

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN MALAYSIA

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>The Malaysian government has been encouraging PPPs actively since 1991. The PPP scheme were officially unveiled under the 9th Malaysia Plan in 2006 whereby the government decided to streamline privatization by adopting new approaches such as PPP/PFI model and mechanisms. The Tenth Malaysian Plan (2011-2015) further enhances the objective of PPPs.</p> <p>Malaysia does not have specific PPP laws. However, the Financial Procedure Act 1957 provides for the general control and management of the public finances in Malaysia. The Act was amended in 1972 to empower the Minister of Finance to manage, control, supervise and direct all financial matters involving the federal government. Although, the Act does not provide specifically for PPPs, the Act is still relevant as it regulates public purchase and acquisition. Treasury Instructions, Treasury Circulars and Federal Circular Letters issued by the Ministry of Finance further contain provisions that regulate government procurement.</p> <p>To maintain checks and balances in the procuring process, project proposals are assessed and evaluated by the Project Steering Committee i.e. through the PPP Committee and the Highest PPP Committee. It is then tabled to the Cabinet for a collective decision. In addition to the above, PPPs in Malaysia are also governed by the national policies on PPPs, including the privatization master plan. These national policies set out guidelines for the regulation of PPPs. In view of the fact that these national policies are not acts of parliament, they are not binding. Nevertheless, these policies guide PPPs and are to be followed when procuring PPPs.</p> <p>Apart from the above, UKAS as the central agency in coordinating PPPs in the country has also developed several Guidelines pertaining to PPP and privatization. These Guidelines further detail out the objective of the policy, methods of PPP and privatization, as well as the implementation mechanism.</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	<p>http://www.ukas.gov.my http://www.treasury.gov.my</p>
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs	No

that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	
Please describe:	n/a
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	No
Please describe:	n/a
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	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	No

or restrict PPPs in any of the following sectors?: Other	
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	No
If yes, please specify and provide the relevant legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in Malaysia and provide their website(s) (if available):	PPP procuring authorities involve all governmental levels from Federal Government (ministries/agencies) to state governments as well as local governments depending on the project, in which their roles are conducted according to their respective authority or responsibility
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):	<p>Public Private Partnership Unit, Prime Minister's Department http://www.ukas.gov.my</p> <p>When the privatization policy was launched in 1983, a Privatization Section (initially known as the Privatization Special Task Force) was established and was put under the Economic Planning Unit of the Prime Minister's Department. In 2009, after the official introduction of PPPs under the 9th Malaysia Plan, the Privatization and Private Finance Initiative Unit was established which is now referred to as the Public-Private Partnership Unit ("3PU"), a government agency within the Prime Minister's Department, otherwise known as the Unit Kerjasama Awam Swasta ("UKAS").</p> <p>JKAS, which is a committee established by UKAS, has central decision making powers on policy matters for proposed PPP projects. Before launching the procurement, the evaluation of the PPP projects is undertaken by the JKAS members consisting of (i) the Director General of UKAS, (ii) the Director or Principal Assistant Director of the Secretariat Subsection, Project Monitoring and Secretariat Section of UKAS, (iii) Attorney-General, (iv) representatives from the Economic Planning Unit of the Prime Minister's Department, (v) representative from the Investment, MKD (MKD refers to the Ministry of Finance Incorporated, a corporate body under the Ministry of Finance which has the authority to enter into contracts, acquisitions, purchases, possessions, holdings and maintains tangible and intangible assets) and Privatization Division of the Ministry of Finance, (vi) Deputy Director General (Policy) of UKAS and (vii) Deputy Director General (Development) of UKAS. Meetings are also attended by representatives from key agencies/divisions, which include the Budget Management Division of the Ministry of Finance, Government</p>

	Procurement Division of the Ministry of Finance Malaysia, Department of Lands & Minerals, Department of Valuation and Property Services and the Director of Technical Section of UKAS, Implementing Ministry/Agency and Specialist Officer of UKAS. (according to UKAS official website)
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.	No
6.6 Revision of fiscal risks born by the Government.	No
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	Yes
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>According to UKAS official website, its main functions are as follows: As a central agency, the main functions of UKAS, JPM is as follows:</p> <ol style="list-style-type: none"> 1. To formulate policies and strategies for public-private partnership; 2. To plan, implement, coordinate, monitor and evaluate public-private partnership initiative (PPP) and the development of the corridor and corridor development and managing the provision of the Facilitation Fund (Facilitation Fund); 3. To examine and evaluate the technical and financial proposals of PPP projects with the assistance of relevant agencies; 4. Prepare and improve and update the Guidelines PPP procedures from time to time; 5. Negotiate terms and conditions of the concession agreement with the assistance of the Attorney General and the relevant agencies; 6. Carry out continuous research and improvement of PPP programs; 7. To engage in strategic cooperation with relevant agencies abroad; 8. To provide advice to government agencies and the public and to promote PPP program; and 9. Being a Secretary to the Government projects to be implemented in five

	regional corridors of the East Coast Economic Region (ECER), Iskandar Malaysia (IM), Sarawak Corridor of Renewable Energy (SCORE), Sabah Development Corridor (SDC) and the Northern Corridor Economic Region (ECER)
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):	<p>Section 4.0 of the Public Private Partnership Guidelines published by the Prime Minister Department's Public-Private Partnership Unit (UKAS) ('PPP Guidelines') provides that the Ministry of Finance or Central Budgetary Authority shall approve the PPP project before launching the procurement process.</p> <p>Section 13 of the Financial Procedure Act 1957 ("1957 Act") provides that the Minister responsible for finance must authorize any project which utilizes public funds: (2) "The Minister or the Menteri Besar or Chief Minister, as the case may be, shall by warrant under his hand authorize the issue from the Consolidated Fund of such sums as may be required to meet the cost of any service charged upon the Consolidated Fund." "Menteri Besar or Chief Minister" in relation to the Consolidated Fund or estimates of a State means—</p> <p>(a) in the case of Sabah, the Minister responsible for finance in the State; and</p> <p>(b) in the case of the other States, the Menteri Besar or Chief Minister of the State and includes the State financial authority of the State, acting in accordance with any directions given to him by the Menteri Besar or Chief Minister (Section 3 of 1957 Act)</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):	No regulatory basis
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	Cabinet
and provide the relevant legal/regulatory provisions (if any):	The third and seventh step of the process Flow of PPP Projects is consideration and evaluation of PPP proposal and submission to the Cabinet for approval (PPP Guidelines, p. 11)
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):	The approval from the Cabinet for the selection of the private operator is required before negotiations with the selected private operator (PPP Guidelines, Section 4.0 pg. 11).
10. Does the procuring authority use transaction advisors during the PPP project cycle?	No

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	<p>No</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<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>Yes</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>No</p>
<p>If yes, please elaborate:</p>	<p>No regulatory basis</p>
<p>The procuring authority does not evaluate PPPs against existing government priorities.</p>	<p>No</p>

Please elaborate and provide examples:	n/a
11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?	No
If yes, please specify:	n/a
If no, please elaborate:	Prioritization is not regulated and is generally based on the policies and priorities determined and set by the Government from time to time.
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	Yes
Relevant legal/regulatory provision (if any)	A PPP proposal will only be considered if there is a need on the part of the Government for the project after taking into account the benefits/probity as a whole in terms of, inter-alia: i. socio-economic impacts (PPP guidelines, 2.1). PPP Guidelines, Sections 3.1: All PPP proposals should be submitted directly to the relevant Ministries/agencies. The typical information required for submission of PPP proposals should include (...) results of economic, financial and engineering feasibility studies, including SCBA (socio-economic cost benefit analysis)
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	Contributors did not confirm that cost-benefit analysis of the socio-economic impact of PPP projects is always done in practice.
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No

If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	JKAS conducts affordability assessment of PPP projects, but there is no specific methodology for this assessment.
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	PPP Guidelines, Sections 3.1: All PPP proposals should be submitted directly to the relevant Ministries/agencies. The typical information required for submission of PPP proposals should include, inter alia, risk matrix. (...)
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Risks are identified and allocated, but the results are not made publicly available.
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)	Section 2.1 of the PPP Guidelines is related to principles in Adopting PPP Approach : A PPP proposal will only be considered if there is a need on the part of the Government for the project after taking into account the benefits/probity as a whole in terms of, inter-alia: ii. value for money and cost savings to the Government. Section 3.1 contains Typical Information Required for PPP Proposals, including: The PPP modality options and the preferred option, concession period, risk analysis and allocation and financing scheme
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Section 2.1 of the PPP Guidelines is related to principles in Adopting PPP Approach : A PPP proposal will only be considered if there is a need on the part of the Government for the project after taking into account the benefits/probity as a whole in terms of, inter-alia: ii. value for money and cost savings to the Government. According to section 2.2 of the PPP Guidelines, the main driver of the PPP Program is Value for Money (VfM), defined as ‘the optimal combination of whole life cost and quality to meet the users’ requirements’. Generally, VfM is achieved through: <ul style="list-style-type: none"> - risk transfer which allocates risks optimally between the public and private sectors ; - long term nature of contracts (which embodies whole life costing) ;

	<ul style="list-style-type: none"> - the use of output specification which allows bidders to innovate ; - competition that provides fair value of the project ; - performance-based payment mechanism ; - private sector management expertise and skills.
Is the assessment done in practice?	Yes
Details:	The PPP project is compared to other procurement alternatives to evaluate whether a PPP is the best option.
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	PPP Guidelines, Sections 3.1: All PPP proposals should be submitted directly to the relevant Ministries/agencies. The typical information required for submission of PPP proposals should include, inter alia, the justification for the proposal, business and financial plans, evidence of financial stability and capability, proposed payment mechanism and risk matrix. (...) Typical Information Required for PPP Proposals includes, inter alia: (...) An evidence of financial stability and statement of financial capability, including access to capital (debt and equity), and Letters of Support from potential lenders (...)
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Financial viability is assessed.
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	All contributors confirm that market sounding is done prior to procurement although no legal provision exists.
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	Section 34A(2) "Environmental Quality, Prescribed Activities" of the Environmental Quality Act 1974 ("1974 Act") provides that environment impact assessments are to be conducted for any activity which "may have a significant environmental impact" and submitted to the appointed Director General of Environmental Quality. Therefore, environmental assessment report is a pre-requisite for a procurement of all major infrastructure projects, including PPP projects.

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Environmental impact assessment is done in practice for all infrastructure projects, including PPP projects.
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
If no, please elaborate	n/a
14.1. Are the tender documents published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and please specify the website:	n/a
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits:	No
Procuring authority (or other Government entity)	
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.2. Obtaining the required environmental permits:	No
Procuring authority (or other Government entity)	
Private Partner	Yes
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No

Relevant legal/regulatory provision (if any)	No regulatory basis
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
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)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	Yes

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>PPP Committee (JKAS) terms and conditions Financial sub-committee : 7.2 JKK members (A) Chairman: Section Director (project negotiation supervisor), UKAS, JPM (B) Secretary: Section Principal Assistant Director or Assistant Director (desk officer to the project negotiation), UKAS, JPM (C) Permanent Members: Ministry of Finance Malaysia; Economic Planning Unit, Prime Minister’s Department; UKAS Specialist Officer, related JPM (D) Invited Members: Implementing Ministry / Agency</p> <p>Technical aspects : 8.2 JKT Members (A) Chairman: Director, Deputy Director of the Technical Section, UKAS, JPM (B) Secretary: Principal Assistant Director Assistant Director of Technical Section, UKAS, JPM (C) Permanent Members: Economic Planning Unit, Prime Minister’s Department Public Works Department or Malaysia Administrative Modernization and Management Planning Unit (MAMPU) - depending on the type of project Specialist Officer UKAS, related JPM (D) Invited Members: Implementing Ministry / Agency</p>
<p>The bid evaluation committee members require sufficient qualification without specific details.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The bid evaluation committee members are not required to have any specific qualifications.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>19. Does the procuring authority issue a public procurement notice of the PPP project?</p>	<p>Yes</p>
<p>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</p>	<p>No regulatory basis</p>
<p>19.1. If yes, is the public procurement notice published online?</p>	<p>Yes</p>
<p>If yes, please specify the website:</p>	<p>www.ukas.gov.my</p>
<p>20. Are foreign companies prohibited from participating in the bidding process?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>

21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
and the time in calendar days:	n/a
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.4. Competitive dialogue: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.5. Direct negotiation with more than one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.6. Direct negotiation with only one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.7 Other. Specify:	No
Available	n/a

Default	n/a
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 16 of the of the Treasury Circular n 5 of 2007
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):	No regulatory basis
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):	The majority of our contributors confirm that prequalification/short listing criteria are specified in the tender documents and available to all bidders.
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):	No regulatory basis
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis

23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	If it is a public procurement by tendering, the procuring authorities will invariably treat all tenderers equally and make available the same information to all tenderers.
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:	Typically, results of the pre-bidding conference are published but the contents of the pre-bidding conference are not published.
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):	As stated in the PPP Guidelines Para 3.1 Box 2: Typical Information Required for PPP Proposals - A business plan, including: partnership structure; duration of the proposed partnership; ownership (present and future); terms of payment; maintenance costs; reserves that need to be kept by the private partner; risk management, including that of force majeure; risk transfer from the government to the private sector partner; economic benefits to the government. - A financial plan, including: detailed cost schedule; financial structure;

	potential partner's sources of funding; how improvements, upgrades and modifications will be financed; pro forma financial statements (include in the submission a softcopy of the financial models)
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):	No regulatory basis
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one): The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	Yes
28. Does the procuring authority publish the award notice?	Yes

If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	No regulatory basis
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	http://www.ukas.gov.my/en/keputusan-tender/sebutharga
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	There are no specific regulatory provisions.
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?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	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):	Pursuant to section 3.4 of the PPP guidelines: The relevant Ministries are responsible for the contract management and performance monitoring
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
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	No
Relevant legal/regulatory provisions (if any):	n/a
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	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, specific processes, insurance regime, etc.)	No
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management	No

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.	
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.	Yes
Please elaborate and provide examples:	No regulatory basis
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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	Yes

system of the PPP contract implementation after construction?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating	No

the income resulting from the operation of a PPP project?	
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):	Guidelines on Concessionaire Shareholders Changes : 1. Purpose of the Guidelines is to: i. standardize the application process conversion of shareholdings concessionaires; ii. detailing the factors and elements that need to be considered in the process of changing the shareholding; iii. a reference in implementing the change holdings shares; and iv. improve the efficiency and transparency of the process of change holdings share.
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):	As per Guidelines on Concessionaire Shareholders Changes Para 8: Companies must comply with the criteria and eligibility requirements as follows: Para 8.1 No change in shareholding during the moratorium period unless for the purpose of listing on Bursa Malaysia; Para 8.2 Moratorium period for the services sector is a minimum of 2 years while the construction sector was 3 years or more depending on the construction period of the project;
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	No
If yes, please provide the relevant legal/regulatory/standard	n/a

contractual provisions (if any):	
In other cases, flexibility to change the ownership structure and/or assign the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	As per Guidelines on Concessionaire Shareholders Changes Para 8: Companies must comply with the criteria and eligibility requirements as follows: Para 8.1 No change in shareholding during the moratorium period unless for the purpose of listing on Bursa Malaysia; Para 8.2 Moratorium period for the services sector is a minimum of 2 years while the construction sector was 3 years or more depending on the construction period of the project;
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the risk allocation of the contract.	n/a

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.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.3. Can the procuring authority unilaterally modify a PPP contract?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
Material Adverse government action .	No
If yes, please provide the relevant	n/a

legal/regulatory/standard contractual provisions (if any):	
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Refinancing.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	No
If yes, please provide the relevant 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):	No regulatory basis
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	No
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	Yes

Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	n/a
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):	Arbitration Act 2005, Article 3: (1) This Act shall apply throughout Malaysia - in respect of a domestic arbitration, where the seat of arbitration is in Malaysia (...) and in respect of an international arbitration, where the seat of arbitration is in Malaysia (..). Recognition and enforcement of award is regulated by Article 38 of the said Arbitration Act 2005.
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Malaysia is a signatory of the New York Convention.
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Malaysia is a signatory of the ICSID convention.
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	No
If yes, please provide the relevant legal/regulatory/standard	n/a

contractual provisions (if any):	
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	n/a
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the	No

termination of the PPP contract?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Unsolicited Proposals	
34. Are unsolicited proposals in Malaysia: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	Yes
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	There is no specific regulation as to unsolicited proposals. Section 3.0 of the PPP Guidelines applies to both solicited and unsolicited proposals, but does not explicitly state so. Unsolicited proposals which are submitted will be processed by the relevant ministries and will be proposed to the JKAS for deliberation. In situation where there is a need to evaluate unsolicited proposals, the evaluation process is done based on Treasury Instructions, Treasury Circulars and Federal Circular Letters as well as UKAS' Standard Operating Procedures (SOPs) and PPP Guidelines.
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	No regulatory basis
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
36. Which of the following options best describe how the procuring authority ensures	No

that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	No
Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
and the time in calendar days:	n/a
39.1 Does the procuring authority use any of the following incentive mechanisms to	No

reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a