

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN KUWAIT

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>PPPs are governed by a specific regulatory framework in Kuwait. The regulations that fall under this framework include: 1) Law No. 116 of 2014 Regarding Public Private Partnerships [hereinafter “PPP Law”] Article 1 (1) of which provides, “Public Private Partnership Project” or “PPP Project”: a project to implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service, procured by the Authority in cooperation with the Public Entity and in accordance with the PPP Model after the approval of the Higher Committee, provided it does not contradict with the provisions of Articles 152 and 153 of the Constitution.” ; and 2) Decree No. 78 of 2015 issuing the Executive Regulations of Law No 116 of 2014 Regarding Public Private Partnerships [hereinafter “PPP Executive Regulations”]. The aforementioned shall be the main instruments to procure PPP projects for purposes of this analysis.</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	http://www.ptb.gov.kw/en/Legislation
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	No
Please describe:	n/a
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	A PPP Handbook or Manual is anticipated to address details within the PPP Law and Executive Regulations
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the	No

following sectors?: Transportation.	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	Yes
If yes, please provide the relevant legal/regulatory provisions:	KAPP and the Higher Committee issued a clarification to bidders on the Al Abdaliyah ISCC PPP Project in March 2017 that the project is outside of the scope of the PPP Law and the PPP Regulations and should be procured under Law No. 39 of 2010 Regarding the Establishment of Kuwaiti Joint Stock Companies to Undertake the Construction and Implementation of Electrical Power Plants and Sweetening Water in Kuwait. The project is expected to be retendered under that law sometime in 2017. This may also apply to two other power and water projects currently under procurement - the Az Zour North IWPP (Phase 2) and the Al Khairan IWPP (Phase 1).
3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	Yes
If yes, specify and provide the relevant legal/regulatory provisions:	Projects related to Natural Resources are specified in the PPP Law and require particular procedures and laws as per Article 1 (1) of the PPP Law and Articles (152) and (153) of the Kuwaiti Constitution. Article 152 of the Constitution of the State of Kuwait provides, "No concession for exploitation of either a natural resource or a public service may be granted except by a law and for a

	<p>limited period. In this respect, the preparatory measures facilitate the operations of prospecting and exploring and ensure publicity and competition.”</p>
<p>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provision (if any):</p>	<p>Article 6 (14) of the PPP Law provides that amongst the competencies of the Kuwait Authority for Partnerships Projects (KAPP), as shall be described later on, is, “The Authority shall collaborate and cooperate with the Public Entities for the implementation of PPP Projects in compliance with the provisions of this Law, and shall carry out the following: 14. Propose the exemption of the project from taxes and custom duties and raise such recommendation to the Higher Committee.</p> <p>Article 28 of the same Law provides, “ The terms of reference (or RFP) issued to the Investors for the submission of their proposals shall include the incentives provided to the Successful Investor including exemption from income tax, any other taxes, custom duties or any other fees based on the decision of the Higher Committee as well as any other benefits provided for under Law 116 of 2013. The executive regulations shall set out the mechanism for granting such exemptions”.</p> <p>Article 30 of the PPP Executive Regulations provides, “The Terms of Reference shall set the incentives provided to Investors to submit their proposals and the incentives granted to the Contracting Investor including the exemption from income tax, or any other taxes, custom duties or any other fees based on the decision of the Higher Committee, as well as any other benefits provided for under Law No 116 of 2013 regarding the Promotion of Direct Investment in the State of Kuwait.</p> <p>The Authority shall in collaboration with the Public Entity while preparing the project’s procurement documents propose the incentives and the tax and customs exemptions taking into consideration the nature of the project and shall draft a report regarding the same to be presented to the Higher Committee in order to issue the appropriate decision thereon.</p> <p>The decision of the Higher Committee issued in this regard shall be binding towards all the State’s authorities concerned with the implementation thereof.”</p>
<p>5. Please identify the PPP procuring authorities in Kuwait and provide their website(s) (if available):</p>	<p>PPP projects procuring authorities in Kuwait shall be the relevant public entity (any government, Ministry or Department, or any public entity with a supplementary or an independent budget, Article 1 (8) of the PPP Law) and KAPP http://www.ptb.gov.kw/en/Home in coordination with the public entity. For purposes of the case study assumption, the Ministry of Public Works http://www.mpw.gov.kw/sites/en/Pages/HomePage.aspx shall be the relevant procuring authority.</p> <p>Article 2 of the PPP Executive Regulations provides, “The proposal for the procurement and implementation of a PPP Project may be submitted by the following entities:</p>

	<p>1. Public Entities: A Public Entity wishing to propose a project that falls within its competences in accordance with the PPP Law shall submit a request to the Authority along with the comprehensive feasibility studies of the project in accordance with the Law, its Executive Regulations and the Guidebook.</p> <p>2. The Higher Committee: the Higher Committee approves the request of the relevant Public Entity for the procurement of a PPP Project in accordance with a PPP Model, and it may propose PPP Projects to Public Entities...</p> <p>The Authority shall in coordination with the Public Entity review the feasibility studies presented by the aforementioned entities and finalize the same, as needed, in order to submit an appropriate recommendation thereon to the Higher Committee.</p> <p>The Authority may prepare the project's comprehensive feasibility studies and procurement documents, and it may in all cases seek support from advisory firms and specialized offices whether local or foreign as it deems suitable for this purpose in accordance with the provisions of the laws and regulations."</p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name, and its website (if available):	Kuwait Authority for Partnership Projects (KAPP) http://www.ptb.gov.kw/en/Home
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	Yes
6.2 PPP capacity building for other public authorities.	Yes
6.3 PPP promotion among the public and/or private sectors in national and international forums.	Yes
6.4 Technical support in implementing PPP projects.	Yes
6.5 Identification and selection of PPP projects from the pipeline.	Yes
6.6 Revision of fiscal risks born by the Government.	Yes
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	Yes
6.9 Undertaking the procurement of PPPs.	Yes
6.10 Oversight of PPP implementation.	Yes

6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>Article 6 of the PPP Law provides, "The Authority (KAPP) shall collaborate and cooperate with the Public Entities for the implementation of PPP Projects in compliance with the provisions of this Law, and shall carry out the following:</p> <ol style="list-style-type: none"> 1. Conduct surveys and preliminary studies to identify projects that may be procured under this Law and submit reports regarding the same to the Higher Committee. 2. Review and study projects and Initiatives prepared by the Public Entities or Concept proposer and submit appropriate recommendations regarding the same to the Higher Committee. 3. Assess the comprehensive feasibility studies of PPP Projects and proposed Concepts, prepare and complete these studies as needed, submit appropriate recommendations in relation to the same to the Higher Committee in preparation for the procurement of the project. 4. Prepare a guidebook for PPP Projects. 5. Set the mechanism for the submission of Initiatives as well as their methods of evaluation and procurement, in accordance with the provisions of this Law. 6. Set out approaches to follow up and evaluate the performance of approved PPP Projects. 7. Develop contract templates, including required terms and provisions, to be submitted to the Higher Committee for approval. 8. Prepare the legal drafting of PPP Agreements and the Terms of Reference thereof. 9. Submit recommendations to the Higher Committee for the approval of the Successful Investor after a successful negotiation. 10. Incorporate public joint-stock companies for the implementation of PPP Projects and determine the capital thereof in accordance with the provisions of this Law. 11. Develop PPP Projects programs and follow up on their completion and issue necessary decisions in relation thereto. 12. Compile and submit a semi-annual report on PPP Projects to the Higher Committee for its approval, prior to the Minister of Finance presenting the same to the Council of Ministers. 13. Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected. 14. Propose the exemption of the project from taxes and custom duties and raise such recommendation to the Higher Committee. <p>And it shall also exercise all other competences stipulated in this Law."</p>
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 2 of the PPP Law provides, "In accordance with this Law, a Higher Committee called the "Higher Committee for Public-Private Partnership

	<p>Projects” shall be established by a decree (and shall replace the Higher Committee for projects built on state-owned property established by Decree No 145 of 2008), and shall assume the powers and authorities of the Authority’s board of directors provided for under this Law. The Higher Committee shall be chaired by the Minister of Finance...</p> <p>The decisions of the Higher Committee shall only be effective upon their approval by the Minister of Finance.”</p> <p>Article 3 of the same Law provides, “The Higher Committee shall have the following competences: Approving the request of the relevant Public Entity for the procurement of PPP Projects in accordance with the PPP Model and proposing PPP Projects to the Public Entities.</p>
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 2 of the PPP Law provides, “In accordance with this Law, a Higher Committee called the “Higher Committee for Public-Private Partnership Projects” shall be established by a decree (and shall replace the Higher Committee for projects built on state-owned property established by Decree No 145 of 2008), and shall assume the powers and authorities of the Authority’s board of directors provided for under this Law. The Higher Committee shall be chaired by the Minister of Finance...</p> <p>The decisions of the Higher Committee shall only be effective upon their approval by the Minister of Finance.”</p> <p>Article 3 of the same Law provides, “The Higher Committee shall have the following competences: 8. Approving the Successful Investor based on the recommendation of the Authority;</p> <p>9. Approving the PPP Agreements to be executed by the Public Entity.”</p>
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a

8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	n/a
Accounting and reporting according to other international standard (e.g. European System of Accounts).	n/a
Please specify:	n/a
Other.	n/a
Please specify:	n/a
9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	Yes
If yes, please specify the relevant authority	The Higher Committee for PPP Projects (Higher Committee).
and provide the relevant legal/regulatory provisions (if any):	The Higher Committee for PPP Projects (Higher Committee) as per Article 3 of the PPP Law, which provides, "The Higher Committee shall have the following competences: 7. Approving the studies and Concepts of PPP Projects and approving the procurement thereof in accordance with the PPP Model."
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>The Higher Committee for PPP Projects (Higher Committee) as per Article 3 of the PPP Law, which provides, "The Higher Committee shall have the following competences: 8. Approving the Successful Investor based on the recommendation of the Authority.</p> <p>9. Approving the PPP Agreements to be executed by the Public Entity."</p> <p>Moreover, the State Audit Bureau shall approve PPP projects according to Article 31 of the PPP Law, providing, "PPP Agreements executed in accordance with the provisions of this Law, including consultancy agreements, shall be subject to ex ante and ex post auditing of the State Audit Bureau according to rules of supervision set forth in Law No 30 of 1964." And Article 44 (1) of the PPP Executive Regulations provides, "The award of the competition is in all cases subject to the approval of the State Audit Bureau in accordance with</p>

	Article (31) of the Law. The procurement documents and the offer of the Preferred Investor shall all be presented to the State Audit Bureau, as well as any the minutes of any negotiations undertaken with it and the final terms agreed upon, taking into consideration the duration of validity of the bid bond."
10. Does the procuring authority use transaction advisors during the PPP project cycle?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 2 (3) of the PPP Executive Regulations provides, "The Authority may prepare the project's comprehensive feasibility studies and procurement documents, and it may in all cases seek support from advisory firms and specialized offices whether local or foreign as it deems suitable for this purpose in accordance with the provisions of the laws and regulations." Article 10 of the PPP Executive Regulations also provides, "The Authority may seek the assistance of such persons as it may deem fit for such purpose, whether from local or foreign consultancy firms or otherwise from the public bodies according to the nature and needs of the project". And Article 22 of these Regulations further provides, "The Public Entity in collaboration with the Authority shall prepare the project's procurement documents in accordance with the provisions of the Law, and shall submit the same to the Higher Committee in order to issue an appropriate decision in this regard. The Authority may seek the assistance of local or international consultancy firms to review and prepare such documents."
11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a

<p>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</p>	<p>Yes</p>
<p>If yes, please elaborate:</p>	<p>Article 3 (a) of the PPP Law provides, “The Higher Committee shall have the following competences: 1. Setting the general policies for projects and initiatives of strategic importance to the national economy, identifying priorities and approving detailed documentation related thereto.” Contributors further confirm that KAPP has an internal PMO and strategy analysis and management system uses to prioritize the PPP projects and ensure they are inline with the national Governmental Plan.</p>
<p>The procuring authority does not evaluate PPPs against existing government priorities.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>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?</p>	<p>Yes</p>
<p>If yes, please specify:</p>	<p>Contributors provided that PPPs have been prioritized to meet Kuwait’s development plans.</p>
<p>If no, please elaborate:</p>	<p>n/a</p>
<p>12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)</p>	<p>Yes</p>

Relevant legal/regulatory provision (if any)	<p>Article 5 of the PPP Executive Regulations provides, “If the approval of the project in accordance with the PPP Model is recommended, the recommendation shall include the following:</p> <p>7. The proposed service to be provided, its economic, social and/or service importance, or whether it is a development or improvement of an existing service or reduction of the cost thereof or improvement of its efficiency.”</p> <p>Article 8 of these Regulations also provides, “The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project’s investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects and other requirements as per the best practices in this regards.”</p>
Is there a specific methodology for the assessment?	<p>No</p>
If yes, please elaborate	<p>n/a</p>
Is the assessment done in practice?	<p>Yes</p>
Details:	<p>Contributors provided that this is conducted as part of the project feasibility study</p>
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	<p>Yes</p>
Relevant legal/regulatory provision (if any)	<p>Article 5 of the PPP Executive Regulations provides, “If the approval of the project in accordance with the PPP Model is recommended, the recommendation shall include the following:</p> <p>7. The proposed service to be provided, its economic, social and/or service importance, or whether it is a development or improvement of an existing service or reduction of the cost thereof or improvement of its efficiency.”</p> <p>Article 8 of these Regulations also provides, “The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project’s investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects</p>

	<p>and other requirements as per the best practices in this regards.” Article 9 of the Regulations further provides, “The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project’s Concept as well as its economic aspect, taking into consideration the following rules: 3. Assumptions with regards to the project’s ability to recover the cost and the expected internal rate of return of the project... 5. The expected Total Cost for the project including the suggested capital in addition to the anticipated operational and maintenance expenses for one year of operation... 7. Determination of the anticipated economic benefits of the project... 15. Funding sources.”</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Article 11 of the PPP Executive Regulations provides, “The Total Cost of a PPP Project shall be determined in accordance with the project’s feasibility study, which shall include the following components:</p> <ol style="list-style-type: none"> 1. The market value for the usufruct right of the project’s land, if any. 2. The value of the assets provided by the Public Entities to the Investor or the fee due for the land usufruct right. 3. The estimated expenses for the implementation of the project including capital expenditures, comprising fees for the establishment, design, construction, financing and equipping. 4. The estimated expenses for the operation of the project for one year. 5. Any other expenses in accordance with the nature of the project.” <p>Moreover, KAPP accordingly applies a standard methodology for affordability assessment that highlight the components of the Regulations above and should be embodied in the renewed PTB Guide Book.</p>
Is the assessment done in practice?	Yes
Details:	Contributors provided that this is conducted as part of the project feasibility study
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	<p>Article 8 of the PPP Executive Regulations provides, “The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project’s investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects and other requirements as per the best practices in this regards.” Article 9 of the Regulations further provides, “The comprehensive feasibility study shall</p>

	particularly determine the technical and operational aspects of the project's Concept as well as its economic aspect, taking into consideration the following rules: 6. Schedule for project risk allocation."
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors provided that this is conducted as part of the project feasibility study
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	Yes
Relevant legal/regulatory provision (if any)	Article 7 of the PPP Executive Regulations provides, "2. It shall be established through the comparison between the implementation of the project in accordance with the PPP Model or its implementation by the Public Entity, provided that the comparison is conducted in light of any or all of the following criteria: a. Implementation cost (value for money). b. Risk allocation. c. Transfer of knowledge and use of technology. d. The project shall have a promising rewarding financial yield to the Investor and the investment risk shall be allocated in an acceptable manner towards the private sector thus creating an opportunity for competition thereon and motivating the Lenders to finance it. e. Any other standards or requirements set by the Guidebook."
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors provided that this is conducted as part of the project feasibility study
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	Article 8 of the PPP Executive Regulations provides, "The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for

	<p>its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project's investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects and other requirements as per the best practices in this regards." Article 9 of the Regulations further provides, "The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project's Concept as well as its economic aspect, taking into consideration the following rules: 3. Assumptions with regards to the project's ability to recover the cost and the expected internal rate of return of the project... 5. The expected Total Cost for the project including the suggested capital in addition to the anticipated operational and maintenance expenses for one year of operation... 7. Determination of the anticipated economic benefits of the project... 8. Suggestion of the proposed incentives and tax and custom exemptions as well as other exemptions essential for the success of the project... 15. Funding sources."</p>
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors provided that this is conducted as part of the project feasibility study
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	<p>Article 9 of the PPP Executive Regulations provides, "The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project's Concept as well as its economic aspect, taking into consideration the following rules:</p> <p>4. Assumptions with regards to the participation of the private sector in the project and its interest to participate in the implementation thereof."</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Article 13 of the PPP Executive Regulations provides, "The Authority may announce the Request for Expression of Interest for PPP Projects, as a procedure preceding the qualification proceedings, in order to assess the interest and willingness of the private sector to participate in the implementation of the project prior to undertaking the procurement proceedings, in the Official Gazette and other local or international media that are suitable with the nature of the project, and through the publication of the same on the website of the Authority...</p> <p>The Authority shall review and study the Requests for Expression of Interest submitted by the Investors. The Authority shall, upon that study, decide on</p>

	the feasibility for undertaking the proceedings set by the law and invite interested parties for Prequalification to participate in the competition for the implementation of the project or to refrain from undertaking such proceeding, in preparation to present a recommendation in this respect to the Higher Committee.”
Is the assessment done in practice?	Yes
Details:	Contributors provided that this is conducted as part of the project feasibility study
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	Article 7 of the PPP Executive Regulations provides, “The project to be tendered for investment in accordance with the PPP Model must meet, the following criteria, based on its feasibility study: 1. The project shall conform to all the technical, legal and environmental requirements and shall be economically viable, and the benefits offered by the project to the State or to the beneficiaries of the service provided shall be suitable according to the parameters set in the feasibility study and the best practice applicable in this regard.” Moreover, Law No. 42 of 2014 (amended by Law No. 99 of 2015) regarding the Protection of the Environment (Environment Protection Law) defines environmental impact assessments from projects that must be conducted before their launch (Article 1) and Article 16 of this Law obliges governmental entities to conduct such assessments in accordance with the Implementing Regulations (No. 2 of 2015) to the Environment Protection Law.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	The Implementing Regulations (No. 2 of 2015) to the Environment Protection Law provide details on environmental impact assessments that procuring entities must follow according to Article 16 of the Environment Protection Law.
Is the assessment done in practice?	Yes
Details:	Contributors provided that this is conducted as part of the project feasibility study
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a

13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
and specify which of the assessments are included in the request for proposals and/or tender documents:	All regulated assessments, as previously provided, are included in the request for proposals
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 22 of the PPP Executive Regulations provides, "The project's procurement documents shall mainly include the following: 4. The model Agreement Documentation(s) and its language, including the draft PPP Agreement and the lease agreements of the land, if any."
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
and please specify the website:	http://www.ptb.gov.kw/en/Home
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are	n/a

available or provide an electronic copy of them:	
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular: 3. The responsibility for obtaining licenses, permits and approvals."
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular: 3. The responsibility for obtaining licenses, permits and approvals."
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular: 3. The responsibility for obtaining licenses, permits and approvals."

16.4. Obtaining the required land: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Article 3 of the PPP Law provides, "The Higher Committee shall have the following competences: 6. Approving the requests for the allocation of land necessary for the implementation of PPP Projects in coordination with the competent authorities." Contributors confirmed that the competent government authorities accordingly obtain the necessary land.
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	Article 26 of the PPP Executive Regulations provides, "The PPP Agreement must, inter alia, include the following: 18.The usufruct right of any in-kind assets provided by the state."
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 3 of the PPP Executive Regulations provides, "The Authority shall establish, following the approval of the Higher Committee and in accordance

	<p>with the requirements of the business, a committee for each PPP Project named “Competition Committee”, in which the Public Entity(s) whose competences and responsibilities correspond to the nature of the project shall be represented, by at least one member being no less than an assistant undersecretary, and provided that technical, financial and legal expertise are also represented therein.</p> <p>The committee shall review, complete and prepare project-related studies, instruments and procurement documents and shall approve the same. The committee shall also evaluate the technical and financial offers and shall supervise the public session set for opening the financial envelopes of the technically accepted offers... The committee may seek support from any expert as it deems necessary and the latter shall have no voting rights.”</p>
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):	Article 13 (2) of the PPP Law provides, “The Authority shall announce the projects approved by the Higher Committee for procurement in accordance with the PPP Model, in the Official Gazette and at least two Kuwaiti dailies, both in Arabic and English, as well as other local and international media that are convenient to the nature of the project and through announcement on the website of the Authority.” Article 14 of the PPP Executive Regulations provides a similar provision.
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	KAPP website: http://www.ptb.gov.kw
20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	Foreign companies are not explicitly prohibited from participating in the bidding process on PPPs projects.
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 23 of the PPP Executive Regulations provides, “The instructions to bidders shall, in particular, include the following: 2. Specify the deadline for submitting proposals indicating the date and hour, provided that the duration for submission of proposals is no less than (90)

	ninety days from the date of publication of the announcement for request of proposals in the Official Gazette.”
and the time in calendar days:	90
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	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.2. Restricted tendering (with pre-qualification stage): Available	No
Default	Yes
Relevant legal/regulatory provision (if any)	Article 14 of the PPP Executive Regulations provides, “The Authority shall, following the approval of the Higher Committee on the PPP Project and the determination of the PPP Model and the method of procurement in accordance with the provisions of Article (8) of these Executive Regulations, in collaboration with the Public Entity appointed by the Higher Committee, announce the invitation for qualification for the project in the Official Gazette and at least two Kuwaiti dailies in both Arabic and English, and in local or international media as may be deemed necessary in accordance with the nature of the project, as well as publishing it on the website of the Authority.”
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 34 of the PPP Executive Regulations provides, “The Higher Committee may, based on the recommendation of the Authority, decide to procure the project in two stages in accordance with the nature and requirements thereof, and conduct a Competitive Dialogue at the intermediary bid-submission of the process in order to obtain clarifications in relation to the elements of the technical and financial offers presented during this stage. In the second stage, final proposals shall be submitted.”
22.4. Competitive dialogue: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 34 of the PPP Executive Regulations provides, “The Higher Committee may, based on the recommendation of the Authority, decide to procure the project in two stages in accordance with the nature and requirements thereof, and conduct a Competitive Dialogue at the intermediary bid-submission of the process in order to obtain clarifications in relation to the elements of the technical and financial offers presented during this stage. In the second stage, final proposals shall be submitted.”

22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.6. Direct negotiation with only one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	No
Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 23 of the PPP Executive Regulations provides, “The instructions to bidders shall, in particular, include the following:</p> <ol style="list-style-type: none"> 1. Means for the preparation of proposals and the number of required envelopes and their content and place for submission. The Higher Committee may approve the submittal of Proposals through electronic means of communication which support the necessary confidentiality, as per the proceedings set by the Higher Committee. 2. Specify the deadline for submitting proposals indicating the date and hour, provided that the duration for submission of proposals is no less than (90) ninety days from the date of publication of the announcement for request of proposals in the Official Gazette.” The Article provides other components as well. Articles 22 & 24 of these Regulations provide similar provisions about the necessary elements of a request for proposals and procurement documents, which include clarification of the procurement process.
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 14 of the Executive Regulations provides, “The announcement of the invitation for qualification shall include the following:</p> <ol style="list-style-type: none"> 1. Determination of the Public Entity or the Public Entities relevant to the project. 2. A short description of the project and its objectives.

	<p>3. The required expertise for qualification.</p> <p>4. The contracting model and term.</p> <p>5. The fee due for the collection of qualification documents. The Authority may postpone the payment thereof until the submission of qualification requests.</p> <p>6. The duration fixed for submission of the requests for qualification, the address for its submission and the mail or electronic mail address as per the circumstances. The duration for submission of the qualification requests shall be no less than (15) fifteen days from the date of publication in the Official Gazette unless it was decided to undertake a Post-qualification in which case the duration shall be included in the duration for submission of proposals.”</p>
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Article 20 of the PPP Executive Regulations provides, “Requests for qualification shall be evaluated based on the standards representing the required elements to be available in the request and relative weights of these elements, in accordance with the terms provided for in the qualification documents...”
If no, please elaborate:	n/a
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 32 (2) of the PPP Executive Regulations provides, “The Investors may submit inquiries with regards to the terms of qualifications and competition in accordance with the conditions and limitations set in the qualification documents and project procurement documents.”
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	Contributors provide that KAPP shares the responses it has provided to questions raised by the bidders on an anonymous basis.
If no, please elaborate:	n/a

24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	No regulatory basis
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	No
If yes, please specify:	n/a
If no, please elaborate:	There has been no consistent practice with such disclosure
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 35 of the PPP Executive Regulations provides, "The proposal must mainly include the following: 3. The financial offer, must include: a) The expected costs for the preparation of designs and the establishment, operation and maintenance of the project. b) The cost of financing the project and the sources of any such financing. c) The projects estimated investment return. d) The financial costs incurred by the State in light of the adopted formulae for the award of the project." Contributors confirm a financial model is required on this basis.
If no, please elaborate:	n/a
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	Article 37 of the PPP Executive Regulations provides, “The Competition Committee shall undertake the evaluation of the technical proposals based on the standards and weights stated in the project’s procurement documents...”
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	Yes
Please specify and provide the relevant legal/regulatory provisions (if any):	Article 40 of the PPP Executive Regulations provides, “In case of submission of only one proposal or if the other proposals were invalid because they were in breach or they did not conform/comply with the terms for participation in the competition, the Competition Committee must prepare a report in this respect and submit it to the General Director of the Authority in preparation for the presentation of the same before the Higher Committee along with the recommendation he deems appropriate. The Higher Committee may decide to approve the sole offer or to reprocure the project or to undertake amendments it deems appropriate in the project’s procurement documents or it may cancel the investment opportunity without any liability whatsoever.”
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and	No regulatory basis

provide the relevant legal/regulatory provisions (if any):	
28.1. If yes, is the public procurement award notice published online?	No
If yes, please specify the website:	n/a
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 37 of the PPP Executive Regulations provides, “The Competition Committee shall submit a report with respect to the evaluation of the technical offers along with its recommendations to the Authority for approval thereof. The Authority shall notify the Investors whose technical offers were approved and those who were rejected. The latter may submit a grievance as to this before the Grievance Committee in accordance with the terms and conditions provided for under Chapter Ten of these Executive Regulations.”</p> <p>Article 39 (2&3) of these Regulations also provides, “The Authority shall specify in light of the recommendation presented by the Competition Committee the Preferred Investor as being the provider of the best proposal in accordance with the Terms of Reference based on which the project is being procured. The Authority must notify the concerned Investor and the Public Entity of the Investor that was determined as being the Preferred Investor in order to proceed with the negotiations with it.</p> <p>The Authority must also notify the other Investors who passed the financial proposals phase of their ranking. The Authority shall keep the bid bond of the Preferred Investor and the subsequent Investor in the ranking and it may release the bid bonds of the other Investors unless it decides to keep them until the appointment of the Successful Investor or the expiry of the duration of the submitted bonds or their refusal to renew their bonds or the extension thereof as per the terms provided for under the project procurement documents.”</p>
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	Yes

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 32 of the PPP Law sets conditions for a grievance period and provides, “2. The committee shall receive grievances from concerned persons in connection with any decision issued in violation of the provisions of this Law or its executive regulations. Every interested party may file a complaint or grievance before the committee in connection with any error with regards to any of the contracting procedures carried out by the Authority or any decision issued by the Higher Committee.</p> <p>Grievances shall be submitted within fifteen (15) days from the date of issuance of the objected decision or the execution of the objected proceeding and the notification thereof to the complainant. The Grievance Committee shall notify immediately the Higher Committee or the Authority of the submission of such complaint or grievance.</p> <p>4. The Grievance Committee may, at the request of the complainant, issue a decision suspending the contracting proceedings until the complaint is ruled upon. The proceedings shall resume if the grievance was expressly or implicitly rejected.”</p> <p>Article 70 of the PPP Executive Regulations provides a similar provision. Contributors confirm that the 15-day period can be used as a standstill period as the procuring authority retains such discretion in terms of suspending proceedings.</p>
<p>and the time in calendar days:</p>	<p>15</p>
<p>30.1. Is the standstill period set out in the notice of intention to award?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>No regulatory basis</p>
<p>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?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 17 of the PPP Law provides, “Negotiations may be carried out with the Preferred Investor for certain clarifications and details regarding the technical and financial requirements, however, such negotiations may not include any contractual terms considered non-negotiable according to the Terms of Reference. No modification may be allowed regarding the technical and financial criteria according to which the proposals were evaluated.”</p> <p>Article 42 of the PPP Executive Regulations similarly provides, “In all cases, the negotiations shall not address any contractual terms deemed in the invitation for submission of proposals as being nonnegotiable or as Material Deviations according to the project’s procurement documents. No amendments may be undertaken with respect to the technical and financial terms and conditions upon which the proposals</p>

	have been evaluated. The negotiations may not lead to an amendment in the competition terms presented to the Preferred Investor, or relieve it from its liabilities in accordance with the provisions of the Terms of Reference under the risk allocation schedule specified in the project's procurement documents."
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	Contributors provided that in their experience they have not witnessed evident violations of negotiation restriction.
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	n/a
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	n/a
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	n/a

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 6 of the PPP Law provides that KAPP is competent with functions pertaining to the implementation of the PPP project which includes, "13. Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected."
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	No
Relevant legal/regulatory provisions (if any):	n/a
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	No
Relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document	Yes
Relevant legal/regulatory provisions (if any):	Article 6 of the PPP Law provides that KAPP is competent with functions pertaining to the implementation of the PPP project which includes, "4. Prepare a guidebook for PPP Projects." This Guidebook shall address the implementation stage of the PPP project.
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	No
Relevant legal/regulatory provisions (if any):	n/a
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines,	No

specific processes, insurance regime, etc.)	
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 27 of the PPP Executive Regulations provides, "The PPP Agreement must set the basis for the Project Company to collect payments (fees) for the services provided or works undertaken, in each or both the following forms:</p> <ol style="list-style-type: none"> 1. From the Public Entity, in return for: <ol style="list-style-type: none"> a) Provision of a service that is compliant with the agreed criteria. b) Usage of the service or the infrastructure provided by the PPP Project. c) The minimum capacity payments related to the estimated demand for the service or infrastructure to be provided by the PPP Project. d) Completion of specific stages agreed upon in the implementation, operation or infrastructure, subject to agreement on the timetable adopted for the implementation of the project. e) Achieving an internal return as stated under the project's procurement

	<p>documents.</p> <p>2. From the beneficiaries of the services or the infrastructure other than the Public Entities and in accordance with the mechanism set forth in the PPP Agreement for the method of calculation of such fees.”</p> <p>Article 6 of the PPP Law provides that KAPP is furthermore competent with functions that include to, “11. Develop PPP Projects programs and follow up on their completion and issue necessary decisions in relation thereto; 13. Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected.”</p>
42.1. If yes, is the PPP contract construction performance information made available to the public?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	n/a
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 6 of the PPP Law provides KAPP’s competencies which include to, “6. Set out approaches to follow up and evaluate the performance of approved PPP Projects; 13. Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected.”</p> <p>Article 33 of this Law also provides, “The Minister of Finance shall present to the Council of Ministers an annual report on all the projects that have been executed or implemented in accordance with the provisions of this Law, and shall send a copy of such report to the National Assembly.... The relevant ministers shall provide the Minister of Finance with all the data, documents, files and information he requires in connection with PPP Projects that have been executed with their ministries for the preparation of the report.”</p> <p>Article 35 of the PPP Law moreover provides, “The Partnership Agreement shall include the following in particular:</p> <p>6. Means of quality assurance and monitoring methods, supervision and follow up on financial, administrative and technical matters in relation to the operation, exploitation and maintenance of the project.”</p>
43.1. If yes, which of the following tools does it include	Yes

(check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	
Relevant legal/regulatory provisions (if any)	Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular: 6. Means of quality assurance and monitoring methods, supervision and follow up on financial, administrative and technical matters in relation to the operation, exploitation and maintenance of the project."
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The private partner must provide the procuring or contract management authority with periodic operational and financial data	No
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	Article 33 of the PPP Law provides, "The Minister of Finance shall present to the Council of Ministers an annual report on all the projects that have been executed or implemented in accordance with the provisions of this Law, and shall send a copy of such report to the National Assembly.... The relevant ministers shall provide the Minister of Finance with all the data, documents, files and information he requires in connection with PPP Projects that have been executed with their ministries for the preparation of the report."
The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a

44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 24 of the PPP Law provides, “The Project Company or the consortium company may not be dissolved, its legal form may not be changed and its capital may not be decreased except after the approval of the Higher Committee, and the Contracting Investor may not assign the project or its shares in the project, in full or in part, to third parties, nor may it change the legal form of the Project Company or the consortium company, except after the lapse of an appropriate period of time starting as of the commencement of the operations as provided for under the agreement’s terms and after the approval of the Higher Committee.</p> <p>In case of any such assignment, the assignee shall replace the Contracting Investor in the Project Company or in the consortium company in all the assignor’s rights and obligations.”</p>
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 24 of the PPP Law provides, “The Project Company or the consortium company may not be dissolved, its legal form may not be changed and its capital may not be decreased except after the approval of the Higher Committee, and the Contracting Investor may not assign the project or its shares in the project, in full or in part, to third parties, nor may it change the legal form of the Project Company or the consortium company, except after the lapse of an appropriate period of time starting as of the commencement of the operations as provided for under the agreement’s terms and after the approval of the Higher Committee.”</p> <p>Contributors further confirm that no transfer of any ownership interest in the Successful Investor until the third anniversary of the Commercial Operation Date and KAPP includes provisions in the Shareholders Agreement embodying such meaning.</p>

Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 24 of the PPP Law provides, "In case of any such assignment, the assignee shall replace the Contracting Investor in the Project Company or in the consortium company in all the assignor's rights and obligations." Article 25 of this Law also provides that the substituted investor when certain circumstances arise, "shall meet all the requirements relating to the qualification requirements and the Terms of Reference on the basis of which the project was awarded or exceed these requirements, as shall be provided for in a written agreement between the Public Entity and the Investor or the Project Company or the consortium company or the Lenders, if any, and such agreement shall not include any additional or supplemental obligations of the Public Entity or anything that contradicts the awarding terms and conditions."</p>
In other cases, flexibility to change the ownership structure and/or assign the contract.	<p>No</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular: 7. Regulate the Public Entity's right to modify and amend the terms of construction, equipping, maintenance, operation, exploitation and other obligations of the Project Company, and the principles and mechanisms for compensation of such amendments." Article 36 of this Law further provides, "The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the</p>

	<p>principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect.</p> <p>The amendment of the Partnership Agreement may be agreed upon in accordance with the principle and the rules provided for under the agreement, if unforeseen circumstances occurred after the conclusion of the Partnership Agreement, including amendments to the laws in force at the time of conclusion of this agreement and leading to a financial imbalance of the agreement.”</p>
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	The Higher Committee must approve such amendments according to Article 36 of the PPP Law, which provides, “Article 36 of this Law further provides, “The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee...”
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the financial and/or economic balance of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 36 of this Law further provides, “The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including

	prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect.
A change in the duration of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 36 of this Law further provides, “The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect.
46.3. Can the procuring authority unilaterally modify a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 35 of the PPP Law provides, “The Partnership Agreement shall include the following in particular: 7. Regulate the Public Entity’s right to modify and amend the terms of construction, equipping, maintenance, operation, exploitation and other obligations of the Project Company, and the principles and mechanisms for compensation of such amendments.” Article 36 (1) of this Law further provides, “The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the

	consideration for provided services is amended, such amendment shall only have an immediate effect.”
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 35 of the PPP Law provides, “The Partnership Agreement shall include the following in particular: 9. The basis for risk allocation associated with changes in laws or unforeseen events or force majeure and the determined compensation, as per the circumstances.” Article 36 (2) of this Law further provides, “The amendment of the Partnership Agreement may be agreed upon in accordance with the principle and the rules provided for under the agreement, if unforeseen circumstances occurred after the conclusion of the Partnership Agreement, including amendments to the laws in force at the time of conclusion of this agreement and leading to a financial imbalance of the agreement.”
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 35 of the PPP Law provides, “The Partnership Agreement shall include the following in particular: 9. The basis for risk allocation associated with changes in laws or unforeseen events or force majeure and the determined compensation, as per the circumstances.” Article 36 (2) of this Law further provides, “The amendment of the Partnership Agreement may be agreed upon in accordance with the principle and the rules provided for under the agreement, if unforeseen circumstances occurred after the conclusion of the Partnership Agreement, including amendments to the laws in force at the time of conclusion of this agreement and leading to a financial imbalance of the agreement.”
Refinancing.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	No

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 29 of the PPP Law provides, “PPP Projects and the agreements thereof shall be subject to the provisions of this Law and its executive regulations, as well as the provisions of applicable laws in the State of Kuwait, provided they do not contradict with the provisions of this Law. The agreement shall regulate the mechanism for dispute resolution in relation to its interpretation or its implementation. Kuwaiti courts shall be the competent authority to examine all the disputes arising from the implementation of the provisions of this Law. In exception to the Emiri Order issued by Law No. 12 of 1960, and based on the Higher Committee’s approval, disputes arising between the contracting Public Entity and the Investor may be settled through arbitration.”</p> <p>Article 35 of the PPP Law also provides, “The Partnership Agreement shall include the following in particular:</p> <p>14. The competence of the Kuwaiti courts with regards to disputes arising between the contracting parties;</p> <p>15. Recourse to arbitration based on the agreement of the contracting parties.”</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	No
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	<p>Article 29 of the PPP Law provides, “PPP Projects and the agreements thereof shall be subject to the provisions of this Law and its executive regulations, as well as the provisions of applicable laws in the State of Kuwait, provided they do not contradict with the provisions of this Law. The agreement shall regulate the mechanism for dispute resolution in relation to its interpretation or its implementation. Kuwaiti courts shall be the competent authority to examine all the disputes arising from the implementation of the provisions of this Law.</p>

	<p>In exception to the Emiri Order issued by Law No. 12 of 1960, and based on the Higher Committee’s approval, disputes arising between the contracting Public Entity and the Investor may be settled through arbitration.”</p> <p>Article 35 of the PPP Law also provides, “The Partnership Agreement shall include the following in particular:</p> <p>14. The competence of the Kuwaiti courts with regards to disputes arising between the contracting parties;</p> <p>15. Recourse to arbitration based on the agreement of the contracting parties.”</p>
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	<p>Article 185 of Law No. 38 of 1980 issuing the Civil and Commercial Procedures Law provides, “The judgment of the arbitrator shall be enforceable only by an order of the President of the Court, who has deposited the judgment in the management of its book at the request of one of the concerned persons, after reviewing the judgment and the arbitration agreement and after ascertaining the absence of the impediments to its implementation, and the expiry of the date of the appeal if the judgment is enforceable. The execution order shall be placed at the root of the judgment.”</p> <p>Law No. 11 of 1995 regarding Judicial Arbitration in Civil and Commercial Matters also provides in Article 9, “Judgments issued by the arbitral tribunal shall have the force of the order and shall be enforceable in accordance with the procedures established in the Civil and Commercial Procedure Act after the executive version of the judgment has been made by the Department of the Court of Appeal.”</p>
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	<p>Article 199 of the Civil and Commercial Procedures Law provides, “The provisions and orders issued in a foreign country in Kuwait may be executed under the conditions prescribed in that country for the execution of the provisions and orders issued in Kuwait. The provisions and orders issued in favor of a Kuwaiti natural or juridical person are required to be executed on funds belonging to a Kuwaiti natural or juridical person. (This paragraph has been replaced by Law No. 38 of 2007). The order of execution shall be made before the Court of Cassation in the normal circumstances of the case. The order may be ordered only after the following has been ascertained: a. The judgment or order issued by a competent court in accordance with the law of the country in which it was issued. B. The litigants in the case in which the foreign judgment was issued were assigned to attend and were duly represented. (C) The judgment or order has obtained the power of the matter ordered in accordance with the law of the court which has rendered it. (D) It does not conflict with a provision or order issued by a court in Kuwait and does not contain anything contrary to public morals or public order in Kuwait.”</p> <p>Furthermore, Kuwait is signatory to the New York Convention on the recognition and enforcement of foreign arbitral awards (1958) since April 28, 1978, which allows the enforcement of such foreign awards.</p>
Investor-State arbitration	Yes

If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Kuwait is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965 (ICSID Convention) since Feb. 2, 1979, which allows for the enforcement of Investor-State arbitration awards, and this may be agreed upon by the parties to the PPP agreement.
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 49 of the PPP Executive Regulations provides, “The substitution of the Contracting Investor with another Investor who replaces it to fulfill the terms of the agreement may be undertaken subject to the approval of the Higher Committee and based on the request of the Public Entity supervising the project, the Authority or the Lenders. Substitution shall be undertaken in accordance with the terms provided in the Agreement Documentation and the Substitution Agreement...”</p> <p>Article 50 of these Executive Regulations also provides, “If the Lenders should request the substitution of the Contracting Investor with another Investor, they must submit a request regarding the same to the Higher Committee, including the identification of the candidate they deem appropriate to substitute the Contracting Investor, without affecting the liability and responsibilities of the Lenders as to the candidate they have elected as well as the Lenders’ obligations provided in the PPP Agreement entered into for the implementation of the project.”</p> <p>Similar provisions exist in Article 25 of the PPP Law.</p>
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly	No

regulates the lender step-in rights.	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 49 of the PPP Executive Regulations provides, “The substitution of the Contracting Investor with another Investor who replaces it to fulfill the terms of the agreement may be undertaken subject to the approval of the Higher Committee and based on the request of the Public Entity supervising the project, the Authority or the Lenders. Substitution shall be undertaken in accordance with the terms provided in the Agreement Documentation and the Substitution Agreement...”</p> <p>Article 50 of these Executive Regulations also provides, “If the Lenders should request the substitution of the Contracting Investor with another Investor, they must submit a request regarding the same to the Higher Committee, including the identification of the candidate they deem appropriate to substitute the Contracting Investor, without affecting the liability and responsibilities of the Lenders as to the candidate they have elected as well as the Lenders’ obligations provided in the PPP Agreement entered into for the implementation of the project.”</p>
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	No
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 19 of the PPP Law provides, “The Higher Committee may approve the termination of the agreement at the request of the Authority or the Public Entity for reasons based on public interest, provided that the Higher Committee justifies its decision and demonstrates the benefits of such termination and provides an estimate of the fair compensation to be paid to the Contracting Investor in accordance with the PPP Agreement.”</p> <p>Article 35 of the PPP Law also provides, “The Partnership Agreement shall</p>

	<p>include the following in particular:</p> <p>11. Cases of early or partial termination, the rights of the parties associated therewith, cases where the Public Entity may solely terminate the agreement and the financial obligations arising from usage of this right.”</p> <p>Moreover, Article 26 of the PPP Executive Regulations provides that the PPP agreement shall address, “13. Events allowing the termination of the agreement without any notification or judicial order.”</p>
<p>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Article 19 of the PPP Law provides, “The Higher Committee may approve the termination of the agreement at the request of the Authority or the Public Entity for reasons based on public interest, provided that the Higher Committee justifies its decision and demonstrates the benefits of such termination and provides an estimate of the fair compensation to be paid to the Contracting Investor in accordance with the PPP Agreement.”</p> <p>Article 35 of the PPP Law also provides, “The Partnership Agreement shall include the following in particular:</p> <p>11. Cases of early or partial termination, the rights of the parties associated therewith, cases where the Public Entity may solely terminate the agreement and the financial obligations arising from usage of this right.”</p> <p>The consequences are to be further addressed in the PPP contract.</p>
<p>Unsolicited Proposals</p>	
<p>34. Are unsolicited proposals in Kuwait: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)</p>	<p>No</p>
<p>Explicitly allowed by the legal framework?</p>	<p>Yes</p>
<p>Not regulated by the legal framework, but do happen in practice?</p>	<p>No</p>
<p>Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)</p>	<p>No</p>
<p>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</p>	<p>Article 20 of the PPP Law provides, “A Concept proposer shall submit a feasibility study to the Authority for its review in order to present recommendations to the Higher Committee...” Article 52 of the PPP Executive Regulations provides, “Any person, whether a natural person or a legal entity, Kuwaiti or non- Kuwaiti, may submit a Concept before the Authority that comprises a request for the implementation of a project in accordance with a PPP Model...”</p>

35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	<p>Article 20 of the PPP Law provides, “A Concept proposer shall submit a feasibility study to the Authority for its review in order to present recommendations to the Higher Committee, which shall take one of the following justified decisions:</p> <ul style="list-style-type: none"> - Approve the study and consider it an Initiative. - Approve the study and consider it a Distinguished Project. - Reject the study.” <p>Article 21 of this Law provides, “The Authority shall communicate with the parties involved in the project to complete the requirements of the study within appropriate periods of time. These parties shall urgently communicate their responses to the Authority. The executive regulations shall set out and specify the appropriate periods of time in all cases.</p> <p>The Authority shall initiate the review of the Concept as soon as it receives the responses of the Public Entities and shall submit its recommendations to the Higher Committee, and it shall respond to the party presenting the Concept within five working days from the date of issuance of the Higher Committee’s decision approving or rejecting the Concept.”</p> <p>Article 53 of the PPP Executive Regulations further provides, “The Authority shall communicate with the Public Entity(s) whose capacities and authorities are consistent with the Concept to cooperate for the completion of the requirements of the feasibility study presented by the Concept Proposer.</p> <p>The Public Entities shall provide the Authority with their responses on an urgent basis in a period not exceeding (20) twenty working days for matters requiring economic and financial analysis and (10) ten working days for matters which do not require such analysis.</p> <p>Upon the receipt of the Public Entities’ responses, the Authority shall undertake the study of the Concept and prepare a report in this regard together with its recommendation and present it to the Higher Committee.”</p>
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The	<p>Yes</p>

<p>procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 1 (3) of the PPP Law defines “Concept” as, “a concept for a PPP Project comprising an initial feasibility study, in line with the State’s strategy and its development plan, proposed by a natural or a legal person, either Kuwaiti or non-Kuwaiti.” And Articles 20-21 of the PPP Law and 53-55 of the PPP Executive Regulations identify the outcome of presented “concepts” as becoming initiatives and distinguished projects. Article 1 (4) of the PPP Law defines “Initiative” as, “an innovative and creative Concept of a PPP Project, unprecedented in the State of Kuwait, approved by the Higher Committee, based on a comprehensive feasibility study and submitted by the Concept proposer to the Authority, providing an economic return or social benefits in line with the State’s strategy and development plan” and “Distinguished Project” as, “a PPP Project approved by the Higher Committee, based on a comprehensive feasibility study presented by the Concept proposer and having an economic return or a social benefit that is in line with the State’s strategy and development plan.” (Article 1(5) of the PPP Law)</p>
<p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 56 of the PPP Executive Regulations provides, “The Authority shall in collaboration with the Public Entity(s) stated in the decision of the Higher Committee prepare the project procurement documents in accordance with the provisions of the Law, ensuring the nondisclosure of confidential technical, economic and financial information of the project submitted by the Concept Proposer and specifically the technical designs of the project and any technique proposed for the implementation thereof as well as any other</p>

	<p>confidential information.</p> <p>The principle of confidentiality shall not hinder the procurement of the project in accordance with the principles of free competition, whereby during the preparation of the project documents all the sufficient data and information to prevent the project's monopoly by the Concept Proposer are provided, ensuring the competition thereon while being procured as per the standards of transparency and fairness."</p>
<p>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>The general provisions as per Article 23 (2) of the PPP Executive Regulations apply, which provides, "The instructions to bidders shall, in particular, include the following:</p> <p>2. Specify the deadline for submitting proposals indicating the date and hour, provided that the duration for submission of proposals is no fewer than (90) ninety days from the date of publication of the announcement for request of proposals in the Official Gazette."</p>
<p>and the time in calendar days:</p>	<p>90</p>
<p>39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.</p>	<p>No</p>
<p>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</p>	<p>Yes</p>
<p>39.3 Bid Bonus.</p>	<p>Yes</p>
<p>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</p>	<p>No</p>
<p>39.5 Other.</p>	<p>Yes</p>
<p>Please specify:</p>	<p>The allocation of a percentage determined by the Higher Committee of the shares of the Public Joint Stock Company not exceeding 10% of the shares of the company at their nominal value in addition to the issuance fee, to be deducted from the percentage allocated to the Investor under Clause (2) of Article (13) of this Law, if the project is implemented through a Public Joint Stock Company.</p>

Please provide the relevant legal/regulatory provisions (if any):

Article (57) of the PPP Executive Regulations provides, "The approval by the Higher Committee of a feasibility study presented by a Concept Proposer and its consideration as an Initiative entails the granting of the following rights to its proposer:

1. The reimbursement of the costs of the feasibility study as approved by the Higher Committee's decision plus 20% of such cost or two hundred thousand Kuwaiti Dinars, whichever is less. Such amount shall be mentioned in the project procurement documents and shall be paid by the Project Company at Financial Close.

2. A preference of 5% granted to its proposal which meets the terms of the project's procurement documents over the value of the best proposal, unless the implementation of the project is to be undertaken through a Public Joint Stock Company.

3. The allocation of a percentage determined by the Higher Committee of the shares of the Public Joint Stock Company not exceeding 10% of the shares of the company at their nominal value in addition to the issuance fee, to be deducted from the percentage allocated to the Investor under Clause (2) of Article (13) of this Law, if the project is implemented through a Public Joint Stock Company."

Article 58 of these Executive Regulations also provides, "The Concept Proposer which Concept has been approved as a Distinguished Project shall have the right to be reimbursed only for the costs of the feasibility study, as per the decision of the Higher Committee, plus 10% of its cost as approved by the Higher Committee or one hundred thousand Kuwaiti Dinars, whichever is less. Such amount shall be mentioned in the project's procurement documents and shall be paid by the Project Company at Financial Close."