance Minister was held to discuss proposal of Public Utility (Resolution of Disputes) Bill on 7 September 2016 and it was decided that instead of introducing this Bill, the institutional arrangement for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts will be streamlined through an amendment to the Arbitration and Conciliation Act 1996. It is under preparation too the issuance of guidelines for renegotiation of PPP concession agreements keeping in mind the long-term nature of such contracts and potential uncertainties of the real economy; and, the development of a new credit rating system for infrastructure projects which emphasizes ‘in-built credit enhancement structures’ to enable lenders to discontinue their reliance on a standard perception of risk which often results in mispriced loans.</p>
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or	<p>No</p>

restrict PPPs in any of the following sectors?: Transportation.	
If yes, please provide the relevant legal/regulatory provisions:	n/a
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	No
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	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
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	<p>No</p>
If yes, specify and provide the relevant legal/regulatory provisions:	<p>n/a</p>
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	<p>Yes</p>

If yes, please specify and provide the relevant legal/regulatory provision (if any):	<p>Section 801A of the income tax Act provides for deduction of an amount equal to 100% of the profits derived by an enterprise engaged in infrastructure development. A subsection of the clause also provides that this deduction can be claimed by the assessee, at its option, for any 10 consecutive assessment years out of 15 years (20 years in certain cases) beginning from the year in which the undertaking commences operation, begins development or starts providing services.</p>
5. Please identify the PPP procuring authorities in India and provide their website(s) (if available):	<p>Procuring authorities are nodal departments located within the sponsoring agencies (State or municipal-level line departments, parastatal agencies and other administrative bodies empowered to implement PPPs in their activity area). For example:</p> <ul style="list-style-type: none"> a) Airports Authority of India http://www.aai.aero b) Various Major Port Trusts like, Kandla Port, and JNPT Port. c) Central Electricity Authority (http://www.cea.nic.in/) d) Telecom Regulatory Authority of India (http://www.trai.gov.in/) e) Water Resources Department for water and irrigation (http://www.wrmin.nic.in/) f) Department of Health and Family Welfare for health (http://mohfw.nic.in/)
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	<p>Yes</p>
If yes, please indicate its name, and its website (if available):	<p>The main specialized government entities are:</p> <ul style="list-style-type: none"> a) the PPP Cell, Department of Economic Affairs, Ministry of Finance (http://www.pppinindia.com) act as the Secretariat for policy level matters concerning PPPs, including policies, schemes, programmes, and capacity building. The PPP cell also manages the websites www.infrastructureindia.gov.in and www.pppinindia.gov.in b) the Public Private Partnership Approval Committee (PPPAC) is responsible for the appraisal of PPP projects in the Central Sector;
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	<p>Yes</p>
6.2 PPP capacity building for other public authorities.	<p>Yes</p>
6.3 PPP promotion among the	<p>Yes</p>

public and/or private sectors in national and international forums.	
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.	Yes
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	Yes
6.11 please specify:	Provision of financial support to commercially unviable projects through a Viability Gap Funding Scheme & providing support to project preparation activities through a project development fund.
Please provide the relevant legal/regulatory provisions:	<p>The Public Private Partnership (PPP) Cell is responsible for matters concerning Public Private Partnerships, including policy, schemes, programmes and capacity building and all other matters relating to mainstreaming PPPs. Its functions are:</p> <ul style="list-style-type: none"> (i) Matters relating to appraisal and approval of Central sector PPP projects, as per the Cabinet approved “Compendium of Guidelines for Central Sector PPPs” and the Delegation of Powers assigned from time to time except those in Road Sector. (ii) Matters and proposals relating to clearance by Public Private Partnership Appraisal Committee (PPPAC) except those in Road Sector. (iii) Matters and proposals relating to the scheme for Financial support to Public Private Partnerships in Infrastructure Viability Gap Funding (VGF) Scheme except those in Road Sector. (iv) Matters and proposals relating to the scheme for India Infrastructure Project Development Fund (IIPDF).

	<p>(v) Developing Multi-pronged and innovative interventions and support mechanisms for facilitating PPPs in the country, including technical assistance and programmes from bilateral/multilateral agencies on mainstreaming PPPs and support to State and local governments.</p> <p>(vi) Managing training programs, strategies, exposures for capacity building for PPPs and other matters relating to institution building for mainstreaming PPPs.</p> <p>(vii) All International interfaces on PPPs & other matters concerning PPPs.</p> <p>(viii) Matters relating to management of PPP related information, including www.pppinindia.gov.in and infrastructureindia.gov.in.</p>
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>No regulatory basis</p>
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>No regulatory basis</p>
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of:	<p>No</p>

Budgeting for PPP projects.	
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 the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	n/a
Accounting and reporting according to	n/a

other international standard (e.g. European System of Accounts).	
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	PPPAC and Cabinet Committee on Economic Affairs (CCEA)
and provide the relevant legal/regulatory provisions (if any):	<p>According to Guidelines for formulation, appraisal and approval of PPP projects (https://www.pppinindia.gov.in/documents/20181/45106/6.+Procedure+for+approval+of+PP+%28notification+dated+Jan+12%2C+2006%29.pdf/3ee22646-ca94-478f-9cae-695a3479d83c), PPPAC approves the PPP projects above a certain threshold.</p> <p>The PPPAC comprises of the following:</p> <ol style="list-style-type: none"> Secretary, Department of Economic Affairs (in the Chair); Secretary, Planning Commission(now CEO Niti Aayog); Secretary, Department of Expenditure; Secretary, Department of Legal Affairs; and Secretary of the Department sponsoring a project <p>Plus, Request for Proposals, i.e. invitation to submit financial bids, should normally include a copy of all the agreements that are proposed to be entered into with the successful bidder. After formulating the draft RFP, the Administrative Ministry would seek clearance of the PPPAC before inviting the financial bids (sections 6 and 9).</p> <p>Annex 1 furthermore provides: The Central Government has in place an elaborate system for investment approval relating to Public sector projects revolving around the Public Investment Board (PIB) chaired by Secretary, Department of Expenditure with the Planning</p>

	Commission providing independent appraisal through the Project Appraisal Division, followed by approval of the Cabinet/CCEA.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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):	<p>Manual of Policies and Procedure of Employment of Consultants published by the Ministry of Finance dated 07/31/2006 in connection with engagement of consultant for various projects/ public procurement</p> <p>The Ministry of Finance has issued a Model RFP for Selection of Financial Consultants and Transaction Advisers via Office Memorandum No. 24(32)/PF-II/2009 dated March 2010. This could be used by all administrative Ministries and other public entities intending to procure the services of financial consultants and transaction advisors. A 'quality cost-based selection' (QCBS) method is set out for selection of consultants in the abovementioned Model RFP for selection of financial consultants and transaction advisors.</p>
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	No

<p>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.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>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.</p>	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.	Yes
If yes, please elaborate:	The 12 th Five-Year Plan, akin to its predecessors has emphasized on infrastructure development through PPPs as priority for public investment. Link: http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol1.pdf . Under Cabinet Committee on Infrastructure, Section 3.71: The approach to PPPs must remain firmly grounded in principles which ensure that PPPs are formulated and executed in public interest with a view to achieve additional capacity and delivery of quality public services at reasonable costs. These partnerships must ensure investment for supplementing scarce public resources while improving efficiencies. The government’s current initiatives in the area of PPPs are designed to achieve these objectives.
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	Yes

described above?	
If yes, please specify:	Prioritization is done through the 12 th Five-Year Plan.
If no, please elaborate:	n/a
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)	<p>The Toolkit includes, for highways, Infrastructure projects will often have significant social and environmental impacts arising from their construction and operation, which can be both positive and negative. The impacts may include flow-on effects beyond the immediate project area and beyond the people directly associated with the project (secondary impacts).</p> <p>Plus, a feasibility study may also include an economic analysis of the project. The purpose of economic analysis is to determine whether there is an economic case for the investment decision. This assessment goes beyond the items typically included in a financial analysis.</p> <p>https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-ef.php?links=ffaapdd1h https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-saef.php?links=ffaapdd1c</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Benefits and costs included in an economic assessment include:</p> <ul style="list-style-type: none"> - Market valuations of the inputs (land, materials, labor etc.) to the project, adjusted for any distortions in the market (such as taxes or subsidies) - The valuation placed on the services by the users. i.e., how much would users be willing to pay for the benefit they would receive from the service. This is not necessarily the same as what they would actually be charged - Secondary or spill-over costs and benefits that have an impact beyond the project itself (sometimes called externalities), for example

	<ul style="list-style-type: none"> - Impacts from the project on the broader economy - Valuations of non-market factors from the social and environmental assessment (social and environmental externalities) <p>The scope of social and environmental studies can cover:</p> <ul style="list-style-type: none"> - Quantifiable social and environmental costs and benefits - Non quantifiable social and environmental costs and benefits - Options for mitigating adverse impacts and the cost of mitigation. <p>https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-saef.php?links=ffaapdd1c https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-ef.php?links=ffaapdd1h</p>
Is the assessment done in practice?	Yes
Details:	The economic and social impact assessment is in practice realized
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?	Yes
If yes, please elaborate	No regulatory basis
Is the assessment done in practice?	Yes
Details:	Affordability assessment is done in practice.
12.3. Risk identification, allocation and assessment (risk matrix)	Yes

Relevant legal/regulatory provision (if any)	<p>The VFM Indicator tool include risk identification and allocation. There are several different types of risk that impact a project. These include:</p> <ul style="list-style-type: none"> - the risk of cost and time overruns during construction - the risk that project revenues will not be as expected due to traffic volumes being lower than forecast. - the risk that project revenues will not be as expected due to “leakage” of revenue as a result of non-payment of tolls. - the risk that operating costs (Opex) during the life of the project will be higher than expected - the risk that the project will need to be renegotiated (this risk is always faced by the public sector). <p>https://www.pppinindia.gov.in/toolkit/module3-vfm-indicator-tool.php?links=tools5&token=</p>
Is there a specific methodology for the assessment?	<p>Yes</p>
If yes, please elaborate	<p>The VFM Indicator tool include risk identification and allocation. More specifically: Allocate risks: On the ‘Set-up’ sheet tick the boxes to allocate risk to either private or public sector. The allocation of risks should match the allocation in the Concession Agreement (or the planned allocation, if the Agreement has not been finalised). The discount rate (interest rate) for pubic sector projects should also be entered on the ‘Set-up’ sheet. The tool has default values already entered for the probability distribution parameters. If the user wants to change these defaults this can be done on the ‘ProbDist Parameters’ sheet. Each probability distribution requires a standard deviation and a mean. The tool can estimate the distributions using these parameters. The parameters must be based on evidence from past projects. Ideally, they will come from a database or from studies of project costs.</p> <p>https://www.pppinindia.gov.in/toolkit/module3-vfm-indicator-tool.php?links=tools5&token=</p>
Is the assessment done in practice?	<p>Yes</p>
Details:	<p>The VFM indicator tool is used to identify and allocate risks.</p>
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	<p>Yes</p>

sector comparator)	
Relevant legal/regulatory provision (if any)	<p>According to PPP toolkit (page 4): the project must be commercially viable for the private sector and offer value for money (VFM) for the public sector. -the choice of PPP should allow the project to be undertaken at lower cost on a lifetime basis, while delivering the same or better quality services than it could be achieved through implementation by the public sector or private sector on their own. It must also be commercially viable in order to be attractive to private investors. These important conditions should be checked early for every project. This will improve the quality and likely success of projects entering the PPP development pipeline. Where these tests are not met, it may be better to carry out the project through the traditional public-sector route. In this case private sector involvement might be introduced in management or operations, but primary responsibility for financing and control of the project would remain with the appropriate public-sector authority. Furthermore, Section 5.3 of the Toolkit provides that: The Suitability Filter is effectively a preliminary qualitative value-for-money (VFM) test. It tests for qualitative factors that have an impact on the ease or difficulty of doing the project as a PPP. The Filter's purpose is to weed out dead-end PPP projects early, so resources aren't wasted and can instead be used on the most promising projects. The results of the Filter can also be used to highlight where there are weaknesses in the project or in the supporting environment that would make the project less suited to be a PPP. By highlighting any such weaknesses, the Filter can help the Project Officer identify areas that need to be improved, or to decide that the project is not well suited to be a PPP. In this way, the Suitability Filter can help to strengthen the quality of PPPs entering the development pipeline. The Suitability Filter is made up of a series of questions about the important factors that impact on the suitability of the project for being a PPP. The answers to each question are scored, and the final result from all questions is presented on a scale of ease or difficulty of developing the project further as a PPP. The Suitability Filter results would be summarised in the Pre-Feasibility Report. Finally, Section 5.5 of the toolkit provides that A quantitative value-for-money (VFM) test compares the estimated cost of procuring the project in the public sector with the estimated cost of procuring it as a PPP. Typical VFM tests use just one monetary value for the risk that would be transferred to the private sector in the PPP. The test is very dependent on the level of uncertainty in the estimate of transferred risk. The VFM Indicator highlights the uncertainty by using a range of values for the estimate of transferred risk. This range is based on probability distributions. This means the VFM Indicator can incorporate the uncertainty into the result and give a better indication of how likely the PPP is to deliver VFM or not.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	No regulatory basis
Is the assessment done in practice?	Yes
Details:	The PPP option is compared with other options of procurement
12.5. Financial viability or	Yes

bankability assessment	
Relevant legal/regulatory provision (if any)	<p>The financial analysis will use information gained from the demand forecasts, technical feasibility, and cost estimates, and will reflect the PPP mode that has been chosen. It should include demand and cost scenarios.</p> <p>https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-fvapdd.php?links=ffaapdd1g</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>The inputs to the detailed financial analysis would include the following:</p> <ul style="list-style-type: none"> - The life-cycle costs of the project and their timing. These include the estimated capital costs and operating and maintenance (O&M) costs identified in the cost assessment and a depreciation schedule for physical assets - Revenue options and the associated forecast revenue stream. This will include tariffs (where user-charges are possible), and secondary revenue sources from the project. - Forecast demand including scenario ranges from the feasibility study - Assumed capital structure (debt - equity mix) of private sector investment vehicle - Debt and repayment schedule - The discount rates for the public sector and private investor consistent with the capital structure and allocation of project risks - Project specifications (investment timing, lifetime etc.) - Sensitivity ranges on assumptions, designed to encourage a careful consideration of probable outcomes and reduce optimism bias. <p>The outputs of the model would include:</p> <ul style="list-style-type: none"> - Expected returns from the project illustrated by the NPV, IRR (see below). - An assessment of subsidy or viability gap funding requirements where there is a viability gap between the revenue requirement and the revenues that can be raised from users - Summary financial information including ratio analysis <p>https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-fvapdd.php?links=ffaapdd1g</p>
Is the assessment done in practice?	Yes
Details:	The financial viability assessment is carried by the procuring authority.
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 sounding is conducted.
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	<p>Infrastructure projects will often have significant social and environmental impacts arising from their construction and operation, which can be both positive and negative. The impacts may include flow-on effects beyond the immediate project area and beyond the people directly associated with the project (secondary impacts).</p> <p>https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-saef.php?links=ffaapdd1c</p> <p>An Environmental Impact Assessment (EIA) report is often a key requirement as part of the process of gaining Environmental Clearance (EC). The EIA report can be a 'Stand Alone' document or can form a part of the DPR or Feasibility Report as the case may be. (http://envfor.nic.in/legis/eia/so1533.pdf).</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Environmental impacts on the project location and in associated areas (e.g. downstream, ground water or ambient air) include effects on environmental resources due to alterations or pollutants</p> <p>It will often be a mandatory regulatory requirement for assessments of social and environmental impacts to be carried out during infrastructure project development. The scope of social and environmental studies can cover:</p> <ul style="list-style-type: none"> - Quantifiable social and environmental costs and benefits - Non quantifiable social and environmental costs and benefits - Options for mitigating adverse impacts and the cost of mitigation. <p>https://www.pppinindia.gov.in/toolkit/highways/module2-ffaapdd-saef.php?links=ffaapdd1c</p> <p>The generic structure of an EIA in India is outlined in Appendix III of the MoEF EIA</p>

	Notification (http://envfor.nic.in/legis/eia/so1533.pdf), which defines the environmental clearance process.
Is the assessment done in practice?	Yes
Details:	Environmental impacts are evaluated
12.8. Consultation process with affected communities on potential impact of the PPP project	Yes
Relevant legal/regulatory provision (if any)	<p>The secondary effects should be included in the assessment. Public consultation is often a part of the social and environmental feasibility process.</p> <p>Public consultation is included in the EIA in India is outlined in Appendix III of the MoEF EIA Notification (http://envfor.nic.in/legis/eia/so1533.pdf), which defines the environmental clearance process. "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>The Public Consultation shall ordinarily have two components comprising of:-</p> <p>(a) a public hearing at the site or in its close proximity- district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;</p> <p>(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.</p> <p>(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty-five) days of a request to the effect from the applicant.</p> <p>(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty-five days,.</p> <p>(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority,</p>

	<p>which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.</p> <p>(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form , within seven days of the receipt of a written request for arranging the public hearing . Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.</p> <p>(vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.</p> <p>http://envfor.nic.in/legis/eia/so1533.pdf</p>
Is the assessment done in practice?	No
Details:	Consultation of potentially affected is sometimes conducted but not every time.
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	As per Clause 1.2.3 of the Model RFP, the Feasibility Report prepared by the Procuring Authority or its consultants is either provided along with the RFP or at least 45 days prior to

relevant legal/regulatory provisions (if any):	the Bid Due Date. As per Clause 2.1.3 of the Model RFP, the Feasibility Report is not binding on the Procuring Authority and, is provided to the bidders only as a preliminary reference document. In any case, as per Clause 2.7.2 of the Model RFP, the Feasibility Report provided by the Procuring Authority as a part of bidding documents is deemed to be a part of the RFP.
and specify which of the assessments are included in the request for proposals and/or tender documents:	The feasibility study report is included in the request for proposals. The FSR should include the following: <ul style="list-style-type: none"> - Support and justification for the project – Results of the feasibility study providing justification for the investment: - Need for the project – gaps identified in the market analysis that would be filled by the project, policy objectives met by the project, alternatives considered - Description of the project, including definition of services / outputs it would provide, location, target user group, technologies to be employed, agencies involved and their responsibilities, project timeline, etc. - Social and environmental assessments and planned impact mitigations - Technical description of infrastructure additions required for the project - Benefits and costs of the project and their distribution among key stakeholders, including social and environmental impacts - Summary of the financial viability of the project - Summary of economic appraisal (benefit / cost analysis) - Project implementation schedule - Support for procuring the project as a PPP – In addition to the general project feasibility results, the FSR should include results of the specific PPP due diligence analysis: <ul style="list-style-type: none"> - Identification of major project risks and their allocation between the public and private partners - Type of PPP proposed including description of likely finance structure - Requirement for government assistance to the project (eg VGF) - Value-for-money (VFM) analysis and result - Other due diligence assessments (legal, market sounding) - Capacity of sponsor to implement the PPP, plan for implementation and PPP management including capacity building and use of advisors, plan for meeting project development costs - A section summarising the justification for the PPP project.
13.1. Are the assessments published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Rule 161 (ii) of the GFR, 2017 provides: The organisation should also post the complete bidding document on its website and on CPPP to enable prospective bidders to make use of the document by downloading from the web site.
specify the website	https://www.pppinindia.gov.in/home http://www.finmin.nic.in/ https://eprocure.gov.in/cppp/
please specify which of the assessments are published online:	The feasibility study report is included in the request for proposals. The FSR should include the following: <ul style="list-style-type: none"> - Support and justification for the project – Results of the feasibility study providing justification for the investment: - Need for the project – gaps identified in the market analysis that would be filled by the

	<p>project, policy objectives met by the project, alternatives considered</p> <ul style="list-style-type: none"> - Description of the project, including definition of services / outputs it would provide, location, target user group, technologies to be employed, agencies involved and their responsibilities, project timeline, etc. - Social and environmental assessments and planned impact mitigations - Technical description of infrastructure additions required for the project - Benefits and costs of the project and their distribution among key stakeholders, including social and environmental impacts - Summary of the financial viability of the project - Summary of economic appraisal (benefit / cost analysis) - Project implementation schedule - Support for procuring the project as a PPP – In addition to the general project feasibility results, the FSR should include results of the specific PPP due diligence analysis: <ul style="list-style-type: none"> - Identification of major project risks and their allocation between the public and private partners - Type of PPP proposed including description of likely finance structure - Requirement for government assistance to the project (eg VGF) - Value-for-money (VFM) analysis and result - Other due diligence assessments (legal, market sounding) - Capacity of sponsor to implement the PPP, plan for implementation and PPP management including capacity building and use of advisors, plan for meeting project development costs - A section summarising the justification for the PPP project.
14. Does the procuring authority include a draft PPP contract in the request for proposals?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>As per Clause 1.2.3 of the Model RFP, the bidding documents include the draft concession agreement. Clause 2.7.2 provides furthermore: the draft concession agreement provided by the Authority as part of the Bid documents shall be deemed to be part of this RFP.</p>
If no, please elaborate	<p>n/a</p>
14.1. Are the tender documents published online?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Rule 161 (ii) of the GFR, 2017 provides: The organisation should also post the complete bidding document on its website and on CPPP to enable prospective bidders to make use of the document by downloading from the web site.</p>

and please specify the website:	https://www.pppinindia.gov.in/home http://www.finmin.nic.in/ https://eprocure.gov.in/cppp/
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	<p>Yes</p>
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	<p>Both standard contracts and transaction documents have been developed. Model RFQ published by the Ministry of Finance Notification No. 24(1)/PF-II/2006 dated 18th May, 2009 provides details on the stages of the procurement process. Available at: https://www.pppinindia.gov.in/documents/20181/36970/Model+Request+for+Qualification+for+PPP+Projects/a77f85bf-a4e6-4bd2-a901-78730f0942e6 Model RFP contained in the Ministry of Finance Notification No. 24(23)/PF.II/2008 dated 14th July 2009 available at: https://www.pppinindia.gov.in/documents/20181/36970/Model+Request+for+Proposal+for+PPP+Projects/e24dffce-f9b8-4438-85ea-76a86c927199. Model Concession Agreements for national highways, major ports and, storage of food grains are available at: https://www.pppinindia.gov.in/standardized-bidding-documents Other model concession agreements can be found at: http://planningcommission.gov.in/sectors/index.php?sectors=infrastructure</p>
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)	<p>No</p>
Private Partner	<p>No</p>
Private partner with facilitation role assigned to the procuring	<p>Yes</p>

authority (or other Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Model Concession Agreement in Clauses 4.1, 5.1 and 6.1 read with Schedule 'E' states that all applicable permits, as required under applicable laws, are required to be obtained by the Private Partner (concessionaire) at its own cost and expense as a condition precedent to obtaining financial close. Such permits will include relevant urban permits as well.
16.2. Obtaining the required environmental permits: 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)	Schedule E to the Model Concession Agreement states that applicable permits, as required, relating to environmental protection and conservation are to be procured by NHAI, i.e. the procuring authority.
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	Yes

other Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Model Concession Agreement in Clauses 4, 9 and 10 read with Schedule 'E' states that all applicable permits, as required under applicable laws, are required to be obtained by the Private Partner (concessionaire) at its own cost and expense as a condition precedent to obtaining financial close. Such permits will include relevant operational permits as well.
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 10 of the Model Concession Agreement read with Schedule 'A' states that the Site of the Project is to be provided and granted by the Procuring Authority (NHAI in this case) to the concessionaire. This Site may have been acquired by the appropriate government under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (indiacode.nic.in/acts-in-pdf/302013.pdf) that regulates land acquisition and lays down the procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons in India.
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other	No

Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Model Concession Agreement in Article 10 states that the right of way is provided and granted by the Procuring Authority (NHAI in this case) to the Private Partner (concessionaire). However, as per Clause 10.6 of the Model Concession Agreement; for any diversion or construction of temporary roads, NHAI will assist the Concessionaire in acquiring the right of way. However, the Concessionaire shall obtain at its own cost such special and temporary rights of way required by it in connection with access to the project site.
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the	n/a

relevant legal/regulatory provisions (if any):	
The bid evaluation committee members are not required to have any specific qualifications.	<p>Yes</p>
Please elaborate and provide examples:	<p>Generally, bid evaluation committees are constituted of concerned ministers and high ranking administrative officers of the central / state government and does not mandate any specific qualification. Transaction advisers and technical experts may be involved in the evaluation process.</p>
19. Does the procuring authority issue a public procurement notice of the PPP project?	<p>Yes</p>
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Rule 159 of the GFR, 2017 requires all the Ministries/Departments of the Central Government, Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, RFQ, RFP, or any other notice inviting bids or proposals in any form on the Central Public Procurement Portal (CPPP) (available at https://eprocure.gov.in/cppp/). Further, Rule 160 of the GFR, 2017 states that all bids received by the Ministries/Department must be through e-procurement.</p> <p>Rule 161 sub-clauses (i) and (ii) of the GFR, 2017 requires that for procurement of goods of estimate value of INR 25 lakhs or above, method of tender by advertisement should be followed, and also provides the procedure for issuance of procurement notices of PPPs. In fact, they provide the following:</p> <p>(i) Advertisement in all cases should be given on CPPP at www.eprocure.gov.in and Government eMarketplace at https://gem.gov.in/. An organisation having its own web site should also publish all its advertised tender enquiries on the web site.</p> <p>(ii) The organisation should also post the complete bidding document in its web site and on CPPP and enable prospective bidders to make use of the document downloaded from the web site. No cost of tender document may be charged for the tender documents downloaded by the bidders (GFR, 2017 Rule 161, Clause (iv)).</p>
19.1. If yes, is the public procurement notice published online?	<p>Yes</p>
If yes, please specify the website:	<p>The Central Public Procurement Portal of Government of India facilitates all the Central Government Organizations to publish their Tender Enquiries, Corrigendum and Award of Contract details. It is available online at https://eprocure.gov.in/cppp/ Central Public Procurement Portal. Further, respective website of authorities sponsoring PPPs also publish</p>

	<p>procurement notices e.g., http://www.nhai.org/procurement_current.asp in case of NHAI.</p> <p>Finally, there is a dedicated website that serves as a consolidated source at the Central for public procurement notices for PPP projects accessible at: (http://eprocure.gov.in) aiming to facilitate the convenience of the general public.</p> <p>The primary objective of the portal is to provide a single point access to the information on procurements made across various Ministries / Departments and all the organizations under them. All user departments and agencies are required to link their individual portals with this centralized procurement portal.</p>
20. Are foreign companies prohibited from participating in the bidding process?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
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?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Rule 161 (v) of the GFR, 2017 provides that ordinarily, the minimum time for submission of bids must be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. In case the procuring department also contemplates bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidders. However, this is a general stipulation and the actual time period may vary (usually more than the minimum time period prescribed) based on the rules of the procuring authorities and the bid documents. For instance, the Model RFQ and Model RFP prescribe a timeline of 45 days for the submission of bid from the date of issuance.</p>
and the time in calendar days:	<p>45</p>
22.1. In a case comparable to the case study assumptions, which are the procurement procedures	<p>Yes</p>

available and/or set as default for PPP projects? Open tendering: Available	
Default	No
Relevant legal/regulatory provision (if any)	Rule 161 of GFR, 2017 refers to Advertised Tender Enquiry requires publishing a tender notice and provides a minimum time for bidders to present their offer.
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Procurement of a PPP includes a shortlisting of bidders. https://www.pppinindia.gov.in/toolkit/highways/module2-p3-intro-pmfp3.php?links=intro1d
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Rule 164 of the GFR, 2017 relates to two-stage bidding (Obtain bids in two stages with receipt of financial bids after receipt and evaluation of technical bids) (i) Ministry/Department may procure the subject matter of procurement by the method of two-stage bidding, if (a) it is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or (b) the character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; or (c) Ministry/Department seeks to enter into a contract for the purpose of research, experiment study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or (d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Rule 144 of the GFR 2017 refers to Fundamental principles of public buying (for all procurements including procurement of works). Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.</p> <p>The procedure to be followed in making public procurement must conform to the following</p>

	<p>yardsticks :</p> <p>(i) The description of the subject matter of procurement to the extent practicable should -</p> <p>a) be objective, functional, generic and measurable and specify technical , qualitative and performance characteristics.</p> <p>b) not indicate a requirement for a particular trade mark, trade name or brand.</p> <p>(ii) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.</p> <p>(iii) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification.</p> <p>(iv) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs.</p> <p>(v) offers should be invited following a fair, transparent and reasonable procedure.</p> <p>(vi) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects.</p> <p>(vii) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.</p> <p>(viii) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.</p> <p>(ix) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.</p> <p>(x) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website.</p>
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification /shortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory	Rule 173 of the GFR, 2017 inter alia requires that the bidding documents should provide the eligibility criteria of the bidders comprehensively and the bidding documents should be self contained. Further, paragraph 2.2 of the Model RFQ provides for the usual eligibility criteria for pre-qualification of bidders.

provisions (if any):	
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 legal/regulatory provisions (if any):	Paragraph 2.2 of the Model RFQ provides for the eligibility criteria for pre-qualification of bidders. A similar approach is usually taken for prequalification of bidders in procurement across various sectors.
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):	<p>Rule 173 clauses (iv) and (x) of the GFR, 2017 provides that the bidding documents must provide the mechanism to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid and in case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment or wherever felt necessary, a suitable provision must be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues and clearing doubts, if any.</p> <p>Further, paragraph 2.9 of the Model RFQ and para 2.8 of the Model RFP elaborate on the procedure for obtaining clarifications from the procuring authorities. The said provisions also provide that the Authority will forward all the queries and its responses thereto, to all bidders/purchasers of the RFQ without identifying the source of queries.</p>
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring	Yes

authority disclose those questions and clarifications to all potential bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Para 2.9 (i) of the Model RFQ and para 2.8 (i) of the Model RFP provide that the Authority will forward all the queries and its responses thereto, to all bidders/purchasers of the RFQ without identifying the source of queries.</p>
23.2. 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>Publication of clarifications is a usually followed practice in all major public procurement projects.</p>
If no, please elaborate:	<p>n/a</p>
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>Rule 173 Clauses (x) of the GFR, 2017 provides that in case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for one or more rounds of pre-bid conferences for clarifying issues and clearing doubts, if any.</p> <p>Further, Article 5 of both the Model RFQ and the Model RFP provides for organizing a pre-bid/pre-application conference.</p>
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the	<p>Yes</p>

results of the pre-bid conference to all bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Rule 173 Clauses (x) of the GFR, 2017 requires that the records of such conference shall be intimated to all bidders and, shall also be exhibited on the website(s) where tender was published.
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	Since the requirement of publication of the record of pre-bid conferences under Rule 173 Clauses (x) of the GFR, 2017 is a recent development, the compliance with the same is yet to be observed.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	This is project specific and any requirements regarding a financial model would be set out in the bid documents. Typically, bidders are required to submit a qualification proposal (to demonstrate their technical and financial qualification to undertake the project) and a financial bid (the contents of which would depend upon the bid parameter). In a highway tolling project, the financial bid would usually be the amount of premium that the bidder is willing to offer the authority or the amount of grant that the bidder requires from the authority to undertake the project. In a port or airport project, the financial bid would be

	<p>the revenue share offered by the bidder to the authority. In a waste management project, the financial bid would usually be the tipping fee quoted by the bidder. For more complex projects, bidders may also be required to submit a technical proposal. There aren't many instances where bidders are required to submit a financial model, over and above the qualification, financial, and/or technical proposal.</p> <p>Financial model as approved by the lenders is usually required to be submitted by the successful bidder as a 'condition precedent' after the signing of the procurement agreement.</p>
<p>26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Rule 173 (xii) of the GFR, 2017 provides that bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; no new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids. Determination of a bid's responsiveness is based on the contents of the bid itself without recourse to extrinsic evidence.</p>
<p>Evaluation criteria is not set in the tender documents</p>	<p>No</p>
<p>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</p>	<p>Yes</p>

where only one proposal is submitted.	
Please specify and provide the relevant legal/regulatory provisions (if any):	<p>According to Rule 173 (xx) of the GFR, 2017 even when only one bid is submitted, the process may be considered valid, provided the following conditions are satisfied: (a) the procurement was satisfactorily advertised and sufficient time was given for submission of bids, (b) the qualification criteria was not unduly restrictive; and (c) prices are reasonable in comparison to market values.</p> <p>Further, Rule 173 (xxi) provides that when a limited or open tender result in only one effective offer, it shall be treated as a single tender contract. Rule 166 of the GFR, 2017 contemplates procurement from a single source. However, such procurement is limited to the circumstances specified under the Rule. Further, where necessary, the approval of the Central Vigilance Commission (“CVC”) may be required.</p>
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	<p>No</p>
Please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The procuring authority does not award a PPP contract if only one proposal is submitted.	<p>No</p>
Please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The regulatory framework does not include any provisions.	<p>No</p>
28. Does the procuring authority publish the award notice?	<p>Yes</p>

If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Rule 173 (xviii) of the GFR, 2017 provides that the name of the successful bidder awarded the contract should be mentioned in the CPPP, Ministries or Departments website and their notice board or bulletin.</p>
28.1. If yes, is the public procurement award notice published online?	<p>Yes</p>
If yes, please specify the website:	<p>All public procurement award notices are to be published on the website of CPPP at https://eprocure.gov.in/cppp/. Further, since under the GFR, 2017 procuring authorities are also required to publish the results of a tender on their own websites, the same may be found on their respective websites as well.</p>
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
If no, please elaborate:	<p>As per Rule 173 (xviii) of the GFR, 2017, the name of the successful bidder is published online and hence, in public domain. This does not include however a personal notification to each bidder.</p>
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?	<p>n/a</p>
If yes, please provide the relevant legal/regulatory	<p>n/a</p>

provisions (if any):	
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?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Rule 173 (xiv) of the GFR, 2017 discourages negotiations with bidders after bid opening other than in exceptional circumstances where price negotiation against an ad-hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.</p> <p>Further, the CVC vide Circular No. 005/CRD/012 dated 20/01/2010 available at http://cvc.gov.in/tpn20012010.pdf prohibits all post-tender negotiations except with the selected bidder in certain exceptional situations.</p>
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	<p>Yes</p>
If yes, please specify:	<p>Post-tender negotiations are severely discouraged. However, in exceptional circumstances where price negotiation against ad-hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.</p>
If no, please elaborate:	<p>n/a</p>
32. Does the procuring authority publish the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>The toolkit of PPP cell provides the publication of PPP agreement as it is important for maintaining the transparency. It provides that the Sponsoring Agency should publish all PPP contracts in full on its website, or on the website of the appropriate PPP-related Authority (eg, the PPP Cell). https://www.pppinindia.gov.in/toolkit/highways/module2-p3-cfaa-pdotpa.php?links=cfaa1a</p>
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	<p>Yes</p>
Publication of the full PPP contract without	<p>No</p>

including all its annexes and appendices	
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 appendices	No
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendices	No
32.2. If yes, is it published online?	Yes
If yes, please specify the website:	<p>The toolkit of PPP cell provides for the publication of PPP agreement as it is important for maintaining the transparency. It provides that the Sponsoring Agency should publish all PPP contracts in full on its website, or on the website of the appropriate PPP-related Authority (eg, the PPP Cell).</p> <p>https://www.pppinindia.gov.in/toolkit/highways/module2-p3-cfaa-pdotpa.php?links=cfaa1a</p> <p>For instance, the Concession Agreements entered by NHAI are published on its website at http://www.nhai.org/concessionagreementcj.asp and by the Airports Authority of India at http://www.civilaviation.gov.in/agreements.</p>
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis

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):

The Planning Commission in 2012 had issued certain Guidelines for creation of Institutional Mechanism for Monitoring of PPP Projects (available at http://planningcommission.gov.in/sectors/ppp_report/reports_guidelines/Guidelines%20for%20Monitoring%20of%20PPP%20Projects.pdf) that provides for creation of a two-tier structure, at the project level and at the ministry level, for monitoring of the PPP project. The monitoring reports for each project would include compliance of contract terms, adherence to time lines, assessment of performance, remedial measures and imposition of penalties. However, the said guidelines are generic in nature and allow the project authorities to create their own mechanisms for monitoring of PPP projects.

Recently, the GFR 2017 also provides for creation of an institutional framework for execution/monitoring of projects. As per Rule 135(2) of the GFR, 2017, the procuring Ministry or Department is required to put in place an empowered project team for all large value projects and such teams would be tasked only with project execution and are not to be given any operational duties. Further, if a project costing INR 100 crore (approx. USD 15 million) or above is approved, as per Rule 141 of the GFR, the Administrative Ministry or Department will set up a Review Committee consisting of a representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work.

The Department of Economic Affairs (DEA), Ministry of Finance has formulated a Post Award Contract Management Guideline (the same may be accessed at: <https://www.pppinindia.gov.in/documents/20181/33749/Guidelines+on+Post+Award+Contract+Management+of+PPP+Concessions/75c24213-59c6-44df-a874-8485066ef97a>).

Under the said Guidelines, a Post- Award Contract Management Manual has been issued for the Highway Sector (available at: <https://www.pppinindia.gov.in/documents/20181/33749/Post+Award+Contract+Management+for+Highway+PPP+Concessions/65db7f64-fb67-4ca0-b5a1-e40185602bfb?version=1.0>) that provide guidance on various activities required to be undertaken by the Authority officials at different stages of project lifecycle in a Highway Concession.

	<p>In addition, the concession agreement executed for such PPP projects usually contains adequate mechanisms to ensure implementation of the project as well as an impartial monitoring mechanism. The Model Concession Agreement, under Article 13 contains provisions for monitoring and supervision of the construction by an independent engineer. Under the said provision of the Model Concession Agreement, during the Construction Period, the Concessionaire is required to furnish monthly progress reports of actual progress of the construction works to NHAI and the independent engineer and provides for inspection of the construction works by the independent engineer and make out an inspection report of such inspection (the "Inspection Report"). The Concessionaire is required to take necessary action to remedy the lapses, if any, stated in the Inspection Report.</p>
<p>41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team</p>	<p>Yes</p>
<p>Relevant legal/regulatory provisions (if any):</p>	<p>Rule 135(2) of the GFR, 2017: Ministry or Department shall put in place, as far as possible, empowered project teams for all large value projects and these teams should be tasked only with project execution and not given other operational duties.</p> <p>Rule 141 of the GFR, 2017: Review of Projects. After a project costing Rs. 100 crores or above is approved, the Administrative Ministry or Department will set up a Review Committee consisting of a representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rs. 100 crores, it will be at the discretion of the Administrative Ministry/Department to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates.</p> <p>Also, Part 2 of the Post-Award Contract Management Manual provides the guidelines for the establishment and composition structure of the authority and ministry level Contract Management Team. The Manual also provides for recruitment of external consultants to seek necessary assistance in the monitoring activity.</p> <p>The Model Concession Agreement mandates the appointment of an independent engineer, which is a technical expert in the field to monitor and report on the implementation of the project.</p>
<p>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</p>	<p>No</p>

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):	<p>Guidelines for Post- Award Contract Management for PPP Concessions (section 4.1.1)</p> <p>The contract management plan must have clear defined objectives. This helps in making sure that the exercise remains true to its objectives in the strictest sense. The primary objectives of creating a contract management plan are:</p> <ul style="list-style-type: none"> - Provide a clear understanding of how to approach the contract management activity - Be meticulous and exhaustive for stages throughout the lifecycle - Develop a comprehensive understanding of in-depth procedures of approaching each contract management activity - Adopt a pro- active approach to resolution of issues and disputes and define a procedure for the same - Support the contract management team in reviewing their current contract management activities and planning for future ones
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):	<p>Guidelines for Post- Award Contract Management for PPP Concessions (section 3.6.) provide: Identifying the Initial and Ongoing Training Requirements: Although the Authority officials might already possess some amount of the required proficiency and talent, there are some difficulties usually experienced by them which leave them in a tight spot. Authorities must therefore ensure that appropriate training is provided, both ‘on-the-job’ as well as the more formal training that will aid them in the contract management process. Training falls into two categories: general, which can often be offered in- house; and specific, which will probably need to be sourced externally.</p> <p>Part 13 of the Post-Award Contract Management Manual requires the procuring Authority to ensure that appropriate training is provided to the members of the Contract Management Team that includes both technical & specific trainings as well as general training in contract management.</p>
Establishment of a risk mitigation mechanism which considers	Yes

<p>the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</p>	
<p>Relevant legal/regulatory provisions (if any):</p>	<p>Part 11 and 12 of the Post-Award Contract Management Manual requires that the PPP concession management must be adaptable to changes throughout the lifecycle of a PPP Project and provides guidelines for managing various risks during the life cycle of the Project. Provisions relating to Force Majeure, Change in Law etc., are usually a part of PPP concessions.</p> <p>Risk management is a complex process and post identification of the risks it is necessary that they are actively monitored and mitigated. While, risk mitigation involves assessing the likelihood and consequences of each risk and strategizing alternatives to mitigate the same, risk monitoring requires tracking each risk from time-to-time and readying an action plan in case the risk materializes. Thus, while risk mitigation is the art of proactive management of risks, risk monitoring actively manages and controls the existing risks to keeping their values under the threshold.</p> <p>Hence, for effective risk management, a risk register in the following format should be designed where for all types of risks, their likelihood and their impacts and assessed by the responsible Authority officials and mitigation and control strategies are designed for the same. It must be noted that, in case a particular official is unable to control a materialized risk, the same should be communicated to the next official higher in the Authority.</p>
<p>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.</p>	<p>Yes</p>
<p>If yes, please specify and</p>	<p>Post-Award Contract Management Manual (part 2): After the Contract Manager is selected, the next task in the series of Transition planning activities is defining the team requirements,</p>

<p>provide the relevant legal/regulatory provisions (if any):</p>	<p>its structure and composition. The Contract Manager must communicate the requirements for the contract management team and its operations to the Chairman at Decision Making Level, along with details of roles and responsibilities of each member of the team. The Chairman may then delegate responsibilities to each Member at Decision Making Level. The size of the team is required to be decided based on:</p> <ul style="list-style-type: none"> - Size of Project - Complexity of Project Activities - Risks estimated and their potential consequences - Amount of regular duties each of the appointed officials is required to fulfill <p>Usually, not more than 2-3 representatives from each level, Operations, Supervisory and Decision Making need to be appointed as a part of the team. The roles and responsibilities of officers at each level and the frequency of their meetings are specified as below: [...]</p>
<p>The PPP contract management team members are required to meet sufficient qualification without specific details.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The PPP contract management team members are not required to meet any specific qualifications.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction</p>	<p>Yes</p>

works under a PPP contract?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to clause 14.1 of the Model Concession agreement, during the Construction Period, the Concessionaire shall furnish to NHAI and the Independent Consultant with monthly progress reports of actual progress of the Construction Works comprised in the Project Highway and shall give all such other relevant information as may be required by NHAI and/or the Independent Consultant.
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	The Post-Award Contract Management Manual in Part 5 lays down the scope of activities to be undertaken by the Contract Management Team of the Authority during the Operation Period of the Project. Article 19 of the Model Concession Agreement provides for monitoring and supervision of the Project during the Operation Period by the Independent Engineer that shall prepare an "O&M Inspection Report" to check conformity with

provisions (if any):	specifications and standards, the maintenance manual and the good industry practice and the Concessionaire is required to act in accordance with such report for rectification of defects, if any.
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)	Part 8 of the Post-Award Contract Management Guidelines: In each of these parameters, what needs to be taken care of is that the value of concessionaires' performance in a parameter, matches the indicator value of the parameter to a reasonable extent and in the stipulated time. Discrepancies, if any, and beyond the control of the Authority in charge need to be escalated to the next level on timely basis so that necessary action can be taken on the same.
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	<p>In light of the structuring of the revenue model of the project, the provisions of the Model Concession Agreement do not provide for reduction of payment, but for recovery of damages from the Concessionaire for breach of its operational obligations under the concession agreement.</p> <p>However, the NHAI model concession agreement for Annuity based projects (available at http://www.nhai.org/annuity.pdf) provides in Clause 8.4 for reduction in annuity payment for failure to meet Assured Availability obligations by the Concessionaire.</p>
The private partner must provide the procuring or contract management authority with periodic	Yes

operational and financial data	
Relevant legal/regulatory provisions (if any)	<p>As per Clause 19.1 of the Model Concession Agreement, the Concessionaire is required to undertake periodic inspection of the project highway to determine inter alia, its compliance or otherwise with the maintenance manual, the maintenance programme, specifications and standards and the maintenance required, and to submit reports of such inspection to NHA and the Independent Engineer.</p> <p>Further, as per Clause 19.5 of the Model Concession Agreement, the Concessionaire is required to submit a statement of fees to NHA in the form set forth in Schedule 'M' of the Agreement.</p>
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	<p>Chapter 13.5 of the Post-Award Contract Management Manual lays down detailed guidelines to require the authority to maintain a 'knowledge management system' that keeps a record of the KPIs, financial data and other project related information.</p> <p>Further, as per Clause 19.2 of the Model Concession Agreement, the Independent Engineer is obliged to undertake monthly inspection of the project highway and submit reports of such inspection to NHA and the Concessionaire.</p>
The PPP contract performance information must be available to the public	Yes
Relevant legal/regulatory provisions (if any)	The Planning Commission Guidelines on Institutional Mechanism for Monitoring of PPP Projects provides for project authorities to place all relevant information relating to compliance with agreed performance standards, user and performance standards in public domain.
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?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>The Model Concession Agreement restricts a change in the shareholding pattern of the SPV undertaking the project under Clauses 5.3 and 7.1 (k) read with the definition of Change in Ownership under the Model Concession Agreement. It inter alia provides that a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidders/consortium members, together with their Associates in the total Equity to decline below 51% thereof during the Construction Period and a period of 2 years thereafter shall constitute a Change in Ownership. Further, any material variation (as compared to the representations made by the Concessionaire during the Bidding Process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be) in the proportion of the equity holding of selected bidder/ any Consortium Member to the total Equity prior to the period of 2 years from the date of completion certificate shall also constitute a Change in Ownership. Such Change in Ownership requires prior approval of the Authority.</p> <p>Further, under Article 40 of the Model Concession Agreement, assignment of the concession agreement is not permissible without prior written consent of NHAI unless such assignment</p>

	is permitted as per the terms of the agreement or is a result of lenders exercising their rights of step-in or substitution.
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).	Yes
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	Equity structure of the private partner is regulated as per sector specific model concession agreements. For the Highway Sector, as described above, Clause 5.3, 7.1 (k) and the definition of Change in Ownership under the Model Concession Agreement requires the Concessionaire to hold at least 51% of its issued and paid up equity capital during the construction period and for a period of 2 years following the commercial operations date. Clause 7.1 (k) of the Model Concession Agreement inter alia provides that each Consortium Member whose technical and financial capacity was evaluated for the purpose of pre-qualification and short-listing shall hold at least 26% of Equity during the construction period and for a period of 2 years thereafter.
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	Yes
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	No regulatory basis
In other cases, flexibility to change the ownership structure	Yes

and/or assign the contract.	
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>Equity structure of the private partner is regulated as per sector specific model concession agreements. For the Highway Sector, as described above, Clause 5.3, 7.1 (k) and the definition of Change in Ownership under the Model Concession Agreement requires the Concessionaire to hold at least 51% of its issued and paid up equity capital during the construction period and for a period of 2 years following the commercial operations date. Clause 7.1 (k) of the Model Concession Agreement inter alia provides that each Consortium Member whose technical and financial capacity was evaluated for the purpose of pre-qualification and short-listing shall hold at least 26% of Equity during the construction period and for a period of 2 years thereafter.</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>Yes</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>Rule 225(xiv)(a), GFR, 2017 provides that the terms of a PPP contract, including the scope and specification once entered into, should not be materially varied.</p> <p>Further, the draft model concession agreements in most of the sectors do not contemplate modification or renegotiation of the PPP contract except in order to accommodate specific circumstances such as Force Majeure or Change in Law. However, certain guidelines for renegotiation of PPP concession agreements, keeping in mind the long-term nature of such contracts and potential uncertainties of the real economy are also proposed to be issued.</p>
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>Rule 225(xiv)(b) of the GFR, 2017 provides that when material variation in any of the terms or conditions in a contract becomes unavoidable, the financial and other effects involved should be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments should be obtained. The financial decisions above certain specified thresholds would require the approval of the DEA, Ministry of Finance.</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>Yes</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>Rule 225(xiv)(a), GFR, 2017 provides that the terms of a PPP contract, including the scope and specification once entered, should not be materially varied.</p>
A change in the risk allocation of the contract.	<p>No</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>n/a</p>
A change in the financial and/or economic balance of the contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>Rule 225(xiv)(b), GFR, 2017: the financial and other effects involved should be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments obtained, before varying the conditions.</p>
A change in the duration of the contract.	<p>No</p>
If yes, please provide the relevant legal/regulatory	<p>n/a</p>

/standard contractual provisions (if any):	
A change in the agreed price or tariff.	No
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?	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	Force Majeure is regulated in detail under Chapter VI of the Model Concession Agreement (published by the NHA at http://www.nhai.org/fvb.pdf). It is defined as: the occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Clauses 29.2, 29.3, and 29.4 respectively hereinafter which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of

provisions (if any):	<p>the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and (iii) has a Material Adverse Effect on the Project. Furthermore, Clauses 29.6 through 29.13 regulate the effects of such force majeure events.</p>
Material Adverse government action .	<p>Yes</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>Material Adverse government actions are contemplated and addressed under the provisions of the Model Concession Agreement. Under Clause 32.4.1 of the Model Concession Agreement, the NHA1 Event of Default, that entitles the Concessionaire to terminate the agreement, is provided to include (i) a breach of the agreement by NHA1 that has a Material Adverse Effect on the Concessionaire and (ii) an act of commission or omission by the Central Government or the State Government that have a Material Adverse Effect on the performance of its obligations by the Concessionaire.</p> <p>Further, the definition of Force Majeure under Article 34 of the Model Concession Agreement includes Political Force Majeure Events. Such Political Force Majeure Events mean any act or event by or on account of any Government Instrumentality that inter alia results in “(i) Change in Law, only when provisions of Article 41 cannot be applied; (ii) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors; or (iii) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire’s or any Contractor’s inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.”</p>
Change in the Law.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>A Change in Law scenario is usually covered under the terms of the PPP agreement and is often restricted to an event of change in Indian law. For instance, under the Model Concession Agreement, Change in Law is defined to mean “the occurrence of any of the following after the date of the Bid: (i) the enactment of any new Indian law; (ii) the repeal, modification or re-enactment of any existing Indian law; (iii) the commencement of any Indian law which has not entered into effect until the date of this Agreement; (iv) a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Bid; or (v) any change in the rates of any of the Taxes that have a direct effect on the Project.”</p> <p>Upon occurrence of any such Change in Law event, the recourse available to parties is elaborated under Article 41 of the Model Concession Agreement which includes amendments to the agreement and payment of an amount by either party in such a way that would nullify the effect of Change in Law.</p>
Refinancing.	<p>Yes</p>
If yes, please provide the relevant	<p>As per NHA1 Model Concession Agreement, refinancing agreements (which are included in the definition of Financing Agreement under the terms of the Model Concession Agreement) would require prior consent of the NHA1 under Clause 5.2.3 of the Model Concession</p>

legal/regulatory /standard contractual provisions (if any):	Agreement only if such refinancing have the effect of increasing or imposing any financial liability or obligation on NHAI in any manner.
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>Chapter 12 Clause 1.4 of the Post Award Contract Management Manual provides that the Concession agreement signed by the Concessionaire and the Authority, entitle the Concessionaire to assign or subcontract work in selected instances only. If the Concessionaire wants to assign or hire a sub-contractor for tasks not mentioned in the concession agreement, approval from authority is required and requests for the same need to be created. Some of the key activities undertaken by Operation Level (HQ) in this regard are provided below:</p> <ul style="list-style-type: none"> - To review the request submitted by Concessionaire and may decline the consent without assigning any reason, if required - Process to assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement - Report to the supervisor level (HQ) & decision-making level within one day of default, if any.
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	<p>The Post-Award Contract Management Manual for the Highway Sector under Part 10, Chapter 2 elaborates the dispute resolution process undertaken by the officials of NHAI. the Manual encourages the use of mediation or conciliation before a resort is made to legal actions. As per the provisions of Article 44 of the Model Concession Agreement, the settlement of disputes is to be undertaken through conciliation methods first that involve the Independent Engineer, and subsequently, by the Chairman of NHAI and the Chairman of the Board or Directors of the Concessionaire. Failing such amicable settlement, the dispute may be referred to arbitration in accordance with the terms of the agreement and governed</p>

provisions (if any):	<p>by the provisions of the Arbitration and Conciliation Act, 1996.</p> <p>In addition to the dispute resolution process set up under the Model Concession Agreement, the NHAI has developed a settlement process in the form of Independent Settlement Advisory Committee (ISAC) that facilitates settlement between the parties. The constitution of ISAC and the procedure adopted by it is elaborated in the Post Award Contract Management Manual.</p> <p>If a dispute resolution mechanism is not provided under the contract, the procedures prescribed under the Code of Civil Procedure, Code of Criminal Procedure, Indian Contract Act 1882 etc. may be followed depending on the nature of the dispute.</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	<p>No</p>
If yes, please specify:	<p>n/a</p>
Local courts	<p>Yes</p>
Domestic arbitration	<p>Yes</p>
International arbitration	<p>Yes</p>
Investor-State Dispute Settlement (ISDS)	<p>No</p>
Mediation	<p>Yes</p>
Please provide the relevant legal/regulatory/standard contractual provisions (if any)	<p>The Post-Award Contract Management Manual for the Highway Sector under Part 10, Chapter 2 elaborates the dispute resolution process undertaken by the officials of NHAI. The Manual encourages the use of mediation or conciliation before a resort is made to legal actions. As per the provisions of Article 44 of the Model Concession Agreement, the settlement of disputes is to be undertaken through conciliation methods first that involve the Independent Engineer, and subsequently, by the Chairman of NHAI and the Chairman of the Board or Directors of the Concessionaire. Failing such amicable settlement, the dispute may be referred to arbitration in accordance with the terms of the agreement and governed by the provisions of the Arbitration and Conciliation Act, 1996.</p> <p>In addition to the dispute resolution process set up under the Model Concession Agreement, the NHAI has developed a settlement process in the form of Independent Settlement Advisory Committee (ISAC) that facilitates settlement between the parties. The constitution of ISAC and the procedure adopted by it is elaborated in the Post Award Contract Management Manual.</p> <p>If a dispute resolution mechanism is not provided under the contract, the procedures</p>

	prescribed under the Code of Civil Procedure, Code of Criminal Procedure, Indian Contract Act 1882 etc. may be followed depending on the nature of the dispute.
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):	Section 36, Arbitration and Conciliation Act, 1996 provides that a domestic arbitral award, unless challenged as liable to be set aside in accordance with the provisions of the Act, shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court.
International arbitration	Yes
If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):	Section 49, Arbitration and Conciliation Act, 1996 provides that where the court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court. India ratified the New-York Convention on 13 Jul 1960.
Investor-State arbitration	n/a
If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):	n/a
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial	No

difficulty prior to insolvency?	
If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	Yes
If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>The step-in rights of the lenders are provided under the Model Concession Agreement under Clause 40.3. The said clause provides that Senior Lenders may exercise the rights of step-in or substitution as provided in the format of Substitution Agreement in Schedule 'V' to be entered among the Concessionaire, NHA and Senior Lenders. The right of the lenders usually extends to replace the Concessionaire with a Nominated Company upon occurrence of a financial default or a Concessionaire Event of Default under the Model Concession Agreement and such right of substitution does not allow the lenders to operate and maintain the highway on their own.</p> <p>Similarly, Schedule O of the NHA model concession agreement for annuity based project also provides a draft of the substitution agreement to be executed with the lenders and contemplate a right of step-in in favor of lenders in the event of a financial default as well as a default by the Concessionaire under the concession agreement.</p>
50.1. If yes, which of the following options best describes the	Yes

lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	
If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>The step-in rights of the lenders are provided under the Model Concession Agreement: Senior Lenders may exercise the rights of step-in or substitution as provided in the Substitution Agreement to be entered into among the Concessionaire, NHAI and Senior Lenders in the form set forth in Schedule 'U' provided that the person substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations under this Agreement as if it were the Concessionaire. Provided, however, that in the event of such step-in or substitution, an additional Cure Period of 90 (ninety) days shall be provided by NHAI to enable the Concessionaire to cure any breach or default subsisting on the day of such step-in or substitution. Provided further that if the Senior Lenders step in to operate and manage the Concession for a period not exceeding 90 (ninety) days, their liabilities shall be restricted to the obligations relating to and arising during such 90 (ninety) days period.</p>
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	<p>No</p>
If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):	<p>n/a</p>
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	<p>No</p>
If yes, please specify and provide the relevant legal/regulatory /standard	<p>n/a</p>

contractual provisions (if any):	
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):	Article 37 of the Model Concession Agreement refers to Termination: for concessionaire default (37.1) and for authority default (37.2).
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 37 of the Model Concession Agreement refers to Termination and provides for consequences, such as the termination payment (37.3).
Unsolicited Proposals	

34. Are unsolicited proposals in India: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	<p>Yes</p>
Explicitly allowed by the legal framework?	<p>No</p>
Not regulated by the legal framework, but do happen in practice?	<p>No</p>
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	<p>No</p>
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	<p>Rule 162 (ii), GFR, 2017 provides that unsolicited bids should not be accepted. However, certain state governments have specific laws dealing with unsolicited proposals.</p>
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	<p>n/a</p>
If yes, please specify and provide the	<p>n/a</p>

relevant legal/regulatory provisions (if any)	
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.	n/a
If yes, please specify and provide the relevant legal/regulatory	n/a

provisions (if any):	
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	n/a
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.	n/a
Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a

38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	n/a
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	n/a

proponent has the option to match the winning bid and win the contract).	
39.5 Other.	n/a
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a