



## PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN IRELAND

SURVEY QUESTION	ANALYSIS
<b>PPP Regulatory Framework</b>	
<b>2. Does the regulatory framework in your country allow procuring PPPs?</b>	Yes
<b>If yes, please specify the relevant regulatory framework and the year of adoption:</b>	<p>PPP framework in Ireland consists of (i) The State Authorities Act 2002 aka. Public Private Partnership Arrangements (hereinafter “The PPP Act”), (ii) the Framework for Public and Private Partnerships (hereinafter “PPP Framework”), (iii) Main Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships: Procedures for the Assessment, Approval, Audit and Procurement of Projects (hereinafter “PPP Guidelines”), (iv) Assessment of Projects for Procurement as Public Private Partnership (hereinafter “PPP Assessment”).</p> <p>Detailed methodology for PPP proposal assessments is described in (v) Value for Money and the Public Private Partnership Procurement Process (hereinafter “VfM”), (vi) Discount Rate Principles for Public Private Partnership Capital Investment Projects (hereinafter “DRP”), (vii) Assessment of Projects for Procurement as Public Private Partnership, and (viii) Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector (hereinafter “Appraisal Guidelines”). Issued in February 2005, Appraisal Guidelines apply to all capital expenditure proposals, including PPPs.</p> <p>Further, regulatory framework for public investment generally applies to PPP projects: (ix) Planning and Development Act of 2000 (hereinafter “PDA”), (x) Public Spending Code (hereinafter “PSC”), (xi) Building on Recovery: Infrastructure and Capital Investment 2016 - 2021 (hereinafter Capital Plan), and newly transposed EU procurement and concession directives: (xii) S.I. No. 284/2016 European Union (Award of Public Authority Contracts) Regulations 2016 (hereinafter “EU Regulations 2016”) and (xiii) European Union Award of Concession Contracts Regulations 2017 (hereinafter “EU Concession 2017”).</p> <p>We will also refer to (xiv) National Development Finance Agency Act 2002 (hereinafter “NDFAA”) and its amendments (xv) National Development Finance Agency (Amendment) Act 2007 (hereinafter “NDFAA Amendment”), which establish and describe the functions of the National Development Finance Agency (hereinafter “NDFA”). NDFA was subsequently dissolved and subsumed by the National Treasury Management Agency (NTMA), as per (xvi) National Treasury Management Agency (Amendment) Act 2014 (hereinafter “NTMA Amendment”). We will use NTMA Amendment, NDFAA, and NDFAA Amendment to describe the role of the NTMA as to PPPs. We will base our analysis of PPP contract management using (xvii) NDFA-provided standard PPP Project Template Agreement (hereinafter “Contract Template”).</p>
<b>and provide a link to a government-supported</b>	<a href="http://ppp.gov.ie/key-documents/legislation/">http://ppp.gov.ie/key-documents/legislation/</a>

<b>website where the mentioned regulatory framework is available or provide an electronic copy of it:</b>	
<b>2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</b>	<p>Yes</p>
<b>Please describe:</b>	<p>Ireland recently transposed three EU 2014 directives setting specific rules on concessions and intended to simplify EU public procurement laws. Two of them: S.I. No. 284/2016 European Union (Award of Public Authority Contracts) Regulations 2016 (hereinafter “EU Regulations 2016”) and European Union Award of Concession Contracts Regulations 2017 (hereinafter “EU Concession 2017”), generally apply to PPPs. EU Concession 2017 was published on 23 May 2017 with an effect from April 2016, which was the EU deadline for implementation of the Concessions Directive.</p>
<b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b>	<p>Yes</p>
<b>Please describe:</b>	<p>Department of Public Expenditure &amp; Reform is in the process of amending the guidelines on PPP procurement to reflect practices provided by the EPEC/Eurostat “A Guide to the Statistical Treatment of PPPs” (published in September 2016).</p>
<b>3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	<p>n/a</p>
<b>3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	<p>n/a</p>

<b>3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other</b>	Yes
<b>If yes, specify and provide the relevant legal/regulatory provisions:</b>	<p>There is no restriction on a sector basis. However, Department of Public Expenditure and Reform limits the total annual cost of PPPs in Ireland to 10% of the total annual exchequer capital spending, according to “Building on Recovery: Infrastructure and Capital Investment 2016 - 2021” report, last paragraph of the “Third Phase of Public-Private Partnerships (PPPs)” section.</p>
<b>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provision (if any):</b>	<p>Article 1.17 of the PPP Guidelines “Tax and PPPs” does specify a special treatment of VAT and Corporate Tax for PPP projects, different from traditional procurement projects: The Sponsoring Agency should be aware that, in a number of PPP accommodation projects, the VAT liability arising on the construction of the PPP asset has been paid in total up front by Sponsoring Agencies when unitary payments commence, i.e. this cost is not included in the unitary payments going forward. This approach avoids spreading the construction VAT liability over the whole contract term which would result in additional financing costs for the project. When this approach is taken in a given project, the cost and the timing of the upfront VAT-related payment has to be factored into the overall project budget. (...)</p>

<p><b>5. Please identify the PPP procuring authorities in Ireland and provide their website(s) (if available):</b></p>	<p>The National Treasury Management Agency (hereinafter “NTMA”) established a National Development Finance Agency (hereinafter “NDFFA”), which does procurement on the behalf of the so-called State Authorities or plays an advisory function for procuring State Authorities. According to Article 9 of the PPP Act, procuring State Authorities are: Transport Infrastructure Ireland: <a href="http://www.tii.ie">www.tii.ie</a> (formerly National Roads Authority), a Minister of the Government, a local authority (e.g. Department of Housing, Planning, Community and Local Government: <a href="http://www.housing.gov.ie/planning/policy/public-private-partnerships/dept-guidelines-and-circulars">http://www.housing.gov.ie/planning/policy/public-private-partnerships/dept-guidelines-and-circulars</a>), the Commissioners of Public Works in Ireland, a health board established under the Health Act 1970, the Eastern Regional Health Authority, and a university within the meaning of the Universities Act 1997, other than Trinity College and the University of Dublin, the Dublin Institute of Technology, a college within the meaning of section 2 of the Regional Technical Colleges Act 1992, a vocational education committee within the meaning of section 7 of the Vocational Education Act 1930, Courts Service: <a href="http://www.courts.ie">www.courts.ie</a>, and a harbor authority within the meaning of the Harbours Act 1946.</p>
<p><b>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</b></p>	<p>Yes</p>
<p><b>If yes, please indicate its name, and its website (if available):</b></p>	<p>(1) Procurement of PPPs in Ireland is done through (or with the assistance of) the National Development Finance Agency’s (hereinafter “NDFFA”), established by the National Treasury Management Agency (hereinafter “NTMA”), - <a href="http://www.ndfa.ie">www.ndfa.ie</a>. At the same time, the overall supervision of PPPs in Ireland, as an administrative matter, falls within the ambit of the Central PPP Policy Unit at the Department of Public Expenditure and Reform (hereinafter “Central PPP Unit”) - <a href="http://ppp.gov.ie/">http://ppp.gov.ie/</a>. Our analysis takes into account both the functions of the NDFFA and the Central PPP Unit.</p> <p>(2) According to its website, NDFFA integrates finance, procurement, and project delivery model for new public-sector projects, including Public Private Partnerships. NDFFA assumes a direct role as statutory financial adviser to certain State authorities and, in some cases, as the procuring authority. NDFFA was established in 2003 under the NDFAA in 2002 and all PPP projects involving the use of private finance or valued €30 million or above must be referred to the NDFFA for advice. The enactment of NDFAA Amendment in 2007 expanded the role of the NDFFA to enable it to (1) enter into a PPP arrangement with a view to transferring the rights and obligations under such an arrangement to any State authority and (2) to act as agent for any State authority in connection with the entry or proposed entry by that State authority into a PPP arrangement. These arrangements do not apply to the roads and rails sectors, where existing procurement arrangements continue. Similarly, existing arrangements remain in place in the local government sector.</p> <p>(3) The Central PPP Unit facilitates the PPP process centrally by developing the general policy framework (including, where necessary, the legal framework) within which PPPs operate and by providing central guidance to Departments and other State Authorities in the context of PPPs. According to its website, the</p>

	Central PPP Unit also chairs a high -level Steering Committee which oversees progress on the PPP projects announced in the recent Government Stimulus Initiative. The remit of the Steering Committee is: (i) to ensure the correct projects are selected and that they can be progressed in a timely manner, (ii) to establish milestones and delivery targets for the projects, (iii) to identify ways to streamline PPP processes, and (iv) to prepare project reports for Government.
<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	Yes
<b>6.2 PPP capacity building for other public authorities.</b>	Yes
<b>6.3 PPP promotion among the public and/or private sectors in national and international forums.</b>	Yes
<b>6.4 Technical support in implementing PPP projects.</b>	No
<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	No
<b>6.6 Revision of fiscal risks born by the Government.</b>	Yes
<b>6.7 Consultation with affected communities on potential impact of PPP projects.</b>	No
<b>6.8 Approval of PPP projects.</b>	Yes
<b>6.9 Undertaking the procurement of PPPs.</b>	Yes
<b>6.10 Oversight of PPP implementation.</b>	No
<b>6.11 Other</b>	Yes
<b>6.11 please specify:</b>	In some cases, NDFA can act as agent for any State authority in connection with the entry or proposed entry by that State authority into a public private partnership arrangement.
<b>Please provide the relevant legal/regulatory provisions:</b>	<p>(1) NDFA Functions: Procurement functions of NDFA are described in detail in “Guidelines to State Authorities regarding the National Development Finance Agency”.</p> <p>The full list of NTMA functions relating to infrastructure projects, and hence NDFA functions in relation to PPPs that are listed in the article 26 of the NTMA - Link: <a href="http://www.irishstatutebook.ie/eli/2014/act/23/enacted/en/html">http://www.irishstatutebook.ie/eli/2014/act/23/enacted/en/html</a>. These functions include:</p> <p>(a) to provide advice to any State authority of what, in the opinion of the Agency, are the optimal means of financing the cost of public investment projects in order to achieve value for money;</p> <p>(b) to provide advice to any State authority on all aspects of financing,</p>

	<p>refinancing and insurance of public investment projects to be duly undertaken by means of public private partnership arrangements or within the public sector;</p> <p>(c) to enter into a public private partnership arrangement with a view to transferring the rights and obligations under such an arrangement to any State authority,</p> <p>(d) to act as agent for any State authority in connection with the entry or proposed entry by that State authority into a public private partnership arrangement, or</p> <p>(e) to enter into any arrangement or contract to procure as agent for the Minister of Education and Skills any public investment project in relation to a school, educational facility, or other building or structure, including the financing, management, design, and construction of such building or structure, as that Minister may from time to time designate.</p> <p>(2) Central PPP Unit functions: Article 10.2 in the Framework for Public and Private Partnerships: The Central PPP Unit (...) should continue to give a high priority to: (i) delivery of the PPP programme; (ii) developing a standardised approach in terms of tendering procedures, model contracts, and documentation, in step with progress in the pilot programme; (iii) developing PPP policy; and (iv) resolving outstanding obstacles to the wider use of PPPs (including legal, taxation, financial, and other issues).</p>
--	---

**PPP Preparation**

<b>8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	Yes
---	-----

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to PSC (Section “General Conditions of Sanction for Multi Annual Capital Envelopes,” sub-section (h) Reporting Requirements, in adherence to National and EU requirements, undertaking PPP projects in excess of €20 million requires consultation with the National Development Finance Agency. All public procurement projects over €20 million, including PPPs, are subject to a Cost Benefit Analysis (CBA) or Cost Effectiveness Analysis (CEA). Prior to Approval in Principle, the CBA and CEA should be submitted to the relevant vote section in the Department of Public Expenditure and Reform who may seek the views of the CEEU.</p> <p>Further, “The CEEU will give its views on the appraisal to the Sponsoring Agency and may publish their review of the CBA (or CEA) on their website, with any necessary redaction to protect the State’s interest in the tender process and commercial sensitivity.”</p> <p>PBS also provides that programmes with an annual value in excess of €30 million and of 5 years or more duration to be subject to prior and mid-term evaluation at the beginning and mid-point of each 5-year cycle or as may be agreed with the Department of Public Expenditure &amp; Reform. (Section “Approvals Required and Scale of Appraisal”, sub-section 3(v) “Scale of Appraisal”)</p>
--	--

<b>8.1. Does the Ministry of Finance or Central</b>	No
---	----

<b>Budgetary Authority approve the PPP project before signing the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Budget for PPPs is agreed and set out in Chapter 4 “Non-Exchequer Investment” in the Capital Plan. It is capped at the amount equal to 10% of the total annual Exchequer (aka National Treasury of Ireland) capital spending.
<b>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Ireland follows the European System of National and Regional Accounts (ESA 2010) and Eurostat February 2004 guidelines
<b>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Ireland follows the European System of National and Regional Accounts (ESA 2010) and Eurostat February 2004 guidelines
<b>8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).</b>	No
<b>Accounting and reporting according to other international standard (e.g. European System of Accounts).</b>	Yes
<b>Please specify:</b>	Ireland follows the European System of National and Regional Accounts (ESA 2010) and Eurostat February 2004 guidelines regarding the accounting treatment of PPP projects for the purposes of calculating the General Government Balance (GGB) (article 4.3 of PPP Guidelines): “(...) the assets of privately financed PPP projects will be off balance sheet in the National Accounts, and therefore the construction costs will not affect the GGB upfront over the construction period, provided that the private sector partner carries the Construction risk and carries either the Demand or the Availability risk (...)”
<b>Other.</b>	No

<b>Please specify:</b>	n/a
<b>9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?</b>	Yes
<b>If yes, please specify the relevant authority</b>	An Agency, Department or Section, different from the procuring one, can act as a "Sanctioning Authority" and approve the PPP project before launching the procuring process.
<b>and provide the relevant legal/regulatory provisions (if any):</b>	Article 1.8 of the PPP Guidelines provides: Approval Function should be carried out as a separate function from project assessment and by a different Agency/Department/Section, i.e. the "Sanctioning Authority." It involves the decision on whether a project should proceed to Detailed Appraisal (where this would involve significant cost) and, following the Detailed Appraisal, deciding whether the project should be approved and whether it is suitable for procurement as a PPP. Additionally, Article 1.8 of the PPP Guidelines clarifies that "(...) a Department might be the Sanctioning Authority for one project, while in others it might be the Sponsoring Agency. Also, a Department/Agency may carry both the Sponsoring Agency and Sanctioning Authority functions through separate divisions of work within the organisation. This would entail an internal separation at the level of that Department/Agency, between those who propose expenditure and those who sanction it."
<b>9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 3.4 of the PPP Guidelines: Many projects require statutory approvals, e.g. Environmental Impact Statements, Oral Hearings, Ministerial Approval. These are obtained at various stages in the procurement process.
<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>11. In a case comparable to the case study assumptions,</b>	Yes



<p><b>please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Department of Public Expenditure and Reform limits the total annual cost of PPPs in Ireland to 10% of the total annual exchequer capital spending (last paragraph of the “Third Phase of Public-Private Partnerships (PPPs)” section of “Capital Plan - Infrastructure and Capital Investment 2016-2021).</p> <p>Pursuant to Article 4.2 of the PPP Guidelines, “Arrangements are now in place to facilitate a structured approach to planning Departmental capital investment programmes on a five-year rolling basis. The Minister for Finance will continue to evaluate the mix of Exchequer and PPP/NDFAs funding for these programmes and will approve an investment envelope on this basis. (In the case of Agencies this will be evaluated by the relevant Department.) It is a matter for each Department to check the status of a PPP project in this respect with the appropriate Vote section of the Department of Finance.”</p> <p>Furthermore, PSC, Section B01 provides: “(PPP project) appraisal involves both the Sponsoring Agency and the Sanctioning Authority being clear about the objectives of a proposal/intervention and consideration of all the options open to the Sponsoring Agency in meeting these objectives. All publicly funded projects or initiatives should be appraised carefully for: (...) consistency with programme/policy objectives (...)</p>
<p><b>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>

<b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</b>	No
<b>If yes, please elaborate:</b>	n/a
<b>The procuring authority does not evaluate PPPs against existing government priorities.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?</b>	Yes
<b>If yes, please specify:</b>	No regulatory basis
<b>If no, please elaborate:</b>	n/a
<b>12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	PSC, Section D-01 (3): "The general principle of cost benefit analysis (CBA) is to assess whether or not the social and economic benefits associated with a project are greater than its social and economic costs. To this end, a project is deemed to be desirable where the benefits exceed the costs. However, should the benefits exceed the costs, this does not necessarily imply that a project will proceed as other projects with a higher net present value (NPV) may be in competition for the same scarce resources. In addition, there are affordability constraints which mean that projects should not proceed even if the NPV is positive."
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	A detailed guide on how to carry out a CBA is set out in PSC D.03 – Guide to Economic Appraisal: Carrying out a CBA.

<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	The assessment is realized in practice by a procuring authority before procuring a PPP project.
<b>12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Article 2.2 “Affordability” of PPP Guidelines, “the State Authority should confirm that the projected PPP capital cost will come within the capital envelope targets. In addition to establishing the value for money at project level, the State Authority should also examine whether the project specific budgets proposed are consistent with its capital investment allocations and targets over the period concerned, e.g. in the case of unitary payments funded PPPs, the relevant State Authority should confirm that the projected capital cost of the project can be accommodated in its capital envelope allocation.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Affordability assessment mechanisms are described in Article 1.13 of PSB: “Affordability. The issue of affordability is fundamental to the proper planning / assessment / approval of any project. PPPs typically give rise to a 25-to-30-year repayment mechanism. At a macro level, therefore, it is vital that some control mechanism is in place to ensure that projects are “affordable” in the longer term, taking account of other budgetary demands. In the case of unitary payment funded PPP projects, the setting of PPP/NDFA targets in the Capital Envelopes for Departments (set out in Annex D of the Budget) and charging the capital costs of PPPs against these amounts over their construction period provides an overall control mechanism for sustainable investment at a macro level. At project level, the issue of affordability is addressed in the context of the overall capital envelope amount available to the Sponsoring Agency, and by the setting of a project budget and the compilation of a PSB. A Sanctioning Authority should not allow a project to proceed unless it is satisfied that the overall capital cost of the project as a whole, including both PPP and non-PPP elements, can be accommodated within the Capital Envelope allocation(s) available to the Sponsoring Agency – Voted Capital and/or PPP/NDFA amount, as appropriate.”
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	The assessment is part of the appraisal procedure and is realized in practice before procuring a PPP project.
<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 3.9 of the APP PPP covers different types of risks inherent to the management of a typical PPP project. It provides that achieving an optimal risk transfer in a PPP project is necessary to secure value for money for the Exchequer (aka Treasury): “A 2004 Eurostat ruling stated that the key issue in

	determining how a PPP project affects the General Government Balance depends on whether the main project risks are borne by the Government or by the private sector partner. The cost of a PPP project and its impact on the GGB can be spread over the full period of the contract provided the construction risk and either demand or availability risk is transferred to the private sector. The NDFA must be consulted regarding all aspects of risk analysis. The inclusion of the cost of private finance, which is costlier than the cost of Government borrowing, must be justified by the level of risk transfer achieved or otherwise offset through innovative proposals to address the State Authority’s output specifications.”
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Article 3.9 of the APP PPP specifies the types of risks to be allocated between the two partners. Appendix 1 of the APP PPP, “Extract from a Sample Risk Matrix Showing Some Risk Allocations in a PPP Contract,” provides a template and suggestions for a risk allocation matrix.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	The assessment is part of the Detailed Appraisal step of a PPP procurement project.
<b>12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 1.14 of the PPP Guidelines provides that two different levels at which “Value for Money” (or VfM) is achieved for the Exchequer (aka Treasury), needs to be considered: (a) the overall VfM of the project – i.e. if the project as a whole offers good value for money, and (b) the VfM of the PPP contract – i.e. if the aspects of the project that are being procured by PPP represent good value for money, particularly when compared with the cost of achieving the same objective by traditional procurement (as represented by the Public Sector Benchmark (PSB)). Article 1.4 VfM prescribes that a procuring government agency “should monitor both the PPP and non-PPP costs associated with each PPP project in accordance with the Capital Appraisal Guidelines and the value for money measures, and should be satisfied that, in the wider value for money consideration of the project (taking both PPP and non-PPP elements into account), the project as a whole continues to represent value for money.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Article 1.14 of the PPP Guidelines provides that four formal VfM tests should be carried out during the PPP procurement process at the following points: (i) at

	<p>PPP Procurement Assessment – a test carried out to determine whether, and in what form, a PPP arrangement has the potential to offer the best value for money solution for the procurement, by reference to a number of criteria (see section 2.3.1 below); (ii) at Completion of the PSB – to determine whether, in light of the quantifications in the PSB, the conclusion reached in the PPP Procurement Assessment still holds; (iii) at Tender Evaluation stage - to compare the highest ranking bid against the PSB, allowing for the differing impact of taxes, etc. to assess whether the highest ranking bid offers a potential value for money solution; and (iv) at Financial Close – a final test carried out (a) to assess the impact of any changes in the interest rate(s) and/or discount rate and (b) where the project has been procured using the Negotiated Procedure, to examine the effect of any proposed changes in the contract terms.</p> <p>VfM further provides a comprehensive 23-page methodology for VfM assessment of PPP projects in Ireland.</p>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Four formal VfM tests are carried out during the PPP procurement process.
<b>12.5. Financial viability or bankability assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 3.5 of PPP Assessment: The procuring authority may conduct a market consultation to identify or clarify suitable options or solutions; to determine the bankability of, and the market interest in, the proposed project; to evaluate the risks that will be transferred; and to assess the private sector’s willingness to accept the required degree of risk transfer.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	<p>Article 2.3.1 of the PPP Guidelines: “PPP Procurement Assessment. The NDFA will provide financial, insurance, and risk analysis advice to State Authorities in order to assist in determining the most appropriate procurement mechanism. Detailed factors to be taken into consideration in the context of a PPP Procurement Assessment will be issued in a separate technical note.”</p> <p>DRP provides guidelines on calculating the discount rate for discounting whole life PPP cash flows within: (a) the PSB and (b) the final stages of the Value for Money Comparison (VfMC) of PPP tenders (Article 2.0 “Scope”). The purpose of the discount rate is to correctly discount the future cash flows of a PPP project before it is procured to identify whether it is financially robust (viable).</p>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Consultations to determine bankability of a PPP project are integrated in the assessment process.
<b>12.6. Market sounding and/or assessment (showing evidence of investors’ interest in the market for the project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 2.8.2 of the PPP Guidelines: Communication with market and EU Procurement Procedures Earlier communication with the market to determine their interest in delivering a project may only occur in circumstances as outlined

	<p>in section 3.3 below – dealing with optional market consultation.</p> <p>Article 3.3 of the PPP Guidelines: “(...) Market consultation must not commence until the Project or Programme Budget is approved by the Sanctioning Authority. In exceptional circumstances, the Sanctioning Authority may approve early consultation with the market in the case of a proposed project which is complex and innovative. Market consultation does not commit the State Authority to the procurement of the project (...)”</p> <p>Article 40 of EU Regulations 2016: “Before commencing a procurement procedure, a contracting authority may conduct market consultations with a view to preparing the procurement and informing economic operators of the authority’s procurement plans and requirements (...)”.</p>
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	<p>Article 3.3 of the PPP Guidelines: “Optional Market Consultation. The EU procurement Directives do not preclude market consultation in order to establish whether the market has an interest in, and the capacity to deliver, the proposed PPP project but such consultation must be carried out in a non-discriminatory and transparent fashion. Market consultation must not commence until the Project or Programme Budget is approved by the Sanctioning Authority. In exceptional circumstances, the Sanctioning Authority may approve early consultation with the market in the case of a proposed project which is complex and innovative. Market consultation does not commit the State Authority to the procurement of the project. Market consultation may be needed to: identify or clarify suitable options or solutions; determine the bankability of and the market interest in the proposed project; evaluate the risks that will be transferred; and assess the private sector’s willingness to accept the required degree of risk transfer. Other than in the context of a Competitive Dialogue Procedure or Negotiated Procedure, market consultation must end when a call to competition is published, after which no market consultation may be undertaken. As noted earlier, the project advisors will provide specific advice on this.</p>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Market sounding assessment is optional and only relates to complex PPP projects.
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>Article 18(4a) “Principles of procurement” of the EU regulations 2016 provides: “In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental (...) law that apply at the place where the works are carried out or the services provided that have been established by European Union law, national law, collective agreements or by international, environmental, social, and labour law listed in Schedule 7.</p> <p>Article 24 of the European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No. 349 of 1989), has been integrated in the PDA. Articles 172-176, Chapter X of the PDA prescribe that Environmental Impact Assessment</p>

	should accompany a planning and development project proposed by a local government, identifying how a project “may have significant effects on the environment” and “specifying the manner in which the likelihood that such development would have significant effects on the environment is to be determined” (Article 172).
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	In accordance with national and EU-level legislation, most significant infrastructure projects carried out in Ireland require an Environmental Impact Assessment (“EIA”) to be conducted. While an EIA is formally conducted as part of the planning process, environmental sustainability factors and environmental risk are likely to be considered at PPP identification / preparation stage as they are referenced in the Irish Government’s PPP guidelines.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Contributors confirm that EIA is followed in practice while assessing PPP projects.
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 1.5 “Stakeholders in the PPP Procurement Process” of PPP Guidelines: “PPP projects involve the coming together and interaction of a number of interests and parties. It is a condition of the agreed Framework for Public-Private Partnerships that the Sponsoring Agency should consult with relevant stakeholders at appropriate points throughout the procurement process.” Article 7.1 of the PPP Framework defines stakeholders as “employees and their trade unions, the public, the people who will use the assets and services provided, and local community groups and sectoral interest groups.” Article 3.10 “Employee Relationships” of APP PPP: “The Framework for Public Private Partnerships provides that in selecting, developing and implementing PPP projects, the economic, social and environmental concerns of those directly affected at local level should be taken into account along with the statutory rights and legitimate economic concerns of stakeholders.”
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Article 1.5 “Stakeholders in the PPP Procurement Process” of PPP Guidelines: “The Department of Finance issued central guidelines for State Authorities undertaking PPP Projects on Stakeholder Consultation for Employees and their Representatives in January 2005. It is important that State authorities familiarise themselves with the relevant guidelines on Stakeholder Consultation and apply them in an appropriate manner.”
<b>Is the assessment done in practice?</b>	Yes

<b>Details:</b>	Engagement with local communities is generally undertaken by sponsoring departments or other stakeholders. There is no formal process for facilitating this.
<b>13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b>	n/a
<b>13.1. Are the assessments published online?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>specify the website</b>	n/a
<b>please specify which of the assessments are published online:</b>	n/a
<b>14. Does the procuring authority include a draft PPP contract in the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 53(1) of the EU Regulations 2016 "Electronic availability of procurement documents": "A contracting authority shall, by electronic means, offer unrestricted and full direct access free of charge to the procurement documents from the date— (a) of publication of a notice in accordance with Regulation 51, or (b) on which an invitation to confirm interest is sent."
<b>If no, please elaborate</b>	n/a
<b>14.1. Are the tender documents published online?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 22 of the EU Regulations 2016 "Rules applicable to communication": (1) "All communication and information exchange under these Regulations, in particular electronic submission, shall be performed using electronic means of communication in accordance with the requirements of this Regulation. (2) The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communications technology products in general use and shall not restrict economic operators' access to the procurement procedure."



<b>and please specify the website:</b>	www.etenders.gov.ie
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	Yes
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	Standard project agreement draft: <a href="http://www.ndfa.ie/tenders/standard-procurement-docs-and-ndfa-template-project-agreement/">http://www.ndfa.ie/tenders/standard-procurement-docs-and-ndfa-template-project-agreement/</a> Other standard document drafts and transaction descriptions: <a href="http://ppp.gov.ie/key-documents/compendium-of-clauses-for-a-dbfom-contract/">http://ppp.gov.ie/key-documents/compendium-of-clauses-for-a-dbfom-contract/</a>
<b>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)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>Section 4 of the PSC, Part "Planning Permission Requirements": "Under Design and Build Contracts responsibility for obtaining planning permission may be assigned to the successful contractor." In practice, the latest trend has been for a State Authority procuring the project to obtain the necessary environmental approvals and the land rights.</p> <p>The article also provides: "If a project requires planning permission, a final decision to proceed with it should not be taken until permission is obtained from the appropriate Planning Authority or An Bord Pleanála. (...) Similar considerations should apply to the requirements of various statutory codes operated by local authorities and other bodies, e.g. Building Control (Fire Safety Certificate), Air or Water Pollution Licence, Waste Permit, or Integrated Licence (Environmental Protection Agency). Under Design and Build Contracts responsibility for obtaining planning permission may be assigned to the successful contractor."</p>
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	No

<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>Section 4 of the PSC, Part “Planning Permission Requirements”: “Under Design and Build Contracts responsibility for obtaining planning permission may be assigned to the successful contractor.” In practice, the latest trend has been for a State Authority procuring the project to obtain the necessary environmental approvals and the land rights.</p> <p>The article also provides: “If a project requires planning permission, a final decision to proceed with it should not be taken until permission is obtained from the appropriate Planning Authority or An Bord Pleanála. (...) Similar considerations should apply to the requirements of various statutory codes operated by local authorities and other bodies, e.g. Building Control (Fire Safety Certificate), Air or Water Pollution Licence, Waste Permit, or Integrated Licence (Environmental Protection Agency). Under Design and Build Contracts responsibility for obtaining planning permission may be assigned to the successful contractor.”</p>
<b>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>Section 4 of the PSC, Part “Planning Permission Requirements”: “Under Design and Build Contracts responsibility for obtaining planning permission may be assigned to the successful contractor.” In practice, the latest trend has been for a State Authority procuring the project to obtain the necessary environmental approvals and the land rights.</p> <p>The article also provides: “If a project requires planning permission, a final decision to proceed with it should not be taken until permission is obtained from the appropriate Planning Authority or An Bord Pleanála. (...) Similar considerations should apply to the requirements of various statutory codes operated by local authorities and other bodies, e.g. Building Control (Fire Safety Certificate), Air or Water Pollution Licence, Waste Permit, or Integrated Licence (Environmental Protection Agency). Under Design and Build Contracts responsibility for obtaining planning permission may be assigned to the successful contractor.”</p>

<b>16.4. Obtaining the required land: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>16.5. Obtaining the required right of way: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>PPP Procurement</b>	
<b>18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis

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):	A notice is published in the Official Journal of the European Union (OJEU) and through the national procurement website, <a href="http://www.etenders.ie">www.etenders.ie</a> , in accordance with EU Regulations 2016, Article 49.
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	<a href="http://www.etenders.ie">www.etenders.ie</a> ; <a href="http://www.ojeu.eu">www.ojeu.eu</a> ; <a href="http://www.ted.europa.com">www.ted.europa.com</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):	Article 39(3, 4) EU Concession 2017 "Time limits for receipt of applications and tenders for the concession contract": The minimum time limit for the receipt of applications (whether or not including tenders for the concession contract) shall be 30 days from the date on which the concession notice was sent for publication in accordance with Regulation 30. Where the procedure takes place in successive stages the minimum time limit for the receipt of initial tenders shall be 22 days from the date on which the invitation to tender is sent.
and the time in calendar days:	35
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

<b>Relevant legal/regulatory provision (if any)</b>	Article 26 of EU Regulations 2016: (1) When awarding public contracts, a contracting authority (...) may apply—(a) open or restricted procedures, or (b) innovation partnerships. In Open procedure, as defined in Article 27 of EU Regulations 2016, an interested economic operator may submit a tender in response to a call for competition and (...) the tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.
<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 26 of EU Regulations 2016: (1) When awarding public contracts, a contracting authority (...) may apply—(a) open or restricted procedures, or (b) innovation partnerships. In Restricted procedure, as defined in Article 28 of EU Regulations 2016, an economic operator may submit a request to participate in response to a call for competition (...) by providing the information for qualitative selection that is requested by the contracting authority. Only those economic operators invited to do so by the contracting authority following its assessment of the information provided may submit a tender (...) and a contracting authority may limit the number of suitable candidates to be invited to participate (...).
<b>22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Ireland has an option named “Competitive procedure with negotiation.” In Competitive procedure with negotiation, as defined in Article 29 of EU Regulations 2016, the government sets the minimum requirements and the award criteria and invites candidates after a prequalification stage to negotiate with each of the candidates. The number of candidates is reduced each negotiation stage by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document. Article 27 of EU Regulations 2016 provides that “a contracting authority may apply a competitive procedure with negotiation or a competitive dialogue in the following situations: (a) with regard to works, supplies, or services fulfilling one or more of the following criteria: (i) the needs of the contracting authority cannot be met without adaptation of readily available solutions; (ii) they include design or innovative solutions; (iii) the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature (the complexity or the legal and financial make-up) or risks attaching to them; (iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification, or technical reference; (b) with regard to works, supplies, or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted.
<b>22.4. Competitive dialogue: Available</b>	Yes
<b>Default</b>	No

<b>Relevant legal/regulatory provision (if any)</b>	Article 3.1 of the PPP Guidelines: “The revised Directives introduce a new procedure described as “competitive dialogue,” which aims to provide a flexible and transparent mechanism for awarding more complex contracts, including more complex PPPs.” Article 30 (2a) of the EU Regulations 2016: “A competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document.” Article 30 further provides a detailed description of requirements applicable to competitive dialogue procedure, such as “(e) the contract shall be awarded on the sole basis of the award criterion of the best price-quality,” “(i) a contracting authority shall ensure equality of treatment among all participants,” etc.
<b>22.5. Direct negotiation with more than one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.6. Direct negotiation with only one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.7 Other. Specify:</b>	Innovation Partnerships
<b>Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 26 of EU Regulations 2016: (1) When awarding public contracts, a contracting authority (...) may apply—(a) open or restricted procedures or (b) innovation partnerships.  In Innovation partnership, as defined in Article 31 of EU Regulations 2016: “an economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority, and (...) the contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities. (...) An innovation partnership shall aim to develop an innovative product, service, or works with a view to the subsequent purchasing by the contracting authority of the resulting supplies, services, or works, where the resulting supplies, services, or works correspond to the performance levels and maximum costs agreed between the contracting authority and the participants.”
<b>22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 29 (2) of EU Regulations 2016: “Contract notices, where used, shall contain the information specified in Part 3 of Schedule 3 and shall be published in accordance with Regulation 51.” Regulation (aka Article) 51 provides:” The notices (...) shall include the information (...) in the format of standard forms established by the Commission, including standard forms for corrigenda.”
<b>If no, please elaborate:</b>	n/a
<b>22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 41(5) of EU Concession 2017 provides that the contracting authority or contracting entity shall list the award criteria in descending order of importance.
<b>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	Prequalification and shortlisting criteria are strictly adhered to in practice.
<b>If no, please elaborate:</b>	n/a
<b>23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 53(6) of EU Regulations 2016: “Where it has been requested in appropriate time, a contracting authority shall supply, to all tenderers taking part in the procurement procedure, additional information relating to the specifications and any supporting documents no later than 6 days before the time limit fixed for the receipt of tenders.”
<b>23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>23.2. Based on your experience, is it always the case that this disclosure of</b>	Yes

<b>information is done in practice?</b>	
<b>If yes, please specify:</b>	Information is disclosed only for open queries and not the confidential ones.
<b>If no, please elaborate:</b>	n/a
<b>24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	The majority of contributors confirm that the information pertaining to a pre-bid conference is available to the public.
<b>If no, please elaborate:</b>	n/a
<b>25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>If no, please elaborate:</b>	n/a
<b>26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</b>	Yes



<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>The evaluation is not required to be made according to the criteria of the tender documents, but more generally with objective and fair criteria. Pursuant to Article 56(1) of the EU regulations 2016, "Contracts shall be awarded on the basis of criteria laid down in accordance with Regulations 67 to 69, where the contracting authority has verified, in accordance with Regulations 59 to 61, that the tender— (a) complies with the requirements, conditions, and criteria specified in the contract notice or invitation to confirm interest and in the procurement documents, taking into account, where applicable, Regulation 45"</p>
<b>Evaluation criteria is not set in the tender documents</b>	<p>No</p>
<b>27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.</b>	<p>No</p>
<b>Please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	<p>Yes</p>
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	<p>No regulatory basis</p>
<b>The procuring authority does not award a PPP contract if only one proposal is submitted.</b>	<p>No</p>
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The regulatory framework does not include any provisions.</b>	<p>No</p>
<b>28. Does the procuring authority publish the award notice?</b>	<p>Yes</p>
<b>If yes, please specify the means of publication and provide the relevant</b>	<p>Article 50(1) of EU Regulations 2016: "A contracting authority shall, no later than 30 days after the award of a contract or the conclusion of a framework agreement, following the decision to award or conclude it and send for</p>

<b>legal/regulatory provisions (if any):</b>	publication a contract award notice on the results of the procurement procedure.”
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	www.etenders.gov.ie; www.ojeu.eu
<b>29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 55(b) of EU Regulations 2016 provides that “a contracting authority shall, as soon as possible, inform each candidate and tenderer of a decision reached concerning the (...) award of a contract (...).</p> <p>Article 6(2) of the EC 2010 requires a government authority to send out a notice to an unsuccessful tenderer “for a contract based on a framework agreement or dynamic purchasing system” with a summary of the reasons for the rejection of his or her application/a summary of the reasons for the rejection of his or her tender.</p> <p>Further, according to Article 6(3) of the EC 2010, a tenderer who has submitted an admissible tender (that is, a tender that qualifies for evaluation under the rules of the relevant tender process), shall receive a notice with the characteristics and relative advantages of the tender selected and the name of the successful tenderer and the parties.</p>
<b>If no, please elaborate:</b>	n/a
<b>29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 55(b) of EU Regulations 2016 requires that the public authority “shall, as soon as possible, inform each candidate and tenderer of a decision reached concerning the— (a) conclusion of a framework agreement, (b) award of a contract, or (c) admittance to a dynamic purchasing system, including, where applicable, the grounds for any decision—(i) not to conclude a framework agreement, (ii) not to award a contract for which there has been a call for competition, (iii) to recommence the procedure, or (iv) not to implement a dynamic purchasing system.
<b>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?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 5(4) of the EC 2010: The duration of the standstill period must be at least 14 days if the award notice is sent by fax or electronic means; 16 days if the notice is sent by any other means.
<b>and the time in calendar days:</b>	16
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 5 of the EC 2010: "The standstill period for a contract begins on the day after the day on which each tenderer and candidate concerned is sent a notice (...) of the outcome of his or her tender or application. The duration of the standstill period must be at least (a) 14 calendar days, if the notice under Regulation 6 is sent by fax or electronic means or (b) 16 calendar days, if the notice is sent by any other means."
<b>31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	While a contracting authority shall negotiate with the bidders the initial and all subsequent tenders submitted by them to improve the content of the tenders, it may not negotiate with the tenderers in the final round of the tender. (Article 29(8) of the EU Regulations 2016) The final round of the tender is defined in the Article 29(16): "Once the contracting authority intends to conclude the negotiations, it shall (a) inform the remaining tenderers and set a common deadline to submit any new or revised tenders, (b) verify that the final tenders are in conformity with the minimum requirements (...), (c) assess the final tenders on the basis of the award criteria, and (d) award the contract in accordance with Regulations 66 to 69."
<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	Yes
<b>If yes, please specify:</b>	Public authorities are generally public procurement law risk-averse thus limit negotiations at preferred bidder stage of PPP tender competitions.
<b>If no, please elaborate:</b>	n/a
<b>32. Does the procuring authority publish the PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>32.1. If yes, which of the following options best describes this publication (choose only one)?:</b>	n/a

<b>Publication of the full PPP contract including all its annexes and appendixes</b>	
<b>Publication of the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract without publishing the full PPP contract</b>	n/a
<b>Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>32.2. If yes, is it published online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>PPP Contract Management</b>	
<b>41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 2.2 of Appraisal Guidelines: “Unless it already exists (e.g. for ongoing capital programmes), the management structure should always be identified and established once approval in principle has been obtained. In some cases, it may be possible to outline the proposed structure, filling some of the roles immediately and leaving others to be filled later on, as appropriate.”</p> <p>Articles 3.1 of Appraisal Guidelines: 3.1 “Proper programme management is necessary to ensure that capital programmes are effectively and efficiently delivered, that programme objectives continue to be relevant in the operational</p>

	<p>environment and that the programme objectives are being met.”</p> <p>Articles 3.2 of Appraisal Guidelines: “The implementation stage of a project begins once final approval for the award of a contract has been secured. The critical tasks at this stage are to manage and monitor the project to ensure that it is executed satisfactorily, within budget, to standard and on time.”</p>
<p><b>41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team</b></p>	<p>Yes</p>
<p><b>Relevant legal/regulatory provisions (if any):</b></p>	<p>Article 2.2 of Appraisal Guidelines requires that the management structure “should always be identified and established” once approval in principle of a PPP project has been obtained. “In some cases, it may be possible to outline the proposed structure, filling some of the roles immediately, and leaving others to be filled later, as appropriate. (...) The senior decision-makers for the project, and the senior managers should all be identified clearly at the outset, and their involvement and relative role clearly agreed.” Article further provides a tentative organizational structure.</p>
<p><b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b></p>	<p>No</p>
<p><b>Relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>Elaboration of a PPP implementation manual or an equivalent document</b></p>	<p>Yes</p>
<p><b>Relevant legal/regulatory provisions (if any):</b></p>	<p>The NDFA has created a Contract Template for PPP contract agreement, which includes sections of standard clauses on the obligations of both private and public parties during a contract management stage. The Contract Template and other relevant documents are available online at <a href="http://www.ndfa.ie/tenders">http://www.ndfa.ie/tenders</a>.</p>
<p><b>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</b></p>	<p>No</p>
<p><b>Relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</b></p>	<p>Yes</p>
<p><b>Relevant legal/regulatory provisions (if any):</b></p>	<p>The NDFA has created publicly available and extensive guidelines and document templates to provide public and private sector with guidance during the contract</p>

	management stage and to assist risk mitigation throughout this stage. The documents are published at the NDFA website: <a href="http://www.ndfa.ie/tenders/standard-procurement-docs-and-ndfa-template-project-agreement/">http://www.ndfa.ie/tenders/standard-procurement-docs-and-ndfa-template-project-agreement/</a> .
<b>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.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The PPP contract management team members are required to meet sufficient qualification without specific details.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The PPP contract management team members are not required to meet any specific qualifications.</b>	Yes
<b>Please elaborate and provide examples:</b>	No regulatory basis
<b>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Schedule 14(1) "Reports during Construction Period" of the Contract Template, Monthly Design, and Construction Report, covering all relevant aspects of the Works shall be submitted to the procuring authority's representative within five (5) Business Days of the end of each calendar month to track construction progress.
<b>42.1. If yes, is the PPP contract construction performance information</b>	No

<b>made available to the public?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b>	No
<b>If yes, please specify the website:</b>	n/a
<b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Part 7 "Relationship and Monitoring" of the Contract Template specifies reports (Article 20) and records (Article 21) required for project evaluation and monitoring.
<b>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</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	Note 2 of Part 15 of the Contract Template: The payment mechanism is at the heart of the Project Agreement, as it puts into financial effect the allocation of risk and responsibility between the Authority and PPP Company. It determines the payments the Authority makes to PPP Co. and establishes the incentives for PPP Co. to deliver exactly the Service required in a manner that gives value for money.
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	Note 4 of Part 15 of the Contract Template: (b) If PPP Co. fails to perform, there can be both direct and indirect incentives to remedy the failure. (b) The direct approach involves immediate deductions from the Unitary Charge and depends on availability of the Service.
<b>The private partner must provide the procuring or contract management authority with periodic</b>	Yes

<b>operational and financial data</b>	
<b>Relevant legal/regulatory provisions (if any)</b>	According to Schedule 14(2) "Reports during Service Period" of the Contract Template, within 5 Business Days after the end of each calendar month, which falls within the period from Service Commencement Date to the Expiry Date or Termination Date, PPP Co. will provide to the Authority's Representative "Annual Services Report," which should contain operational and financial data.
<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	According to Schedule 14(2) "Reports during Service Period" of the Contract Template, within 5 Business Days after the end of each calendar month, which falls within the period from Service Commencement Date to the Expiry Date or Termination Date, PPP Co. will provide to the Authority's Representative "Annual Services Report," which should contain operational and financial data.
<b>The PPP contract performance information must be available to the public</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>43.2. Is PPP contract performance information made publicly available online?</b>	No
<b>If yes, please specify the website:</b>	n/a
<b>44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard</b>	Contract Template includes section 49 "Change in Ownership." A commonly accepted contractual requirement in Ireland is to allow no changes to the ownership of the PPP company for the first 24 months after the contract has been awarded. In practice, some PPP contracts provide a permanent prohibition



<b>contractual provisions (if any):</b>	on changes of control which result in certain (initial) shareholders having less than a specified shareholding (usually not less than 33%) in the PPP company.
<b>45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Section 49.2 of Contract Template: private partner “will procure that save where the prior written consent of the Authority has been obtained. There will be no: (a) Change in Ownership any time prior to issue of the Certificate of Commencement or (b) Restricted Share Transfer at any time during the Term of this Agreement”.
<b>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Pursuant to Article 43 of EU Concession 2017, Concession contracts may be modified without a new concession contract award procedure, inter alia, (d) where a new concessionaire (...) fulfils the criteria for qualitative selection initially established. Further, Article 72(d(ii)) of the EU Regulations 2016: “Modification of contracts during their term. (1) Contracts and framework agreements (...) may be modified without a new procurement procedure in accordance with these Regulations in any of the following cases: (...) where a new contractor replaces the contractor to which the contracting authority had initially awarded the contract, (...) following corporate restructuring, including takeover, merger, acquisition, or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, where this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of these Regulations (...)
<b>In other cases, flexibility to change the ownership structure and/or assign the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Pursuant to Article 43 of EU Concession 2017, Concession contracts may be modified without a new concession contract award procedure, inter alia, (d) where a new concessionaire replaces the one to which the contracting authority or the contracting entity had initially awarded the concession contract as a consequence of—(i) an unequivocal review clause or option in conformity with paragraph (1)(a) or (ii) universal or partial succession into the position of the initial concessionaire, following corporate restructuring, including takeover, merger, acquisition, or insolvency, of another economic operator that fulfils the

	criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the Regulations.
<b>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Article 72(d(ii)) of the EU Regulations 2016: “Modification of contracts during their term. (1) Contracts and framework agreements (...) may be modified without a new procurement procedure in accordance with these Regulations in any of the following cases: (...) where a new contractor replaces the contractor to which the contracting authority had initially awarded the contract (...) following corporate restructuring, including takeover, merger, acquisition, or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, where this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of these Regulations (...)</p> <p>Schedule 20 in EU Regulations 2016 provides a list of possible modifications to the contract requested by either side and sets a list of obligatory procedures in each case. It also specifies in which cases the public or private partner might reject the modifications proposed by the counterparty.</p>
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>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.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Article 29.3 of the Contract Template provides a procedure for adding Small Works to the scope of an existing PPP contract at the request of a procuring authority, NDFA, in this case. Schedule 20 of the NDFA template provides guidelines which applies to any changes to the contract including the scope. According to Schedule 20 of the NDFA, only a procuring authority may propose changes in the scope of a PPP contract which exceeds that defined by the Small Works.</p>

<b>A change in the risk allocation of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	No regulatory basis
<b>A change in the financial and/or economic balance of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 43 of EU Concession 2017 provides (8b) that a new award procedure is necessary if contract modification is substantial. A modification shall be considered to be substantial when (...) it changes the economic balance of the concession contract in favour of the concessionaire in a manner which was not provided for in the initial concession contract.
<b>A change in the duration of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	No regulatory basis
<b>A change in the agreed price or tariff.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 43 of EU Concession 2017 provides a new concession contract award procedure, which is required for additional works or services by the original concessionaire that have become necessary and were not included in the initial concession contract where a change of concessionaire would cause significant inconvenience or substantial duplication of costs for the contracting authority or contracting entity.
<b>46.3. Can the procuring authority unilaterally modify a PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard</b>	Article 36.1 of the Contract Template regulates contract change due to Force Majeure circumstance.

<b>contractual provisions (if any):</b>	
<b>Material Adverse government action .</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 34 "Termination for Authority Default" of the Contract Template regulates contract termination due to Material Adverse government action.
<b>Change in the Law.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 30 "Change in Law" of the Contract Template: "Schedule 21 (Change in Law) will have effect in respect of Change in Law during the Term." Article 36.3 "Termination for Change in Law" of the Contract Template summarizes procedure, which applies in case of the change in the law.
<b>Refinancing.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 47.1-47.7 "Refinancing" of the Contract Template describe procedures in case of Refinancing. (E.g. Article 47.1: "PPP Co. will obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and PPP Co. will at all times act in good faith with respect to any Refinancing.")
<b>Subcontracting and replacement of the subcontractors.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 50.1-50.11 "Subcontracting" of the Contract Template describes procedures in case of subcontracting and replacement of the subcontractors.
<b>48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 44 "Dispute Resolution Procedure" of the Contract Template contains provisions for dispute resolutions between the parties to the contract.
<b>48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body</b>	No
<b>If yes, please specify:</b>	n/a
<b>Local courts</b>	Yes

<b>Domestic arbitration</b>	Yes
<b>International arbitration</b>	Yes
<b>Investor-State Dispute Settlement (ISDS)</b>	No
<b>Mediation</b>	Yes
<b>Please provide the relevant legal/ regulatory/standard contractual provisions (if any)</b>	<p>Ireland is a signatory of the New York Convention and the ICSID Convention.</p> <p>Article 44.3 “Adjudication” of the Contract Template: Dispute Resolution of the Contract Template prescribes that if a dispute was not resolved through Liason procedure, it must be forwarded to the Adjudicator Panel, “which will be comprised of four (4) experts, one (1) of whom will be competent to adjudicate in relation to matters of a construction nature (the “Construction Expert”), one (1) of whom will be competent to adjudicate upon matters concerning Service issues (the “Service Expert”), one (1) of whom will be competent to adjudicate upon matters relating to financial matters (the “Financial Expert”), and one (1) who will be competent to adjudicate upon legal matters (the “Legal Expert”).”</p> <p>Article 44.5 “Final resolution” of the Contract Template: (a) Unless the Parties have agreed that the Adjudicator’s decision will be final, either Party may refer the Dispute to arbitration in accordance with Clause 44.5(d) below (Final Resolution).</p> <p>(b) If the Parties have agreed that the Adjudicator’s decision will be final, or if neither Party refers the Dispute to arbitration in accordance with Clause 44.5(d) (Final Resolution), the Adjudicator’s decision will be final and binding on both Parties.</p>
<b>48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	Article 23 of AA 2010: “An award (...) made by an arbitral tribunal under an arbitration agreement shall be enforceable in the State either by action or leave of the High Court, in the same manner as a judgment or order of that Court with the same effect, and where leave is given, judgment may be entered in terms of the award.”
<b>International arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	Article 24 of AA 2010: (1) Subject to this Act—(a) the New York Convention, (b) the Geneva Convention, and (c) the Geneva Protocol, shall have the force of law in the State.
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	Ireland is a signatory of the New York Convention and the ICSID Convention.

<b>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?</b>	<p>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Articles 19.1-19.7 of the Contract Template provides guidelines for step-in procedure of a procuring authority, NDFA in this case. Article 19.1 of the Contract Template lists reasons for step-in: “ (a) because a serious risk exists to the health or safety of persons, of property, or to the environment; (b) to discharge a statutory duty; (c) because in the reasonable opinion of the Authority’s Representative the circumstances constitute an Emergency; and/or (d) due to the failure of PPP Co. to provide the Services in accordance with the Project Agreement, where such failure is materially prejudicial to the ability of the Authority to provide [Educational] or [Clinical, etc] Services (...)”</p>
<b>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?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>A footnote 82 of the Schedule 17 of the Contract Template provides guidelines for the Senior Lenders step-in procedure: If the Authority issues a Termination Notice to PPP Co, the Senior Lenders will require an opportunity to put together a remedial plan and accordingly, the right to attempt to rectify breaches or transfer the Project Agreement. The Senior Lenders are given this opportunity under the terms of the Funder Direct Agreement. In such circumstances, the Senior Lenders are incentivised to take control of the Project because any failure to do so will lead to termination of the Project Agreement.</p>
<b>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.</b>	<p>No</p>
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>n/a</p>

<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>NDFA's Contract Template has a provision on a funder's right of step-in, without being specific on the terms upon which such step-in can be affected. Articles 19.1-19.7 of the Contract Template provide guidelines for step-in procedure of a procuring authority, NDFA in this case. Article 19.1 of the Contract Template lists reasons for step-in: " (a) because a serious risk exists to the health or safety of persons or property or to the environment; and/or (b) to discharge a statutory duty; and/or (c) because in the reasonable opinion of the Authority's Representative the circumstances constitute an Emergency; and/or (d) due to the failure of PPP Co. to provide the Services in accordance with the Project Agreement where such failure is materially prejudicial to the ability of the Authority to provide [Educational] or [Clinical, etc] Services (...)" Further, a footnote 82 of the Schedule 17 of the Contract Template provides guidelines for the Senior Lenders step-in procedure: If the Authority issues a Termination Notice to PPP Co, the Senior Lenders will require an opportunity to put together a remedial plan, and accordingly, the right to attempt to rectify breaches or transfer the Project Agreement. The Senior Lenders are given this opportunity under the terms of the Funder Direct Agreement. In such circumstances, the Senior Lenders are incentivised to take control of the Project because any failure to do so will lead to termination of the Project Agreement.</p>
<b>Other.</b>	No
<b>Please Specify:</b>	n/a
<b>51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Articles 33 - 38 "Termination" of Contract Template expressly establishes the grounds for termination of a PPP contract.
<b>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences</b>	Yes

<b>for the termination of the PPP contract?</b>	
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Articles 33.4(d), 34.3, 35.4, 36.1(f), 36.2(b), 36.3(b), 37 to 40 of Contract Template list consequences for termination of the PPP contract.
<b>Unsolicited Proposals</b>	
<b>34. Are unsolicited proposals in Ireland: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)</b>	No
<b>Explicitly allowed by the legal framework?</b>	No
<b>Not regulated by the legal framework, but do happen in practice?</b>	No
<b>Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)</b>	Yes
<b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</b>	n/a
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b>	n/a
<b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent</b>	n/a



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.	
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 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	n/a

<b>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.</b>	
<b>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</b>	n/a
<b>39.3 Bid Bonus.</b>	n/a
<b>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</b>	n/a
<b>39.5 Other.</b>	n/a
<b>Please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a