



PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN MOLDOVA

| SURVEY QUESTION | ANALYSIS |
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| 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 regulatory framework in Moldova is mainly regulated by: 1) Law on Public-Private Partnership No. 179 issued on July 10, 2008 [hereinafter “PPP Law”]; 2) Law No. 534 on Concessions dated July 13, 1995 [hereinafter “Concessions Law”]; 3) Law on Public Procurement No. 131 of 2015 issued July 3, 2016 [hereinafter “Public Procurement Law”]; 4) Government Resolution No. 476 dated July 4, 2012 on approving the Regulation on Standard Procedures and Conditions for Selection of the Private Partner [hereinafter “Government Resolution No. 476”]; 5) Order No. 143 of August 2, 2013 of the Ministry of Economy on approving the Preliminary Matrix of the Project Risk Allocation [hereinafter “Order No. 143”]; and 6) Government Decision No 255 dated 11 April 2013 on the establishment of the Interministerial Network of Public-Private Partnership. Pursuant to Article 18 (5) of the PPP Law, the concession contract as a legal form for public private partnership fulfillment represents a contract concluded in conformity with the legislation on concessions. These regulations shall provide the framework under which PPPs in Moldova will be analyzed.</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>1. PPP Law - http://lex.justice.md/md/328990/ 2. Concessions Law - http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311682 3. Government Resolution No. 476 - http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344004 4. Order No. 143 - http://lex.justice.md/viewdoc.php?action=view&view=doc&id=349276&lang=2 5. Government Decision No 255 - http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=347432 6. Public Procurement Law http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=360122</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 that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017? | Yes |
| Please describe: | <p>The new Law on Public Procurements No. 131, which has entered into force on May 1, 2016, is meant to transpose into the Moldovan legal system EU Directive 2004/18/EC of 31 March 2004, EU Directive 2014/24/EU of 24 February 2014 and EU Directive 89/665/EEC of 21 December 1989 on the</p> |

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| | coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts. The existing Law on public procurement no. 96-XVI dated 13 April 2007 was abrogated on 1 May 2016. |
| 2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017? | Yes |
| Please describe: | Contributors provided that an amendment to the PPP Law is expected. |
| 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 |

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| 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 Moldova and provide their website(s) (if available): | 1. The Government of the Republic of Moldova (the “Government”): http://www.gov.md/ro 2. Local Public Administration - (website to be determined depending on the jurisdiction of the relevant local public authority). For purposes of the case study assumption, the State Road Administration under the Ministry of Transport and Roads Infrastructure shall be the relevant procuring authority http://asd.md/ |
| 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): | Within the Public Property Agency, there is a PPP Directorate (PPP Unit), which coordinates PPP projects http://www.app.gov.md/ . Furthermore, in addition to the Public Property Agency, a specialized government entity, the National Council for Public-Private Partnership is formed under the Government in order to assess the state policy on PPPs to develop priorities and strategies for implementing PPPs in the Republic of Moldova. |
| 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 |

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| 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. | No |
| 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>Article 14 (1) of the PPP law provides that the competence of the Agency is to:</p> <ul style="list-style-type: none"> a) coordinate the beginning of the public - private partnership at national level; b) assist the public partner in identifying public - private partnership project objectives of national interest, develop general requirements for the private-partner selection and the provisions for public - private partnership offered by central government authorities based in feasibility studies; present them to the Government for approval; b1) approve feasibility studies for public and private partnerships of the national and local interest; c) develop and put into force the standard documentation for private-partners selection procedures, disseminate the best practices and recommendations in the field of establishing public - private partnership; d) monitor and evaluate the realization of the public - private partnerships; e) provide the public and private partners the necessary assistance in implementing the law hereby; f) publish press releases and documents related to the private-partners selection procedure on the website of the Agency; g) keep records of public - private partnerships and risks related to the realization of each partnership; h) provide consultations on public - private partnership and train public partners' staff on any person's request; i) identify gaps and barriers to efficient realization of public - private partnerships; provide the Government with annual reports; publish statistical analyses on public - private partnership projects; j) identify prospective public - private partnerships on the basis of the information provided by the public partners and facilitate contacts between them and the potential private partners; k) inquire from the competent authorities information necessary for exercising the tasks. |
| PPP Preparation | |
| 8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP | Yes |

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| project before launching the procurement process? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Pursuant to Article 13 of the PPP Law, the Ministry of Finance (i) examines proposals on state budget participation to realization of PPP projects, initiated and approved by the Government, and (ii) monitors the process of state budget expenditure by the public partner. In case of PPP projects initiated by the central public authorities, which implementation is exerted with participation of the state budget, the feasibility study is submitted to the Ministry of Finance for projects' sustainability evaluation. |
| 8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS). | n/a |
| Accounting and reporting according to other international standard (e.g. | n/a |

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| European System of Accounts). | |
| Please specify: | n/a |
| Other. | n/a |
| Please specify: | n/a |
| 9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)? | Yes |
| If yes, please specify the relevant authority | The state government and local public administrators approve the PPP projects for State owned assets and for assets owned by local public administration respectively. Contributors confirm the state government refers to the Cabinet. |
| and provide the relevant legal/regulatory provisions (if any): | In accordance with the Article 11 a) b) of the PPP Law, the Government approves the list of the State property goods and the list of works and services of public national interest proposed for PPP, along with the objectives, general requirements and the general conditions for the selection of the private partner. Pursuant to Article 15 (1) b) of the PPP Law, the competences of the local and district public administration includes approval of the objectives and conditions of the PPP projects involving assets and services that are managed by local administration, the general requirements concerning the selection of the private partner. |
| 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): | In accordance with the Article 11 e) of the PPP Law, the Government designates the public authority which will conclude the agreement with the private partner in the case of PPP projects initiated by the Government or the public central administration. Pursuant to Article 15(1) f) of the PPP Law, the competences of the local and district public administration also includes the approval of projects of PPP contracts in the negotiated form. |
| 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 14(2) of the PPP Law allows the Public Procurement Agency to involve independent experts in performing the Agency's competencies. Article 25(b) of the PPP Law accepts that the feasibility study may be elaborated by the public partner or the group of experts. Section 7 of Government Resolution No. 476 provides that, if necessary, for specific issues, experts and specialists may be involved in the PPP Committee. Reports of involved experts and |

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| | specialists shall be part of the PPP file. According to Order No. 143 of 2 August 2013 of the Ministry of Economy on approving the Preliminary Matrix of the Project Risk Allocation - authorities may call for specialized consultancy to quantify the value of specific risks involved in the PPP. |
| 11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities. | No |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Article 5c) of Annex 1 of Government Resolution No. 255 of 11 April 2013 on the Establishment of the Interministerial Network of Public-Private Partnership, the interministerial network has the competence to ensure the implementation of programs of development of PPP, based on the priorities identified in the policy documents. Moreover, Law No. 166 of July 11, 2012 on the Approval of the National Development Strategy “Moldova 2020”, as well as Government Resolution No. 685 of September 13, 2012 on the Approval of the Strategy on the Development of Small and Medium Sized Enterprises for the Years 2012-2012, provide that PPP projects are encouraged in certain fields. |
| The regulatory framework does not include any provisions but the procuring authority evaluates the | No |

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| consistency of PPPs with other government investment priorities in practice. | |
| If yes, please elaborate: | n/a |
| The procuring authority does not evaluate PPPs against existing government priorities. | No |
| Please elaborate and provide examples: | n/a |
| 11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above? | Yes |
| If yes, please specify: | Contributors provide that in practice the Government is actively promoting PPP projects and prioritizes them in accordance with the aforementioned regulatory framework. |
| If no, please elaborate: | n/a |
| 12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project) | Yes |
| Relevant legal/regulatory provision (if any) | Pursuant to Article 25 (b) of the PPP Law, the public partner, an expert group, or the person designated by them compiles a feasibility study demonstrating the opportunity to initiate public - private partnership - technical and economic justification of the suggested public - private partnership project, its basic characteristics, technical and economic indicators of public - private partnership, risk identification and analysis (political, legislative, financial, economic, and environmental risk). |
| 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 the feasibility study is done in practice and is ultimately approved by the PPP Unit under the conditions approved by the Government. |

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| 12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities) | Yes |
| Relevant legal/regulatory provision (if any) | According to Section 28 of Government Resolution No. 476, if the public-private partnership project is initiated by the government, where implementation requires the participation of the state budget, the feasibility study is submitted to the Ministry of Finance for examination and assessment of project sustainability. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | This is in application of regulatory provisions and to ensure a properly prepared PPP project |
| 12.3. Risk identification, allocation and assessment (risk matrix) | Yes |
| Relevant legal/regulatory provision (if any) | Pursuant to Article 25 (b) of the PPP Law, the public partner, an expert group, or the person designated by them compiles a feasibility study demonstrating the opportunity to initiate public - private partnership - technical and economic justification of the suggested public - private partnership project, its basic characteristics, technical and economic indicators of public - private partnership, risk identification and analysis (political, legislative, financial, economic, and environmental risk). Moreover, Order of the Ministry of Economy No. 143 on approval of Preliminary Matrix for Repartition of Project Risks would apply. |
| Is there a specific methodology for the assessment? | Yes |
| If yes, please elaborate | Order of Ministry of Economy no. 143 on approval of Preliminary Matrix for Repartition of Project Risks provides such methodology. The matrix addresses various types of risks, including but not limited to: position risk, financing risk, operating risk, commercial risk, political and legislative risk, environmental risk, and risk of force majeure. |
| Is the assessment done in practice? | No |
| Details: | Contributors provided that there is no consistent evidence that this assessment is actually conducted in practice. |
| 12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for | Yes |

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| money analysis, public sector comparator) | |
| Relevant legal/regulatory provision (if any) | According to Section 27 (d) of Government Resolution No. 476, the Public Property Agency will examine whether the results of the feasibility study justifying the need and opportunity for public-private partnership project initiation and demonstrate that: the form provided for the project by assigning a public-private partnership contract is more advantageous compared to other forms. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | No |
| Details: | Contributors provided that there is no consistent evidence that this assessment is actually conducted in practice. |
| 12.5. Financial viability or bankability assessment | Yes |
| Relevant legal/regulatory provision (if any) | According to Section 27 (e) of Government Resolution No. 476, the Public Property Agency will examine whether the results of the feasibility study justifying the need and opportunity for public-private partnership project initiation and demonstrate that: the project is profitable from a financial point of view. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | No |
| Details: | Contributors provided that there is no consistent evidence that this assessment is actually conducted in practice. |
| 12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project) | No |
| Relevant legal/regulatory provision (if any) | n/a |
| Is there a specific methodology for the assessment? | n/a |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | n/a |
| Details: | n/a |
| 12.7. Environmental impact assessment | Yes |
| Relevant legal/regulatory provision (if any) | Article 13 of the Concessions Law, while outlining components of the contract, provides, "(3) The concession contract for land and other natural resources |

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| | must also include: g) maximum admissible environmental impact norms.” |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | No |
| Details: | Contributors provided that there is no consistent evidence that this assessment is actually conducted in practice. |
| 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 the assessments regulated and previously mentioned. |
| 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 | Yes |

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| contract in the request for proposals? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Pursuant to Article 25 (d) of the PPP Law: the necessary documentation for the tender for the selection of the private partner, shall include: the description of the subject of the public-private partnership, the conditions of the public-private partnership; the sample contract of the public-private partnership. |
| 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): | Article 5 of the Law on PPP provides that the public partner shall provide publishing news releases in Monitorul Oficial al Republicii Moldova. The contents of other documents and information referring to the private partner selection procedure shall be published on the website of the Agency for Public Property at the Ministry of Economy and other websites pursuant to the public partner's decision. Government Decision no. 476 also requires the public partner to publish an informative release in the Monitorul Oficial al Republicii Moldova and on the website of the Agency for Public Property. |
| and please specify the website: | http://www.app.gov.md/ro/press-release-types/comunicate-informative-ppp http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344004 |
| 15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed? | Yes |
| If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them: | Government Decision No. 476 of July 4, 2012 provides instructions on issuing standardized PPP contracts and transaction documents: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=344004&lang=2 |
| 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) | Yes |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | According to Article 10 of the PPP Law, (1) The public partner assists the private partner in obtaining the permissions, authorizations and other documents related to the implementation of the public-private partnership, provided by legislation or contract. |

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| | (2) The public partner has no right to refuse the permit issue with no ground provided by law, or authorizations and other documents related to the realization of the public-private partnership started if the issue follows the legislation. |
| 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) | Yes |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | According to Article 10 of the PPP Law, (1) The public partner assists the private partner in obtaining the permissions, authorizations and other documents related to the implementation of the public-private partnership, provided by legislation or contract. (2) The public partner has no right to refuse the permit issue with no ground provided by law, or authorizations and other documents related to the realization of the public-private partnership started if the issue follows the legislation. |
| 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) | Yes |
| To be established in the contract | No |
| Relevant legal/regulatory provision (if any) | According to Article 10 of the PPP Law, (1) The public partner assists the private partner in obtaining the permissions, authorizations and other documents related to the implementation of the public-private partnership, provided by legislation or contract. (2) The public partner has no right to refuse the permit issue with no ground provided by law, or authorizations and other documents related to the realization of the public-private partnership started if the issue follows the legislation. |
| 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) | No |

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| To be established in the contract | Yes |
| Relevant legal/regulatory provision (if any) | Contributors confirmed that obtaining the required land shall be regulated in the contract according to Article 10 of the PPP Law. According to Article 10 of the PPP Law, (1) The public partner assists the private partner in obtaining the permissions, authorizations and other documents related to the implementation of the public-private partnership, provided by legislation or contract.” |
| 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) | Contributors confirmed that obtaining the required right of way shall be regulated in the contract according to Article 10 of the PPP Law. According to Article 10 of the PPP Law, (1) The public partner assists the private partner in obtaining the permissions, authorizations and other documents related to the implementation of the public-private partnership, provided by legislation or contract.” |
| PPP Procurement | |
| 18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Pursuant to Article 27 (1) of the PPP Law, in the private-partner selection procedure, the public partner creates a private-partner selection commission for each item proposed as a public - private partnership object. The Commission is composed of an uneven number of individual members, no less than 5 persons, and includes at least one specialist in economics, one specialist in jurisprudence, an Agency representative, and a related specialist that initiates public - private partnerships. The Commission is headed by a chairman appointed by the public partner. All the members are subjected to the provisions of the Law on Conflict of Interests. |
| The bid evaluation committee members require sufficient qualification without specific details. | No |

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| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| The bid evaluation committee members are not required to have any specific qualifications. | No |
| Please elaborate and provide examples: | n/a |
| 19. Does the procuring authority issue a public procurement notice of the PPP project? | Yes |
| If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any): | Pursuant to Article 5 (2) of the PPP Law, the public partner shall provide publishing news releases in Monitorul Oficial al Republicii Moldova (Official newspaper for all public documents or laws/regulations). The contents of other documents and information referring to the private partner selection procedure shall be published on the website of the Agency for Public Property at the Ministry of Economy and other websites pursuant to the public partner's decision. |
| 19.1. If yes, is the public procurement notice published online? | Yes |
| If yes, please specify the website: | http://monitorul.md/ ; http://app.gov.md/ |
| 20. Are foreign companies prohibited from participating in the bidding process? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Pursuant to Article 26 (1) of the PPP Law and Government Resolution No. 476, the press release is valid for 60 calendar days from the day of publication and the period between the date of publication of the informative notice on the start of the competitive dialogue procedure in the Official Gazette and the website of the Agency for Public Property, and the deadline for submission of bids shall be 60 days. |
| and the time in calendar days: | 60 |
| 22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP | Yes |

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| projects? Open tendering: Available | |
| Default | No |
| Relevant legal/regulatory provision (if any) | <p>Section 33 of Government Resolution No. 476 provides, “The award procedure shall be chosen on the basis of the characteristics of each project and its complexity by applying one of the following forms:</p> <ol style="list-style-type: none"> 1) private partner selection contest (hereinafter - contest); 2) private partner selection contest with prequalification (hereinafter - pre-qualification contest); 3) private partner selection contest by applying competitive dialogue (further competition through competitive dialogue).” <p>Section 43 of this Resolution further provides, “The public partner will conduct the private partner selection contest (hereinafter contest) if the project is of limited complexity and the public partner can determine the technical / legal structure of the project. The competition takes place in a single stage, at the completion of which the public partner is to award the public-private partnership contract.”</p> |
| 22.2. Restricted tendering (with pre-qualification stage): Available | No |
| Default | Yes |
| Relevant legal/regulatory provision (if any) | <p>Section 144 of Government Resolution No. 476 provides that public partner will choose the private partner selection competition with prequalification stage in the case when the project is complex and the public partner wishes to establish criteria for prequalification and subsequently the awarding of the public-private partnership contract.</p> |
| 22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available | Yes |
| Default | No |
| Relevant legal/regulatory provision (if any) | <p>According to Sections 144 & 145 of Government Resolution No. 476,</p> <p>144. The public partner will opt for a pre-qualification private partner selection contest if the project is complex and the public partner wants to establish pre-qualification criteria and subsequently award the public-private partnership contract.</p> <p>145. The pre-qualification contest procedure takes place in two stages.</p> |
| 22.4. Competitive dialogue: Available | Yes |
| Default | No |
| Relevant legal/regulatory provision (if any) | <p>Pursuant to Section 178 of Government Resolution No 476, the public partner shall apply the competitive dialogue procedure for the award of a public-private partnership contract if the public-private partnership project is considered to be of particular complexity and the application of the pre-qualification contest procedure would not lead to the award of the public-private partnership contract.</p> |
| 22.5. Direct negotiation with more than one candidate: Available | No |

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| 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: | n/a |
| 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): | According to Section 47 (5) of Government Resolution No. 476, the notice should include information on the private partner selection procedure. Furthermore, pursuant to Article 26 (1) (e) of the PPP Law, the notice should include information on the procedures for the private-partner selection. |
| 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): | According to Section 153 of Government Resolution No. 476, within the framework of standard documents of prequalification, the public partner is obliged to specify the criteria for prequalification under which it will be conducting the selection of participants, referring only to the economic and financial situation of the participants and to their technical and/or professional capacity. |
| 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): | Contributor provide that generally, the specified criteria are respected in practice. |
| If no, please elaborate: | n/a |
| 23. Can interested parties/potential bidders | Yes |

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| submit questions to clarify the public procurement notice and/or the request for proposals? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Section 57 of Government Resolution No. 476, any interested economic operator shall be entitled to ask the public partner for clarification on the manner of the competition performance and/or documentation to be presented. |
| 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): | According to Section 59 of Government Resolution No. 476, the public partner is obliged to transmit the answers, along with the questions asked, to all of the economic operators who received the tender documentation in accordance with the terms hereof, keeping secret the name of the party who applied for these explanations. |
| 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: | Disclosure of information in accordance with the aforementioned provisions is generally performed in practice. |
| If no, please elaborate: | n/a |
| 24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference? | No |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| 24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders? | n/a |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 24.2. Based on your experience, is it always the case that this disclosure of information is done in practice? | n/a |

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| If yes, please specify: | n/a |
| If no, please elaborate: | n/a |
| 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): | No regulatory 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): | Pursuant to Article 29 (2) of the PPP Law, the submitted offers are evaluated according to the criteria stipulated in the tender documents. Each member of the board shall submit a reasoned opinion on each to the chairman in writing, taking account of compliance with the established criteria. |
| Evaluation criteria is not set in the tender documents | No |
| 27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one?): The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted. | No |
| Please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents. | Yes |
| Please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| The procuring authority does not award a PPP contract if | No |

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| only one proposal is submitted. | |
| 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 provide the relevant legal/regulatory provisions (if any): | Pursuant to Article 5 (4) of the PPP Law, the meetings of the private-partner selection commission are public, and the final results of the selection process shall be made public by publication in the Official Gazette of the Republic of Moldova and the Agency's website. Furthermore, according to Section 113 of Government Resolution No. 476, the Commission shall publish in the Official Gazette, the designation of the winner of the competition and the competition totals within 5 calendar days from the date the contract is signed. |
| 28.1. If yes, is the public procurement award notice published online? | Yes |
| If yes, please specify the website: | Official Gazette of the Republic of Moldova http://monitorul.md/ Public Property Agency: http://www.app.gov.md/ |
| 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): | According to Section 112 of Government Resolution No. 476, the public partner is obliged to notify, in writing, all bidders about the outcome of the competition not later than 3 working days after the signature of the minutes by the members of the Commission. |
| 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? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |

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| and the time in calendar days: | n/a |
| 30.1. Is the standstill period set out in the notice of intention to award? | n/a |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Section 39 of Annex 3 of Government Resolution No. 476, the public partner is obliged to conclude the contract for public-private partnership with the bidder whose bid was established as the winner by the Commission. The price stipulated in the offer which has been established as the winner is firm, the bidder having no possibility to change the offer which will be an integral part of the for public-private partnership contract. The draft of the contract shall be negotiated not more than thirty (30) calendar days from the date of receipt by the bidder designated as the winner. During the negotiation of the terms of the contract, additional conditions can be placed by mutual agreement of the parties, as long as these conditions do not change the essential terms/conditions laid out in the bid book and the winning bid. |
| 31.1. Based on your experience, is it always the case that this restriction is respected in practice? | No |
| If yes, please specify: | n/a |
| If no, please elaborate: | No clear data has been presented that the restriction has been respected in practice. |
| 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 |

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| 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 Article 22 (1) of the PPP Law, the public partner performs annual checks and monitors the performance of the PPP, which includes the appointment of an independent auditor (monitoring teams). In addition, monitoring tools may be regulated by the PPP contract. |
| 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 | No |

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| PPP procurement process and/or vice versa | |
| 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 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. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| The PPP contract management team members are not required to meet any specific qualifications. | No |

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| 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): | Pursuant to Article 22 (1) of the PPP Law, the public partner performs annual checks and monitors the performance of the PPP, which includes the appointment of an independent auditor. Contributors confirm that procuring authorities track progress and completion of construction works under a PPP contract based on this provision. |
| 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? | No |
| 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): | Pursuant to Article 22 (1) of the PPP Law, the public partner performs annual checks and monitors the performance of the PPP, which includes the appointment of an independent auditor. Furthermore, according to Sections 233 and 234 of Government Resolution No. 476, monitoring and evaluation of public-private partnership at the national level is exerted by the Public Property Agency. Moreover, the Public Procurement Law states in Article 1 that the Public Procurement Agency is the administrative authority, subordinated to the Ministry of Finance, which performs the supervision, the ex-post control and the coordination in the domain. |
| 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 |

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| 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) | According to Section 231 of the Government Resolution No. 476 of 4 July 2012, the private partner is obliged to provide, upon request, the information about performing the PPP, as well as the its tasks and competences, rights and obligations of its consumers and customers, except official information with limited accessibility of personal information and the information constituting a state or commercial secret. Also, according to Article 22(2) of the PPP Law, the private partner is obliged to ensure the public partner free access to the PPP object, and to all information and documents related to the fulfillment of the PPP. |
| The procuring or contract management authority must periodically gather information on the performance of the PPP contract | Yes |
| Relevant legal/regulatory provisions (if any) | According to Article 22(1) of the PPP Law and Section 227 of the Government Resolution No. 476 of 4 July 2012, the public partner performs an annual check and monitors the achievements of the PPP. |
| 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 |

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| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |
| <p>45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?</p> | <p>No</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <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).</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>In other cases, flexibility to change the ownership structure and/or assign the contract.</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |

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| 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>Pursuant to Article 33 (1) of the PPP Law, if during the active period of the public - private partnership contract legislative and / or standard acts are adopted, which lessens the situation of the private partner to the extent that they remain deprived of what they were supposed to obtain by signing the contract, the parties may amend the terms of the contract to ensure existing property interests of the private partner on the day of signing the contract. Moreover, Article 23(3) of the PPP Law provides that the parties are responsible for the unilateral amendment of the execution conditions of the PPP. If by amending the performance conditions of the PPP, one party suffered damages, the guilty party will repair them. And Annex II to Government Resolution No. 476 provides that standard contractual provisions shall include, Chapter IX. Specific provisions: 4) acceptable changes in the project.</p> |
| 46.1. If yes, is an approval from a government authority, other than the procuring authority, required? | <p>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>n/a</p> |
| 46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract. | <p>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>n/a</p> |
| A change in the risk allocation of the contract. | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>Pursuant to Article 33 (1) of the PPP Law, if during the active period of the public - private partnership contract legislative and / or standard acts are adopted, which lessens the situation of the private partner to the extent that they remain deprived of what they were supposed to obtain by signing the contract, the parties may amend the terms of the contract to ensure existing property interests of the private partner on the day of signing the contract. Contributors confirm this is applied to a change in risk allocation of the contract.</p> |

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| A change in the financial and/or economic balance of the contract. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the duration of the contract. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the agreed price or tariff. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 46.3. Can the procuring authority unilaterally modify a PPP contract? | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure | Yes |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | According to Chapter 1 of Annex No. 2 of the Government Resolution No. 476, the PPP contract will contain a section regarding force majeure clauses. |
| Material Adverse government action . | Yes |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | Pursuant to Section 28 of the Annex of Order No. 143, in the case of cancellation of additional assistance, the public partner will contribute to the good development of the project within the competence of the treaty. Please note that this information is contained in risk matrix (which is the Annex to Order No. 143). |
| Change in the Law. | Yes |

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| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | Pursuant to Article 33(1) of the PPP Law, if within the period of the PPP contract are adopted legislative acts that are worsening the situation of the private partner so that it remains deprived of what it was entitled to obtain when concluded the PPP contract, the parties may modify the terms of the PPP contract ensuring existing property interests of the private partner to its conclusion. However, according to Article 33(2) of the PPP Law, the provisions of Article 33(1) do not apply if were changed technical regulations or normative acts regulating the relations of protection of subsoil resources, the environment and human health. |
| 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): | Pursuant to Article 36 (1) and 36 (2) of the PPP Law: In case of disputes, the parties shall take all measures of amicable settlement. The parties may agree for mediation or arbitration as a means of settling disputes arising during the implementation of public and private partnership. Furthermore, according to Section 132 of Government Resolution No. 476, the parties will establish necessarily dispute settlement mechanism that may occur during the contract and indicate the courts with resolving such disputes. |
| 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 |

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| Mediation | Yes |
| Please provide the relevant legal/ regulatory/standard contractual provisions (if any) | Pursuant to Article 36 (1) and 36 (2) of the PPP Law: In case of disputes, the parties shall take all measures of amicable settlement. The parties may agree for mediation or arbitration as a means of settling disputes arising during the implementation of public and private partnership. Furthermore, according to Section 132 of Government Resolution No. 476, the parties will establish necessarily dispute settlement mechanism that may occur during the contract and indicate the courts with resolving such disputes. |
| 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): | Domestic arbitration awards are recognized and enforced in Moldova as foreign awards are in accordance with Articles 16(4) and 467 of the Civil Procedures Code of May 30, 2003 No. 225-XV (Civil Procedures Code) |
| International arbitration | Yes |
| If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any): | Article 467 of the Civil Procedures Code, "(1) Decisions of foreign jurisdictions (including settlement agreements) are recognized and enforced with full authority in the Republic of Moldova, if this is provided for by international treaties, of which one of the parties is Republic of Moldova, or on the basis of the principle of reciprocity as regards consequences of decisions of foreign courts." Article 16(4) of the same Code also provides, (4) On the territory of the Republic of Moldova, decisions, instructions and appeals foreign arbitral tribunals, international arbitrations are executed in accordance with this Code, international treaties, one of the parties which is the Republic of Moldova, as well as on the basis of the principle of reciprocity." Moldova is also signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) since Sept. 18, 1998, which allows the enforcement of foreign arbitral awards. |
| Investor-State arbitration | Yes |
| If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any): | Article 467 of the Civil Procedures Code provides, "(1) Decisions of foreign jurisdictions (including settlement agreements) are recognized and enforced with full authority in the Republic of Moldova, if this is provided for by international treaties, of which one of the parties is Republic of Moldova, or on the basis of the principle of reciprocity as regards consequences of decisions of foreign courts." Article 16(4) of the same Code also provides, (4) On the territory of the Republic of Moldova, decisions, instructions and appeals foreign arbitral tribunals, international arbitrations are executed in accordance with this Code, international treaties, one of the parties which is the Republic of Moldova, as well as on the basis of the principle of reciprocity." Furthermore, Moldova is signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) since May 5, 2011, which allows for the recognition and enforcement of investor-state arbitral awards, and this mechanism may be agreed upon in the PPP contract. |
| 49. Does the regulatory framework (including | No |

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| standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency? | |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations? | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights. | n/a |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| The regulatory framework prescribes that a direct 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 |

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| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Other. | n/a |
| Please Specify: | n/a |
| 51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 31 (1) and Article 23 (2) of the PPP Law state that public and private partnership shall cease: a) upon expiration of the contract signed by and between the public partner and the private partner; b) on the basis of the agreement between the public partner and the private partner; c) in other cases stipulated by the law or the contract. The law also provides for the termination of PPP contract upon the respect of 3 month termination notice in the event where one of the signatory parties breaches its own contractual obligations or when the party is in impossibility to fulfill such obligations. Otherwise the usual grounds for termination of contracts apply (such as fundamental breach of contract or anticipatory fundamental breach). |
| 51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | Pursuant to Article 31(2) of the PPP Law, if ceased by the expiration of the PPP contract duration, the private partner is obliged to return to the public partner the goods free of any charges. Furthermore, according to Article 31(3) of the PPP Law, by ceasing of the PPP, the private partner is obliged to ensure the business continuity and service delivery as stipulated in the contract, until taken over by the public partner.” |
| Unsolicited Proposals | |
| 34. Are unsolicited proposals in Moldova: (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 | No |

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| done in practice, skip to section F) | |
| If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions | n/a |
| 35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37) | No |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any) | n/a |
| 35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities. | No |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |

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| The procuring authority does not evaluate unsolicited proposals against existing government priorities. | Yes |
| Please elaborate and provide examples: | <p>Such an assessment would not have any legal status, since the procuring authority is not obliged to evaluate unsolicited proposals.</p> <p>The authorities may evaluate all the circumstances and decide the opportunity to start the PPP or may add the solicited sector to future priorities of PPPs.</p> <p>Contributors provide that usually it is all done in collaboration with the relevant entity.</p> |
| 37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| and the time in calendar days: | n/a |
| 39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting. | No |
| 39.2 Developer's fee (reimbursing the original proponent for the project development cost). | No |
| 39.3 Bid Bonus. | No |
| 39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract). | No |

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| 39.5 Other. | No |
| Please specify: | n/a |
| Please provide the relevant legal/regulatory provisions (if any): | n/a |