

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN IRAQ

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p> PPPs were originally governed by Iraqi Civil Law No. 40 of 1951 (Articles 891-899) and Article 15 of the state-owned Company Law No. 22 of 1997. However, there is no specific PPP regulation for procuring infrastructure projects in Iraq. Iraqi ministries individually apply administrative procedures that are developed internally in order to procure PPPs. These administrative procedures have been proven not to be internationally acceptable and thus do not attract international PPPs. Some agencies follow the general principles of the Government Procurement Regulation No. 2 of 2014; however, this regulation was originally designed and exclusively used for government procurement. Even though the regulation itself does not cover PPPs, it is worth mentioning that when a PPP project is established, it is eligible to apply for and obtain an investment license in accordance with Article 33 of the National Investment Law (discussed below). In addition, the annual Iraqi budget laws could contain PPP-related provisions. </p> <p> National Investment Law No. 13 of 2006, as amended [hereinafter “NIL”], which was promulgated with the objective of promoting “investment and the transfer of modern technologies in order to contribute to the process of developing and enhancing Iraq, and expanding and diversifying its production and service base”, contains provisions on PPPs. In addition, PPPs in Iraq are also governed by Investment Regulation No. 2 of 2009, which was issued by the Cabinet in order to develop and clarify certain provisions of the NIL [hereinafter “Regulation No. 2”]. This Regulation covers infrastructure projects with capital of no less than (50,000,000) fifty million US dollars or the equivalent in Iraqi dinars to be classified as federal strategic investment projects, and thus fall under the scope of the NIL and the competence of the National Investment Commission [hereinafter “NIC”]. The Company Law No. 21 of 1997 also covers PPPs, as well as the Ministry of Planning Guide on PPP Projects. The previously mentioned instruments shape the regulatory framework on PPPs in Iraq. </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> http://www.iraq-ig-law.org/ar/webfm_send/1543 http://investpromo.gov.iq/wp-content/uploads/2013/06/Ammn-Invest-Law-En.pdf http://investpromo.gov.iq/wp-content/uploads/2013/06/Number-2-for-2009-Investment-Regulation-EN.pdf </p>
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or	Yes

<p>in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</p>	
<p>Please describe:</p>	<p>Law No.53 of 2017 (“New Electricity Law”). This sets out a legislative framework for powers of the Ministry of Electricity in relation to PPP projects by way of “setting partnership precedents between public and private sectors and mechanisms of implementation”.</p>
<p>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</p>	<p>Yes</p>
<p>Please describe:</p>	<p>A new PPP draft law is under discussion and consideration by the Government of Iraq</p>
<p>3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom</p>	<p>No</p>

If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes
If yes, please specify and provide the relevant legal/regulatory provision (if any):	According to Article 15 of the Investment Law: First: The project that has obtained an investment license from the Commission shall enjoy exemption from taxes and fees for a period of (10) ten years as of the date of commencing commercial operations in accordance with the areas of development defined by the Council of Ministers at the suggestion of the National Commission for Investment based on the degree of economic development and the nature of the investment project.
5. Please identify the PPP procuring authorities in Iraq and provide their website(s) (if available):	Each ministry serves as the procuring authority for that particular Ministry in Iraq, depending on the relevant sector. For purposes of the case study assumption, the Ministries of Housing and Construction-Department of Roads and Bridges and Municipalities and Public Works are the relevant procuring authorities and they apply their internally-developed PPP procurement administrative procedures. (http://www.imariskan.gov.iq/en/node/3132); (http://www.mmpw.gov.iq/), and the Ministry of Industry and Materials: (http://www.industry.gov.iq/)
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	No
If yes, please indicate its name, and its website (if available):	n/a
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	n/a
6.2 PPP capacity building for other public authorities.	n/a
6.3 PPP promotion among the public and/or private sectors	n/a

in national and international forums.	
6.4 Technical support in implementing PPP projects.	n/a
6.5 Identification and selection of PPP projects from the pipeline.	n/a
6.6 Revision of fiscal risks born by the Government.	n/a
6.7 Consultation with affected communities on potential impact of PPP projects.	n/a
6.8 Approval of PPP projects.	n/a
6.9 Undertaking the procurement of PPPs.	n/a
6.10 Oversight of PPP implementation.	n/a
6.11 Other	n/a
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	n/a
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	No
Accounting and reporting according to other international standard (e.g. European System of Accounts).	No
Please specify:	n/a
Other.	No
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	Ministry of Planning
and provide the relevant legal/regulatory provisions (if any):	According to Article 2(1)(b) of the Government Contracts Instructions, no government entity may list a project in the Federal Investment Budget without the approval of the ministry of Planning
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	Yes

advisors during the PPP project cycle?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	Yes
If yes, please elaborate:	According to our contributors, although there has been limited history of PPPs in Iraq and no specific PPP investment law. As a general matter they would expect significant PPP projects to be evaluated by the NIC (if an investment license is applied for/applicable), the relevant ministry/procuring authority

	and perhaps also the Council of Ministers in relation to local and national investment priorities
The procuring authority does not evaluate PPPs against existing government priorities.	No
Please elaborate and provide examples:	n/a
11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?	No
If yes, please specify:	n/a
If no, please elaborate:	Given the limited history of PPPs in Iraq and the absence of specific PPP investment law it is not possible to confirm that prioritization of PPP projects with other public investment project prioritization always apply. Case by case review will be necessary
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)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.2. 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)	According to Article 2 of the Government Contracts Instructions, the procuring authority must assess the availability of national federal budget allocation to implement the contract, or confirmed by the specialized authorities for the requests of the contractual parties' needs. Any special project classification

	within the projects plan should be indicated in the bid documentations. d- Verify that all terms , specifications , bills of quantities , drawings and others necessary for the implementation are to be accurate and completed to avoid any changes or additions in the contract during the implementation, taking the following into consideration:1. Financial authorities authorized to make decisions on this subject in accordance with the federal budget law and its regulations;
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	According to our contributors, the affordability assessment is not always conducted in practice in Iraq when identifying and preparing a PPP project
12.3. Risk identification, allocation and assessment (risk matrix)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.5. Financial viability or bankability assessment	No
Relevant legal/regulatory provision (if any)	n/a

Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	According to Article 12 of Iraqi environmental law No. 27 of 2009, activities affecting the environment must first obtain an approval from the Ministry of Environment. In order to obtain this approval, the Ministry will require an Environmental Impact Assessment.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>According to our contributors, there is a specific methodology used for the assessment of the environmental impact of PPP projects. In fact, in order to obtain this approval, the Ministry will require an Environmental Impact Assessment (EIA). Such EIA provides an assessment of the positive and negative impacts of the project on the environment and the impact of the surrounding environment on it; such as for instance:</p> <ul style="list-style-type: none"> • the proposed means to avoid and treat the causes of the pollution to comply with environment related regulations and instructions; • incidental and probable cases of pollution and the precautions which should be taken to avoid them; • the possible alternatives to use technology less harmful to the environment and to reduce the utilization of resources; • measures on reduction or recycling of waste; and • estimation of the environmental feasibility of the project and estimation of cost of the pollution.
Is the assessment done in practice?	Yes
Details:	According to our contributors, the environmental impact assessment is done in practice when identifying and processing a PPP.

12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
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)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract in the request for proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate	The regulatory framework did not provide explicit provisions that address draft PPP contracts in the request for proposals, nor have contributors confirmed that this is done in practice.
14.1. Are the tender documents published online?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and please specify the website:	n/a
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
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)	No regulatory basis
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
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)	No regulatory basis
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	Yes

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)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	Yes
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)	No regulatory basis
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	Yes
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)	No regulatory basis
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 6(1-2) of the Government Contracts Instructions, the bid evaluation members shall consist of competent experts in the relevant government agency, with a civil servant of a certain level as president and the legal, administrative, and financial departments, in addition to a member of precise technical expertise.
The bid evaluation committee members require sufficient	No

qualification without specific details.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to have any specific qualifications.	No
Please elaborate and provide examples:	n/a
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	According to Article 4(3)(a) of the Public Contracts Law, the tender notice shall be published in both Arabic and Kurdish at minimum. Although this provision does not specify the means of publication, contributors have clarified that this is done in local newspapers.
19.1. If yes, is the public procurement notice published online?	No
If yes, please specify the website:	n/a
20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 4(3)(b) of the Public Contracts Law, the tender notice shall provide bidders with “enough time” to submit their bids. Moreover, contributors provide that in practice, the minimum period is 30 days.
and the time in calendar days:	30
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	According to Article 3 of the instructions on execution of public contracts (2014), the procuring authority can choose, among other processes, the open

	tendering process through an open public offering, where bidders who are qualified can participate...
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	According to Article 3 of the instructions on the execution of public contracts, (Second): Another process that the procuring authority can choose is the restricted tendering, whenever the goods and services are only available with limited potential contractors...
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 3 of the Instructions on execution of Public Contracts (2014) provides in its third paragraph for open tendering with technical qualification, where the procuring authority launches an open tendering requesting bidders to submit 2 separate envelopes, one of them containing the technical qualifications of the bidders, and the second containing the financial proposal. (the second envelop would only be opened for the selected bidders after opening the 1st batch of envelops. As for the non-selected bidders, the second envelop would be returned to them closed). This Article also provides for the bidding in 2 stages in its fourth paragraph.
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	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 3 of the Instructions on execution of Public Contracts provides in its fifth paragraph for Direct negotiation. The procuring authority can choose this procedure in exceptional cases where there are emergency and not enough time to adopt another tendering process, or for national security reasons, or in cases of Force Majeure, or for big strategic projects requiring foreign expertise ... For this procedure, the procuring authority needs to have at least 3 selected candidates.
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	No
Default	No

Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 4. 3(b) of the Public Contracts Law requires sufficient information to be provided to all bidders, the Government Contracts Instructions sets outs further detailed provisions on process.
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 provisions (if any):	Article 4.3(b) of the Public Contracts Law requires factors on which evaluation will be conducted to be included. Note: According to our contributors, in practice the detail and nature of the relevant factors depends on the particular procuring entity and project.
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	According to our contributors, the prequalification criteria specified in the tender documents are not always respected in practice. Our contributors explained that in practice, certain Ministries/procuring entities may apply their own criteria so this is very hard to answer - e.g. the Ministry of Oil has historically applied its own criteria to bid rounds of certain oil and gas contracts
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):	Article 4(3)(b) of the Public Contracts Law provide that the tender notice shall provide the potential bidders an opportunity to submit clarifications with regards to the tender process. Additionally, the Instructions to Bidders for the Design and Implementation of Works Contracts issued by the Ministry of Planning (http://www.mop.gov.iq/mop/index.jsp?sid=1&id=597&pid=580) [hereinafter "Works Contracts Instructions"] guides bidders on the process of submitting such clarifications. Article 4(Second & Third) of the Government

	Contracts Instructions empowers the Ministry of Planning's guidelines and instructions, by obliging contracting authorities to refer to them.
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	No
If yes, please specify:	n/a
If no, please elaborate:	The procuring authority in Iraq does not disclose questions submitted or clarifications given about the public procurement notice or the request for proposals. Some contributors explained that this situation is due to the fact that in practice, certain Ministries/procuring entities may apply their own criteria and their willingness to disclose information will vary according to circumstances and the reasonableness/nature of the request.
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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:	n/a
25. In a case comparable to the case study assumptions,	No

does the procuring authority require the bidders to prepare and present a financial model with their proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	No precise provisions have been provided, nor have contributors confirmed that this is done in practice.
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 3(First) of the Government Contracts Instructions, the tender process must be public, competitive, just, and clear. Contributors provide that the procuring authority abides by these principles when evaluating proposals in accordance with the evaluation criteria.
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a

The regulatory framework does not include any provisions.	Yes
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	According to Article 41(1) of the Works Contracts Instructions, each contracting authority shall inform all bidders about the results of the procurement process and publish this in its own website and the websites of UNDB and DG Markets. Additionally, according to regulation No. 2, 2014, the award results are also published on the procuring authority's billboard
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	Ministry of Construction and Housing Iraq: http://www.imariskan.gov.iq/en UNDB: https://www.devbusiness.com/DG Markets: http://www.dgmarket.com/
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 12(1)(d) of the Public Contracts Law provides that the procuring authority shall provide the unsuccessful bidders with the results of their bids, and they shall have the right to request clarifications of the reasons for such outcome. And according to Article 41(1) of the Works Contracts Instructions, each contracting authority shall inform all bidders about the results of the procurement process and publish this in its own website and the websites of UNDB and DG Markets.
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 12(1)(d) of the Public Contracts Law provides that the procuring authority shall provide the unsuccessful bidders with the results of their bids, and they shall have the right to request clarifications of the reasons for such outcome.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
32.1. If yes, which of the following options best describes this publication (choose only one)?:	n/a
Publication of the full PPP contract including all its annexes and appendixes	
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract along with the full PPP contract without	n/a

including all its annexes and appendixes	
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
41.1. If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team	n/a
Relevant legal/regulatory provisions (if any):	n/a
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	n/a
Relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document	n/a
Relevant legal/regulatory provisions (if any):	n/a
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	n/a

Relevant legal/regulatory provisions (if any):	n/a
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	n/a
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	n/a
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 14(7) of the Investment Law, the National Commission for Investments may require certain milestones or progress to be made on a project, and otherwise impose sanctions on the developer. It provides: Seventh: Commitment to the correspondence of the work progress schedule submitted by the investor with reality provided that the time difference shall not exceed six months, and that the National Commission

	for Investment shall set forth punitive conditions in case of exceeding the six-month period and that the Commission shall have the right to withdraw the license.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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	n/a
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	n/a
Relevant legal/regulatory provisions (if any)	n/a
The private partner must provide the procuring or contract management authority with periodic operational and financial data	n/a
Relevant legal/regulatory provisions (if any)	n/a

The procuring or contract management authority must periodically gather information on the performance of the PPP contract	n/a
Relevant legal/regulatory provisions (if any)	n/a
The PPP contract performance information must be available to the public	n/a
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Article 23 of the Investments Law (previously Article 10(3) in 2008), the Iraqi or foreign investor can transfer the ownership of the investment project in whole or in part during the period of the license to any other Iraqi or foreign investor, provided that the new investor continues the work of the project in the same specialization or in another specialization after securing the approval of the commission which granted the license. The new investor replaces the old one in terms of rights and obligations stipulated by this law and the terms of the agreement signed with the said investor. In case the Iraqi or foreign investor transfers the ownership of the project during the period in which they have privileges, facilities, and guarantees granted by the agreement, then the new investor continues to enjoy them until the end of that period.
45.1. If yes, which of the following circumstances are specifically regulated? (check	No

all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Article 23 (previously Article 10(3)(c)) of the Investments Law: The Iraqi or foreign investor can transfer the ownership of the investment project in whole or in part during the period of the license to any other Iraqi or foreign investor, provided that the new investor continues the work of the project in the same specialization or in another specialization after securing the approval of the commission which granted the license. The new investor replaces the old one in terms of rights and obligations stipulated by this law and the terms of the agreement signed with the said investor. In case the Iraqi or foreign investor transfers the ownership of the project during the period in which they have privileges, facilities, and guarantees granted by the agreement, then the new investor continues to enjoy them until the end of that period.</p>
In other cases, flexibility to change the ownership structure and/or assign the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Article 23,25,24 No. Firstly & Secondly of the Investments Law (13 for the year 2008), the Iraqi or foreign investor can transfer the ownership of the investment project in whole or in part during the period of the license to any other Iraqi or foreign investor, provided that the new investor continues the work of the project in the same specialization or in another specialization after securing the approval of the commission which granted the license. The new investor or the new joint venture company formed by two or more new investors replaces the old one in terms of rights and obligations stipulated by this law and the terms of the agreement signed with the said investor. In case the Iraqi or foreign investor transfers the ownership of the project during the period in which they have privileges, facilities, and guarantees granted by the agreement, then the new investor continues to enjoy them until the end of that period.</p>
46. Does the regulatory framework (including standard contractual clauses)	Yes

expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 9(Fifth) of the Government Contracts Instructions provide circumstances for modifying the duration of the contract, where contacting authorities may extend the duration of the contact when the conditions set by the Ministry of Planning are met.
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the financial and/or economic balance of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 9(Fifth) of the Government Contracts Instructions provide circumstances of modifying the duration of the contract, where contracting authorities may extend the duration of the contact when the conditions set by the Ministry of Planning are met.

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	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Material Adverse government action .	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Article 12(Third) of the Investments Law, the investor shall be guaranteed non-seizure or nationalization of the investment project covered by the provisions of this law in whole or in part, except for projects on which a final judicial judgment was issued.
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Refinancing.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	No
If yes, please provide the relevant	n/a

legal/regulatory/standard contractual provisions (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 provisions (if any):	According to Article 8 of the Government Contracts instructions, disputes arising after signing the contract shall be settled by conciliation between the parties as detailed in the contract. Where such means fail, the parties would resort to arbitration, or lastly domestic courts. The parties shall agree to the best means.
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	According to Article 8 of the Government Contracts instructions, disputes arising after signing the contract shall be settled by conciliation between the parties as detailed in the contract. Where such means fail, the parties would resort to arbitration, or lastly domestic courts. The parties shall agree to the best means. The ICSID Convention entered in force in Iraq.
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):	According to Article 251 of Code of Civil Procedures No. 83 of 1969, arbitration awards should be enforceable by local courts. We note that our contributors provided that they have never experienced this to happen in practice
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	According to our contributors, in principle this should be possible in certain circumstances (among other matters by applying the Recognition and Enforcement of Foreign judgements and Arbitral Awards under the Riyadh Convention of 1983). They provided that this is a very complex area and great

	care and specialist advice must be taken - Iraq is not, for instance, a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards .
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Iraq recently ratified the ICSID Convention
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct	n/a

agreement should be signed with the lenders.	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	n/a
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 11 of the Public Contracts Law provides that the governmental contracting entity may terminate the contract for “governmental best interest” (ةموكحل ةحلصم) purposes, while compensating the private partner. Furthermore, Article 10(Second) of the Government Contracts Instructions provides circumstances of termination of the contract with the partner in conditions of default or violation of the contract clauses.
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 11 of the Public Contracts Law provides that in the event of the termination by the contracting authority of the contract for public interest, the private partner shall be compensated. And Article 10(Second) of the Government Contracts Instructions provides that the contracting authority shall end the contract with the violating private partner and perform the contract through another private partner at his expense.
Unsolicited Proposals	
34. Are unsolicited proposals in Iraq: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No

Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	Yes
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	Although unsolicited proposals are not regulated by the legal framework in Iraq, they do happen in practice.
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	No regulatory basis
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities	No

without establishing specific procedures to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	Yes
Please elaborate and provide examples:	Our contributors provided that in practice, there may be an informal assessment, which may naturally take into account priorities in order to ensure that unsolicited proposals are consistent with existing government priorities, but there is no explicit regulatory framework outside the Public Contracts Law tender/competitive requirements.
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	No
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.	No
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original	No

proponent has the option to match the winning bid and win the contract).	
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a