

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN NEPAL

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:	Our analysis is based on the regulatory framework for PPP in Nepal, made up of the following texts: (i) Public Private Partnership Policy 2072 (2015) ('PPP Policy') (ii) Act No. 30 of the year 2063 (2006) The Act Enacted to make provisions on Private Financing in Build and Operation of Infrastructure ('PFBOI Act') ; (iii) Private Financing in Build and Operate of Infrastructures Rules, 2064 (2007) ('PFBOI Rules') (iv) The Public Procurement Act, 2063 (2007) ('PPA'); (v) The Public Procurement Rules, 2064 (2007) ('PPR'); (vi) Investment Board Act 2069 (2011) ('IBA') (vii) Investment Board Rules 2069 (2011) ('IBR')
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	http://ppmo.gov.np/acts_and_regulations ; http://ibn.gov.np/legislation
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	Yes
Please describe:	The Government of Nepal has enacted Public Private Partnership Policy 2072 (2015)
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	The new Private Financing in Build and Operate of Infrastructures Act is being drafted.
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the	No

following sectors?: Transportation.	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	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 or restrict PPPs in any of the following sectors?: Other	Yes
If yes, specify and provide the relevant legal/regulatory provisions:	Although there are no explicit restrictions, Article 11.3(2) the PPP Policy specifies sectors in which the PPPs can be procured, including: (a) Physical infrastructures and transportation (Road, Bridge, Airports, Railways, Cable Cars, Ropeway and all ports); (b) Electricity Sector (production, transmission and distribution (together or separately) and other types of energy; (c) Information and communication sector; (d) Urban and rural environment sector (e.g., solid waste management, drinking water, sewerage and sanitation); (e) Education, health related infrastructure and services, all other sectors of tourism infrastructure except hotels and accommodation; (f) Urban amenities.

4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provision (if any):	<p>Pursuant Article 13.8 of the PPP Policy, Government of Nepal may exempt or waive taxes if deemed necessary to do so considering the nature and characteristics of PPP project by provisioning it in tax related Acts.</p>
5. Please identify the PPP procuring authorities in Nepal and provide their website(s) (if available):	<p>The PPP Policy does not specify which government bodies may act as public entities in a PPP project.</p> <p>According to section 1 (b) of the PPA, “Public Entity” means the following entity:-</p> <ol style="list-style-type: none"> (1) Constitutional organ or body, Court, Ministry, Secretariat, Commission, Department of the Government of Nepal or any other Governmental Entity or Office thereunder, (2) Corporation, Company, Bank or Board owned or controlled fully or in majority by the Government of Nepal or Commission, Institute, Authority, Corporation, Academy, Board, Center, Council established at the public level or formed by the Government of Nepal under the laws in force and other corporate body of a similar nature, (3) University, College, Research Center, which is operated by the Government of Nepal or receives grants fully or in majority from the Government of Nepal, and other Academic or Educational Institution of a similar nature, (4) Local body, (5) Development Board formed under the Development Board Act, 1956, (6) Body operated with loan or grant of the Government of Nepal, and (7) Other Bodies as specified by the Government of Nepal by publishing a notification in the Nepal Gazette, as a Public Entity;
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	<p>Yes</p>
If yes, please indicate its name, and its website (if available):	<ol style="list-style-type: none"> (1) According to most of our contributors (both in 2016 and 2017), Public Procurement Monitoring Office and Investment Board (PPMOIB), established by the Office of Prime Minister and Council of Ministers, plays a major a role in the PPP procurement - http://ppmo.gov.np/about_us/functions. For the purpose of our analysis, PPMOIB is the primary government body, which pays an advisory role of a PPP unit. (2) In addition, Article 12.3 of Nepal’s PPP Policy of 2015 provides that a Public-Private Partnership (PPP) Center under the guidance of the PPP Regulatory Committee shall be established. The PPP Regulatory Committee under the chairmanship of the Secretary of National Planning Commission comprises joint secretaries of Ministry of Finance, Ministry of Home Affairs, Ministry of Physical Infrastructure and Transport, Ministry of Federal Affair and Local Development, Ministry of Land Reform and Management, and expert appointed by the Committee as members and Chief of PPP Center as

	Member Secretary so as to manage PPP Center's tasks, provide necessary guidance to the Center and establish coordination among PIAs and to facilitate them. (Article 12.2, PPP Policy)
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.	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>Pursuant to Section 7 of the Investment Board Act, 2068 (2010), the major responsibilities of the office of the PPMOIB are:</p> <p>(a) To invite proposals of investment for competition in the project approved by Board.</p> <p>(b) To evaluate as well as analyze the investment proposal submitted by investors and to submit it to the Board accordingly.</p> <p>(c) To negotiate and conclude agreement with an investor on the basis of terms and conditions approved by the Board.</p> <p>(d) To motivate an investor for implementing the project as per the agreement.</p> <p>(e) To monitor the implementation of the project and to recommend to the Board for cancelation of the license where it is found that the project is not implemented as per the time frame.</p> <p>(f) To solve the problems seen in the course of the implementation of the project.</p> <p>(g) To admonish the investor for not implementing the approved project</p>

	<p>within time frame and to recommend to the Board for action where the project is not implemented despite of admonition.</p> <p>(h) To manage for providing specified economic or non-economic facility to the investors.</p> <p>(i) To submit suggestions to the Board for reform where investors are not motivated for making investment due to insufficient facility provided in a sector or for any other reason.</p> <p>(j) To submit suggestions to the Board where it is necessary to give special priority to a sector or sub-sector of specific investment.</p> <p>(k) To carry out administrative and other function specified by the Board.</p> <p>According to Section 41 of PFBOI Act, 2063 (2006), The Committee may, from time to time, give necessary directions to the concerned Ministry in respect of the project implementation</p> <p>(2) Pursuant to Article 12.3(4) of the PPP Policy, the functions of PPP Center shall be as follows:</p> <p>(a) Carryout feasibility study, independent suitability appraisal of model project agreements and procurement related documents.</p> <p>(b) Facilitate public and private entities in preparation, construction and operation of PPP projects.</p> <p>(c) Conduct PPP related capacity building programs in all possible organs, entities and apparatus of state.</p> <p>(d) Conduct and cause to conduct studies on PPP concerned domestic and foreign good practices and promote them in the country.</p> <p>(e) Institutionalize PPP related experiences and prepare model documents and guidelines.</p> <p>(f) Carryout and cause to carryout discussion with potential investors, banks and financial institutions on creating capital and credit investment friendly environment.</p> <p>(g) Issue necessary guidelines with regard to project identification, prioritization, selection, approval, preparation of procurement related documents, implementation and handover of projects among others.</p> <p>(h) Carryout other tasks as assigned by the Board of Directors.</p>
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 11.4(6) of PPP Policy, Project Implementing Agencies (aka 'PIAs') shall furnish details of the identified projects to National Planning Commission (NPC) in order to provide them PPP structure. PIA shall initiate project preparation only when NPC carries out necessary analysis and recognizes such projects as PPP projects.</p> <p>Pursuant to Article 13.1(1) of PPP Policy "Budgetary Provisions", for the national level projects, PIA shall propose the budget to the Ministry of Finance and National Planning Commission. The Ministry of Finance shall take the final decision for budget allocations for PPP projects, in consultation with the National Planning Commission and concerned PIA. The details of such</p>

	allocation shall be mentioned in Nepal Government's annual budget and allocated budget of concerned local bodies.
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.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 13.1(1) of PPP Policy "Budgetary Provisions", for the national level projects, PIA shall propose the budget to the Ministry of Finance and National Planning Commission. The Ministry of Finance shall take the final decision for budget allocations for PPP projects, in consultation with the National Planning Commission and concerned PIA. The details of such allocation shall be mentioned in Nepal Government's annual budget and allocated budget of concerned local bodies.
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.)?	<p>Yes</p>
If yes, please specify the relevant authority	<p>The Council of Ministers, Ministerial Development Action Committee, Infrastructure Service Fee Review Board</p>
and provide the relevant legal/regulatory provisions (if any):	<p>No regulatory basis</p>
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?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
10. Does the procuring authority use transaction advisors during the PPP project cycle?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 8 of Investment Board Act, 2068 (2010), (1) The Board may with the approval of the Board, constitute an Expert Committee to study and analyze the special technical aspect of the project investment to recommend the Board; (2) The Expert Committee or the Task Force shall study the matter as specified by the Office and submit its report within the time frame as specified by the Office.</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	<p>No</p>

system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.	
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):	<p>Pursuant to Article 13.1(1) of PPP Policy “Budgetary Provisions”, for the national level projects, PIA shall propose the budget to the Ministry of Finance and National Planning Commission. The Ministry of Finance shall take the final decision for budget allocations for PPP projects, in consultation with the National Planning Commission and concerned PIA. The details of such allocation shall be mentioned in Nepal Government’s annual budget and allocated budget of concerned local bodies.</p> <p>Section 11.3 refers to Priority Identification of Infrastructures: (1) Public entities, in the process of identification of PPP projects, shall include such investments/projects/services that are necessary towards fulfilling their individual responsibilities while ensuring public interests. All the proposed PPP projects shall be identified and tested in accordance with the directives as is laid out in the Manual while preparing the list of PPP projects. The article further provides a list of priority infrastructure sectors.</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.	No
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	Yes

provisions of the regulatory framework described above?	
If yes, please specify:	The majority of PPP projects are procured according to identified priorities for national development and existing guidelines.
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)	<p>Pursuant to Article 11.3 of the PPP Policy, the selection criteria for PPP projects are project cost, implementation period, service charge, quantity and quality of the built infrastructure and risk/benefit sharing. The government shall conduct a feasibility study of a PPP project including (3) techno-economic study and (3) market feasibility, which shall be deciding parameters for local level PPP projects. (5) Government of Nepal shall prioritize a project proposal which (a) enhances quality and access to services. For infrastructure PPPs, the government evaluates whether (i) Current status of public service is enhanced; (ii) Economic benefit to the Nepalese economy is ensured; (iii) Funds of the Government and local entities are effectively mobilized; (iv) The innovative and high level technology is made use of.</p> <p>In addition, Section 10 (2) of IBA has embodied the provision that the Executive Chief shall initiate the process of the inquiring and evaluation of the financial, environmental, technical and social aspect of the project within seven days once the proposed investment project is deemed to be appropriate.</p>
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	PPP projects which are identified to benefit to the Nepalese economy are selected.
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:	Our contributor confirms that the assessment is done in practice.
12.3. Risk identification, allocation and assessment (risk matrix)	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?	No
Details:	Risks are in practice not identified and allocated for all PPP projects.
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	A comparative assessment of procuring options is not always undertaken.
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	Section 10 (2) of Investment Board Act 2010 has embodied the provision that the Executive Chief shall initiate the process of the inquiring and evaluation of, inter alia, the financial aspect of the project within seven days once the proposed investment project is deemed to be appropriate. Pursuant to Article 11.3 of the PPP Policy, the selection criteria for PPP projects are project cost, implementation period, service charge, quantity and quality of the built infrastructure and risk/benefit sharing. The government shall conduct a feasibility study of a PPP project including (3) techno-economic study and (3) market feasibility, which shall be deciding parameters for local level PPP projects.

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	Financial viability is not in practice assessed for all PPP projects.
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)	Pursuant to Article 11.3 of the PPP Policy, the government shall conduct a feasibility study of a PPP project including (...) (3) market feasibility (...) Pursuant to section 3 of the PPR, any public entity shall, in preparing for any procurement proceedings, do as follows: (b) To obtain information as to the procurement contract prevailing at the market in order to identify various technical solutions relating to procurement and ascertain the availability of supplier. Section 11.7 of the PPP Policy outlines a step-by-step tender process, which includes optional (A)Request for Expression of Interest (REOI) stage for obtaining additional details on market position, prospective projects, benefit / risk involved and interested bidders.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	Market interest is not in practice always assessed for PPP projects.
12.7. Environmental impact assessment	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.8. 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):	Section 45 of the PPR indicates the Documents to be included in tender documents, including (e) Terms and format of procurement contract.
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):	Pursuant to Rule 10 (2) of Investment Board Rules, 2011, tender documents are published on the website of the Office of the Investment Board and other websites of concerned Government entities.
and please specify the website:	Website of the Office of the Investment Board and other websites of concerned Government entities
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:	Standard bid documents http://ppmo.gov.np/standard_bid_document
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to Section 10(12) of Investment Board Act, 2068 (2010), if environmental impact study or evaluation is required to be carried out on the project as licensed under Sub-Section (9), notwithstanding anything stated in the prevailing laws for this purpose, the Board shall considering the nature of the project, grant the period of three months and the investor shall, within such period accomplish the study and submit the report thereof to the specified authority in a specified format.
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)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Article 11.9(1) of PPP Policy: Government of Nepal shall make available the required land to a procuring authority for PPP projects both at the national and local levels Additionally, Article 28 provides that if any land owned by Government of Nepal or any public land is required for the implementation of the project, Government of Nepal may provide such land to be used on lease or rent as provided for in the agreement.
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
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 147 of the PPR provides for composition of the Evaluation committee (1) The formation of the evaluation committee referred to in Section 71 of the Act shall be as follows: (a) Chief of public entity or senior officer designated by him or her (technical employee, if possible) -Chairperson

	<p>(b) Chief of financial administration section of the concerned public entity - Member</p> <p>(c) Technical expert related in the field (officer level, if possible) -Member</p> <p>(d) If there is a position of law officer in the public entity, law officer of the public entity -Member</p>
The bid evaluation committee members require sufficient qualification without specific details.	No
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 section 7. (3) of the PPA, a Public Entity shall establish a procurement unit or assign the responsibilities thereof in order to carry out the following acts: (d) Publicly publishing the procurement notice. Section 14 furthermore provides that (1) A notice for invitation to bids or prequalification proposals shall have to be published in a daily newspaper of national circulation and, in the case of an international bid; it may also be published in any international communication media.
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	Pursuant to section 14 (2) of the PPA, the notice as referred to in Sub-section (1) shall be placed in the website of the concerned entity or that of the Public Procurement Monitoring Office, in the case of a central level Public Entity, and in the case of a district level Public Entity, such notice may be placed in the website of that body or that of the Public Procurement Monitoring Office.
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 section 14 (4) of the PPA, in publishing a notice under Sub-section (1), for invitation of national level bidding or prequalification proposals, a period of at least thirty days shall be given and at least forty five days shall be given in the case of a notice on invitation that of international level bidding or prequalification proposals.
and the time in calendar days:	45
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Section 11.7 of the PPP Policy outlines a step-by-step tender process, which includes optional (a) Request for Expression of Interest (REOI) stage, (b) a pre-qualification stage, (c) request for proposal stage and (d) Evaluation and selection of preferred bidders; (e) Bid approval; (f) Signing of the project agreement.
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Section 11.7 (2) of the PPP Policy indicates: RFQ and RFP can be made either in one or two stages depending on the PPP procurement process. Such provisions shall be as follows:</p> <p>(a) In case of projects having project outlay less than Rs. 100 million, one single stage process can be adopted where RFQ and RFP can be invited in two separate envelops.</p> <p>(b) Financial proposal contained in second stage shall not be opened unless technical proposal contained in first stage is selected.</p> <p>(c) Financial proposal of only those bidders, whose technical proposal is qualified on the basis of predetermined criteria, shall be opened.</p> <p>(d) International bids shall be invited for projects with outlay exceeding Rs. one billion.</p> <p>(3) Proposal shall be divided into two sections. The first section shall incorporate project implementation modality, the most modern technology that can be used and other technical details while the second section shall include financial proposals wherein bid/ rate/ price and other details asked for are attached. Generally, only the bid/rate/price or quantity of a single parameter that can be appraised shall be asked for in financial proposal, and based on which bidders could be selected.</p>

	(7) Financial proposals of only those bidders selected from the evaluation of technical proposals shall be opened.
22.4. Competitive dialogue: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.6. Direct negotiation with only one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	No
Available	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):	Pursuant to section 13 (2) of the PPA, the bidding documents under Sub-section (1) shall contain the following matters: (a) The nature of procurement, time required for procurement and technical specifications thereof, (e) Instructions for preparing and submitting bids, the place for the submission of bids, the deadline for the submission of bids and the place, date and time for the opening of bids.
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):	In the case of a bidder, the qualification criteria set forth in the bidding documents or where prequalification proceedings have been conducted for procurement, the qualification criteria set forth in the prequalification documents (section 10. 1 (a) of the PPA) More precisely, the prequalification

	documents under Sub-section (1) or (2) shall set forth the qualification criteria required for prequalification and the method for the preparation of proposal and the manner for the submission of proposal (PPA 12 (3)). This requirement is also contained in section 35 and 40 of the PPR.
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):	Contributors confirm that prequalification/shortlisting 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):	<p>According to section 16. (1) of the PPA, where any bidder, being unclear about any matter set forth in the bidding documents or the prequalification documents, requests, within the time period set out in such documents, for a clarification, the Public Entity shall have to communicate the information of such matter to all bidders prior to the deadline for the submission of bids or prequalification proposals.</p> <p>During a 2-stage bidding, the Public Entity may hold discussions with any or all bidders in relation to the bids submitted in response to the invitation to bid made pursuant to Sub-section (2) (section 28 (3) of the PPA).</p> <p>Section 52 of the PPR provides for the Pre-bid conference: (1) A public entity may organize a conference of bidders in advance of at least ten days prior to the deadline for the submission of tender in the case of a notice of invitation to national tender and in advance of at least fifteen days prior to such deadline in the case of a notice of invitation to international tender, for the purpose of briefing bidders on the tender documents, technical specifications, sites or similar other matters.</p> <p>(2) A bidder may raise a question or query about the procurement proceedings before the public entity in a meeting referred to in Sub-rule (1).</p>
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):	Pursuant to section 16 of the PPA, the Public Entity shall have to communicate the information of such matter to all bidders prior to the deadline for the submission of bids or prequalification proposals. Where the Public Entity makes any alteration/modification in the information under Sub-

	<p>section (1) and the bidding documents or prequalification documents, it shall have to communicate information relating to such alteration/modification to all bidders that have participated in the procurement proceedings within a reasonable time so as to enable them to take such alteration/modification into account in submitting their bids or preparing their proposals for prequalification.</p> <p>Section 52 of the PPR also provides that such body shall provide promptly the responses to such question or query and the minutes of meeting to all bidders without identifying the sources of the questioners.</p> <p>In addition, pursuant to Rule 23 of PFBOI Rules 2007, procuring authority discloses and clarifies the matters requested by the bidders.</p>
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:	The procuring authority discloses the answers to the questions to all potential bidders.
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):	Pursuant to Article 13 of the PPA, Bidding Documents to be Prepared: (1) Prior to invitation to bid, the Public Entity shall have to prepare the bidding documents: (...) (d) If any bid conference has to be held prior to submission of bid, information relating to such conference
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):	Pursuant to Article 13 of the PPA, Bidding Documents to be Prepared: (1) Prior to invitation to bid, the Public Entity shall have to prepare the bidding documents: (...) (d) If any bid conference has to be held prior to submission of bid, information relating to such conference
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	Our contributors confirm that the meeting minutes of a pre-bidding conference are signed by all the bidders who received clarifications for their questions. The information is distributed to all bidders at a fee.
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority	Yes

require the bidders to prepare and present a financial model with their proposals?	
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 section 10. 4) of the PPA, bids, pre-qualification proposals and consultancy service proposals shall be evaluated only in accordance with the criteria set forth in the bidding documents, pre-qualification documents and in the documents relating to proposals, respectively, and such criteria shall equally be applicable to all bidders or proponents without any discrimination. Additionally, Article 11.7 (D) "Proposal Evaluations" states: (1) Proposal evaluation and selection of preferred bidders shall be carried out as per proposal evaluation criteria. This process shall be transparent wherein evaluation shall be done on the basis of predetermined criteria set by the committee formed by PIA including the representatives of PPP Center or National Planning Commission and Ministry of Finance.
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.	Yes
Please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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):	<p>Pursuant to section 60. of the PPA, after a procurement contract has been concluded pursuant to this chapter, the Public Entity shall have to publish as prescribed a notice including the result of the evaluation of bid or consultancy service.</p> <p>Section 137 of the PPR furthermore details : (1) The concerned public entity shall, no later than three days of the conclusion of a procurement contract, post a notice thereof on its notice board and arrange for posting such notice also on the notice boards of the District Development Committee, District Administration Office and Treasury and Accounts Comptroller Office.</p> <p>(2) The concerned public entity may arrange for the publication of the notice referred to in Sub-rule (1) on its website, if any, and on the website of the Public Procurement Monitoring Office if that entity has not its website.</p> <p>(3) The public entity shall set forth, in the notice referred to in Sub-rule (1), the results of evaluation of tender or consultancy service, the date of publication of notice inviting tenders, proposals or sealed quotations, the name of newspaper, the reference number of notice, the item of procurement, the name and address of bidder, proponent or sealed quotation bidder making contract and the contract price, among other things.</p>
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	https://www.bolpatra.gov.np/ppmo/searchOpportunity
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):	Pursuant to section 26 (3) and (4) of the PPA, the Public Entity shall have to communicate to all the bidders a notice along with the reason for the rejection of bids or cancellation of the procurement proceedings pursuant to Sub-section (1). Where any bidder requests, within thirty days of the communication of notice pursuant to Sub-section (3), for grounds for the rejection of all bids or rejection of the procurement proceedings, the Public Entity shall have to communicate such information to that bidder.
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of	Yes

the PPP procurement process include the grounds for the selection of the winning bid?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to section 26 (3) and (4) of the PPA, the Public Entity shall have to communicate to all the bidders a notice along with the reason for the rejection of bids or cancellation of the procurement proceedings pursuant to Sub-section (1). Where any bidder requests, within thirty days of the communication of notice pursuant to Sub-section (3), for grounds for the rejection of all bids or rejection of the procurement proceedings, the Public Entity shall have to communicate such information to that bidder.
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):	According to section 111 (1) of the PPR, a public entity shall do the following acts, as required, while implementing a procurement contract: (e) To monitor progress in the implementation of procurement contract according to the contract administration work plan and inspect and examine quality aspects

	(h) To manage financial aspects of contract implementation including budgetary and cost accounting aspects,
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):	<p>According to section 111 (1) of the PPR, a public entity shall do the following acts, as required, while implementing a procurement contract: (d) To form a contract implementation team, where necessary.</p> <p>Section 12.4 of the PPP Policy: (1) Every public entity desirous to implement PPP projects shall be considered as Project Implementing Agency (PIA) and such entities shall form their respective Project Implementation Unit (PIU) in order to implement their individual projects.</p> <p>(2) Public entities shall form PIU for concerned projects in order to make PPP project preparatory works, studies and adoption of procurement processes well organized and to cooperate, coordinate and also to enter into agreements with private entities and implement projects through thus formed units.</p> <p>(3) Projects approved and entered into agreement by Investment Board Nepal established under prevailing laws, shall be handed over by the board to the concerned Ministry or entity subsequent to the completion of financial closure for its implementation. The Board shall coordinate with the concerned Ministries or entities from the initial phase of preparation of projects thus to be implemented.</p>
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	Yes
Relevant legal/regulatory provisions (if any):	<p>Section 12.4 of the PPP policy: (1) Every public entity wishing to implement PPP projects shall be considered as Project Implementing Agency (PIA) and such entities shall form their respective Project Implementation Unit (PIU) in order to implement their individual projects.</p> <p>(2) Public entities shall form PIU for concerned projects in order to make PPP project preparatory works, studies and adoption of procurement processes well organized and to cooperate, coordinate and also to enter into agreements with private entities and implement projects through thus formed units.</p>
Elaboration of a PPP implementation manual or an equivalent document	Yes
Relevant legal/regulatory provisions (if any):	<p>According to section 111 (1) of the PPR, a public entity shall do the following acts, as required, while implementing a procurement contract: (e) To monitor progress in the implementation of procurement contract according to the contract administration work plan and inspect and examine quality aspects.</p>

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.	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Section 38 (2) of PFBOI Act, 2063 (2006): Formation of Committee: specifies specific government titles of the members forming a Project Coordination Committee which oversees the implementation of the projects and give suggestions to Government of Nepal
The PPP contract management team members are required to meet sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Pursuant to Rule 33 of the PFBOI Rules “Power to examine and inspect the project”: (1) The Ministry may examine or inspect, or cause to be examined or inspected, any project as to whether the project is being implemented in accordance with the Act and these Rules. (2) If, while making, or causing to be made, examination or inspection pursuant to Sub-rule (1), it appears that any project is not being implemented in accordance with the Act and These Rules, the Ministry may, setting out the reasons therefor, give direction to the concerned licensee to implement the project; and it shall be the duty of the concerned licensee to observe the direction so given by the Ministry. Further, Section 45 of PFBOI Act 2006 provides Government of Nepal may, on suggestions of the Committee, identify the projects to be implemented pursuant to Section 3 and maintain updated details thereof.</p>
<p>42.1. If yes, is the PPP contract construction performance information made available to the public?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>42.2. If yes, is the PPP contract construction performance information made publicly available online?</p>	<p>n/a</p>
<p>If yes, please specify the website:</p>	<p>n/a</p>
<p>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 15 “Monitoring and Evaluation” of the PPP Policy requires (1) a monitoring and evaluation processes to be established for a PPP project. (2) Ministry of Finance, in cooperation with the PPP Center, may constitute working committees from time to time to carry out reviews and evaluations of the financial status of PPP projects. (3) Project Implementation Unit of the procuring authority carries monitoring responsibility (4) PPP center shall submit an M&E annual report to the Government of Nepal through the Board of Directors.</p> <p>In addition, PFBOI Act, section 40 provides that in order to monitor project: (1) The Committee may monitor the project implementation and President of the concerned District Development Committee and a member shall be involved while so monitoring.</p> <p>According to section 111 (1) of the PPR, a public entity shall do the following acts, as required, while implementing a procurement contract: (e) To monitor progress in the implementation of procurement contract according to the contract administration work plan and inspect and examine quality aspects.</p>

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	Yes
Relevant legal/regulatory provisions (if any)	Section 11.2 of the PPP policy: (i) Government of Nepal, public enterprises, or local bodies while shaping a PPP project shall decide to implement projects that strictly possess the following characteristics: (g) Provisions on result based payment, motivational incentives and penalties.
The private partner must provide the procuring or contract management authority with periodic operational and financial data	No
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	According to section 111 (1) of the PPR, a public entity shall do the following acts, as required, while implementing a procurement contract: (k) To submit periodic reports on the contract implementation to the immediately higher authority. In addition, according to Article 15(4) of the PPP Policy, PPP center shall be responsible for the submission of annual report to the Government of Nepal through Board of Directors. The report should mention the results achieved by the country from the implementation of PPP projects and an assessment of the ways to overcome problems observed in the way of achieving goals and objectives of this policy.
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	No

made publicly available online?	
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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).	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
In other cases, flexibility to change the ownership	n/a

structure and/or assign the contract.	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Section 53. of the PPA, unless otherwise provided for in procurement contract, a procurement contract may be amended by written consent of both parties subject to non-alteration of the basic nature or scope of the work. Provided that the procurement contract need not be amended in issuing a variation order pursuant to Section 54 or making a price adjustment pursuant to Section 55. Section 54. of the PPA and section 118 of the PPR indicate rules for variation orders. Sections 55 of the PPA and 119 of the PPR are related to price adjustment and sections 56 of the PPA and 120 of the PPR regulate the extension of duration.
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Rule 21 (2) of Investment Board Rules, 2069 (2011) provides that the Board must approve modifications to the contract and amendments of the time of the contract. According to the definition of the Board in the Investment Board Rules, the Board consists of the Cabinet of Ministers and other government officials relevant to the project.
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.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to section 53 of the PPA, unless otherwise provide for in procurement contract, a procurement contract may be amended by written consent of both the parties subject to non-alteration of the basic nature or scope of the work. Section 54 (2) provides that the variation order under Sub-section (1) shall be issued in the following manner:- (a) To be so issued as not to change the basic nature or scope of the concerned work.
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard	n/a

contractual provisions (if any):	
A change in the financial and/or economic balance of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Section 56 of the PPA, (1) Provisions concerning the extension of period of procurement contract shall be as provided in the concerned procurement contract.</p> <p>(2) Notwithstanding anything contained in Sub-section (1), if the period of procurement contract is to be inevitably extended due to force majeure, failure of the Public Entity to make available the materials to be made available by it or other reasonable causes, the competent authority may extend the period on the prescribed grounds upon submission of application by the person obtaining procurement contract.</p> <p>Section 120 of the PPR is also related to extension of period of procurement contract : (1) Where it is not possible to complete the work set forth in a procurement contract within the period of such contract owing to the occurrence of event set forth in Section 56 of the Act, the concerned construction entrepreneur, supplier, service provider or consultant has to make an application, accompanied by the reason therefor, to the concerned public entity for the extension of period, in advance of at least Seven days of the expiration of the period of the procurement contract. (...)</p>
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	Yes

the PPP contract? (check all that apply): Force Majeure	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Article 11.7(C)(8e) of the PPP Policy, project agreement draft must include methods and processes of resolving conflicts arising due to: (...) force majeure.</p> <p>According to PPP Policy, Article 11.10(3i)(i), all direct or indirect risks related to force majeure shall be settled through insurance and the matters not covered by insurance shall be managed according to provisions as laid down in the project agreement.</p> <p>Pursuant to section 52. (2) of the PPA, the procurement contract under Sub-section (1) shall include the terms and conditions as referred to in the bidding documents, documents relating to proposal and documents relating to sealed quotation and such terms and conditions may, according to the nature of the contract be the following:- (i) Force majeure.</p> <p>Section 56 of the PPA allows to extend duration of the contract when a force majeure situation makes it necessary.</p>
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Article 11.7(C)(8e) of the PPP Policy, project agreement draft must include methods and processes of resolving conflicts arising due to matters such as (...) changes in legal provisions
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	Yes

the implementation of PPP contracts?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section 11.12 of the PPP Policy provides: (...) (2) disputes in interpretation of the project agreement or implementation, shall be settled amicably through dialogues and discussion between the disputing parties.(3) Disputes not settled amicably shall be resolved through Arbitration Act, 1999.(...)</p> <p>Section 43. of the PFBOI Act is related to Settlement of disputes: (1) mutual understanding; (2) arbitration; (3) the arbitral proceedings shall be as provided for in the agreement if so provided, and if not, as per the prevailing law.</p> <p>According to section 52. (2) of the PPA, the procurement contract shall include the following: (r) Mechanism for settlement of disputes,</p> <p>Finally, section 111 (1) of the PPR indicates that a public entity shall do the following acts, as required, while implementing a procurement contract: (g) To adopt dispute settlement procedures set forth in the procurement contract if there arises any dispute between the public entity and the supplier, consultant, service provider or construction entrepreneur; in the event of breach of the procurement contract, to initiate action in accordance with provisions of remedies set forth in the contract.</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	<p>According to Section 11.7(C)(8e) of the PPP Policy, the project agreement draft must include methods and processes of resolving conflicts arising due to matters such as, force majeure, termination of contract, changes in legal provisions and scope of work and methods of compensation.</p> <p>Section 43. of the PFBOI Act is related to Settlement of disputes: (1) mutual understanding. (2) arbitration. (3) the arbitral proceedings shall be as provided for in the agreement if so provided, and if not, as per the prevailing law.</p> <p>Section 11.12 of the PPP Policy provides: (...) (2) disputes in interpretation of the project agreement or implementation, shall be settled amicably through dialogues and discussion between the disputing parties. (3) Disputes not settled amicably shall be resolved through Arbitration Act, 1999. (4) In the case when the party is a foreign investor or company established with foreign investment, ICC RULES or UNCITRAL dispute resolution work procedure may be adopted while mentioning in arbitration related working procedure in project agreement. Such provision shall be clearly stated in project agreement.</p>
48.2. If applicable, are arbitration awards	Yes

enforceable by the local courts?: Domestic Arbitration	
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	<p>Section 11.12 of the PPP Policy provides: (...) (2) disputes in interpretation of the project agreement or implementation, shall be settled amicably through dialogues and discussion between the disputing parties.(3) Disputes not settled amicably shall be resolved through Arbitration Act, 1999.</p> <p>Article 3 of Arbitration Act, 2055 (1999), disputes to be Settled through Arbitration: (1) In case any agreement provides for the settlement of disputes through arbitration, the disputes connected with that agreement or with issues coming under that agreement shall be settled through arbitration according to the procedure prescribed in that agreement, if any, and if not, according to this Act.</p>
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	<p>Pursuant to Section 11.12(4) of the PPP Policy, in case the party is foreign investor or company established with foreign investment, ICC RULES or UNCITRAL dispute resolution work procedure may be adopted while mentioning in arbitration related working procedure in project agreement. Such provision shall be clearly stated in project agreement.</p> <p>Nepal is a signatory party of the New York Convention.</p>
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	<p>Pursuant to Section 11.12(4) of the PPP Policy, in case the party is foreign investor or company established with foreign investment, ICC RULES or UNCITRAL dispute resolution work procedure may be adopted while mentioning in arbitration related working procedure in project agreement. Such provision shall be clearly stated in project agreement. Nepal also ratified ISCID Convention on February 06, 1969 and is a subject to its rules.</p>
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

<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.</p>	<p>No</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</p>	<p>No</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</p>	<p>No</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>Other.</p>	<p>No</p>
<p>Please Specify:</p>	<p>n/a</p>
<p>51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>According to Article 11.7(C)(8e) of the PPP Policy, project agreement draft must include methods and processes of resolving conflicts arising due to matters such as, force majeure, termination of contract, changes in legal provisions and scope of work and methods of compensation. According to Section 19 of PFBOI Act, (1) If the licensee declines to commence the implementation of the project in accordance with the agreement or does any other act in contravention of this Act or the Rules framed there under or</p>

	<p>the agreement, Government of Nepal may, by giving a notice to the licensee, terminate the license issued to him/her. (2) If the license is revoked pursuant to Sub-section (1), the agreement concluded with the licensee shall be deemed to have ipso facto been revoked. (3) If the license is revoked pursuant to this Section, the licensee shall not be allowed to make any kind of claim against Government of Nepal.</p> <p>Further, pursuant to Section 59 of the PPA, (1) the procurement contract shall have to specify the grounds in which such contract may be terminated. (2) The main grounds under Sub-section (1) may be the following:- (a) Grounds that the Public Entity may terminate procurement contract if the supplier, consultant, service provider or construction entrepreneur breaches the procurement contract, (b) Grounds that the Public Entity may terminate the procurement contract on the grounds of convenience for public interest, (c) Grounds that a supplier, consultant, service provider or construction entrepreneur may terminate the procurement contract, and (d) Grounds that procurement contract may be terminated for force majeure.</p>
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to Section 19 (3) of PFBOI Act, If the license is revoked pursuant to this Section, the licensee shall not be allowed to make any kind of claim against Government of Nepal. Section 127 of the PPR is related to payment to be made while terminating procurement contract by convenience. According to Section 22 of PFBOI Act, The licensee shall transfer the project to Government of Nepal as mentioned in the agreement. Section 59 of the PPA provides the following :</p> <p>(3) A procurement contract shall include along with the following matters the provision of financial settlement and compensation to be made in the event of termination of the procurement contract:- (a) If payment is remaining to be made for the value of work, supply or service that has already been satisfactorily completed, payment thereof, (b) Liability to be borne by a defaulting supplier, consultant, service provider or construction entrepreneur for the increased cost to be incurred by the Public Entity to carryout or cause to be carried out the work under the procurement contract, (c) Amount of the actual loss sustained by the supplier or consultant or service provider or construction entrepreneur due to the termination of procurement contract by the Public Entity without any default on his/her part. (5) Where a procurement contract has been terminated [for convenience], the Public Entity shall have to pay the value for the following work that has been completed prior to the termination of the said contract :-</p>

	<p>(a) Payment due under clause (a) of Sub-section (2), (b) Where expenditure is to be paid on reimbursement basis, such expenditure as actually incurred, (c) The price of the goods specially manufactured for the Public Entity under the procurement contract, (d) Excluding the lost profit and the amount under clause (c) of Sub-section (3), the expenditure incurred for termination of the procurement contract, and (e) Other expenditure as prescribed.</p>
Unsolicited Proposals	
34. Are unsolicited proposals in Nepal: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
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	Article 11.8 of the PPP Policy “Unsolicited Proposals” identifies USPs as project proposals not invited by PIA but identified and requested for implementation by any interested private entity. It describes conditions under which such proposals shall be considered and the requirements for USP review procedure.
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)	<p>Article 11.8 of the PPP Policy “Unsolicited Proposals”: (3) In case Project Implementation Agency upon review finds such unsolicited project proposals attractive and beneficial, may ask proposer of such projects/proposals, except for circumstance stated in 2(a) above, to submit feasibility study report. While doing so, PIA shall ensure that such projects are not in conflict with ongoing projects or projects that are going to be implemented in near future. If conditions are conflicting, PIA shall furnish explicit basis in writing for going ahead with such projects.</p> <p>(4) In case proposals were invited earlier but attempt to select successful bidder failed, the unsolicited proposals if found suitable shall be forwarded to PPP center for suitability appraisal.</p> <p>(5) In case the project outlay exceeds Rs. 100 million, processes can be carried forward only after the approval in principle from Council of Ministers, Nepal Government, irrespective of the project or PIA.</p>

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.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 11.8 of the PPP Policy “Unsolicited Proposals”: (3) In case Project Implementation Agency upon review finds such unsolicited project proposals attractive and beneficial, may ask proposer of such projects/proposals, except for circumstance stated in 2(a) above, to submit feasibility study report. While doing so, PIA shall ensure that such projects are not in conflict with ongoing projects or projects that are going to be implemented in near future.
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):	Pursuant Article 11.8(7) “Unsolicited Proposals” of the PPP Policy, after suitability appraisal of an unsolicited proposal done by the PPP Center, a

	procuring authority shall invite other proposers to participate in the bidding. Thereafter, proposals shall be evaluated and commitments made by the preferred bidder shall be compared with earlier commitments submitted by the company-initiator of the unsolicited proposal.
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:	45
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.	Yes
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).	Yes
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant Article 11.8(7) "Unsolicited Proposals" of the PPP Policy,</p> <p>(a) PIA shall invite proposal after developing structural framework and getting its suitability appraisal done from the PPP Center. Proposers also can participate in such proposals as well. Thereafter, proposals shall be evaluated and commitments made by the preferred bidder shall be compared with earlier commitments submitted by the proposer. If the proposer submitting earlier proposal agrees to work on the commitments made by preferred bidder, he may agree to accept the project within 30 days and undertake the work.</p> <p>b) In case, the proposer does not participate in the bidding process or does not agree to undertake works as per preferred bidder's commitments, project shall not be awarded to the proposer. If the proposer accepts the project, preferred bidder shall be compensated for with the amount required to prepare such bid proposal as specified in RFP.</p>

	<p>(c) In case the proposer participated in the proposal process but neither could qualify the bid nor accepted the proposal submitted by the preferred bidder, the proposer shall be compensated for with the amount by the preferred bidder as stated in RFP.</p>
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