

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN NETHERLANDS

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The regulatory framework is set out in the Procurement Act 2012 (Aanbestedingswet 2012), adopted on 1 November 2012. The legal framework for the PPP contract itself is based on the general principle of freedom of contract and governed by the Dutch Civil Code (DCC). PPP contracts in the Netherlands are usually executed through a standard PPP contract model provided by the government under the name DBFMO (Design Build Finance Maintain Operate) Agreement, the use of this model agreement is market practice for PPP Projects in the Netherlands.</p> <p>There are two DBFMO Standard Agreements, one especially designed for the Department of Public Works (responsible for the design, construction, management and maintenance of the main infrastructure facilities (Rijkswaterstaat)). In this survey the responses are mainly based on the Department of Public Works standard agreement for infrastructure works version 4.3 dated 1 June 2016 (hereinafter referred to as the DBFMO Standard Agreement). The second DBFMO Standard Agreement (which is largely similar to the other DBFMO Standard Agreement) is specifically designed for housing projects.</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	Public Procurement Act 2012 --> http://wetten.overheid.nl/BWBR0032203/2016-07-01DBFMO Standard Agreement --> https://www.rijksoverheid.nl/onderwerpen/publiek-private-samenwerking-pps-bij-het-rijk/documenten/richtlijnen/2016/06/01/dfbm-overeenkomst-rijkswaterstaat
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:	Amendments to the Procurement Act 2012 have been implemented and are in force as of 1 July 2016. The amendments serve to implement the EU guidelines 2014/23, 2014/24 and 2014/25.
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	No
Please describe:	n/a

3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
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	No

incentives, special tax depreciation treatment, etc.)?	
If yes, please specify and provide the relevant legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in Netherlands and provide their website(s) (if available):	- Dutch Ministry of Infrastructure and Environment, department for Public Works (Rijkswaterstaat), www.rijkswaterstaat.nl - Dutch Ministry of Internal Affairs, www.rijksoverheid.nl/ministerie-van-binnenlandse-zaken-en-koninkrijksrelaties - Dutch Central Governmental Real Estate Agency (Rijksvastgoedbedrijf), www.rijksvastgoedbedrijf.nl - Dutch Ministry of Defence, www.defensie.nl It is noted that all of the above mentioned procuring authorities form part of the public authority the State of the Netherlands.
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):	The Ministry of Finance is responsible for the overall DBFMO policy. It ensures proper application of DBFMO in the Netherlands and supervises it. In addition, the ministry has a coordinating role. Every 2 years, the government sends a progress report on DBFMO to the Lower House.Website: https://www.rijksoverheid.nl/ministeries/ministerie-van-financien
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.	No
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.	No
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.	No

6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	PPP is promoted by the State of the Netherlands on the governmental website www.rijksoverheid.nl/onderwerpen/publiek-private-samenwerking-pps-bij-het-rijk
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	PPP budget depends on the available budget per Ministry of the State of the Netherlands. In general, the determination of the State's budget and division thereof over the various Ministries (en PPP budgets) must be in accordance with the procedural provisions of the Government Accounts Act 2001 (Comptabiliteitswet 2001).
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	ESA 2010
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).	No

Accounting and reporting according to other international standard (e.g. European System of Accounts).	Yes
Please specify:	ESA 2010
Other.	No
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.)?	No
If yes, please specify the relevant authority	n/a
and provide the relevant legal/regulatory provisions (if any):	n/a
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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):	No regulatory basis
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,	No

<p>medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>It is the Ministry of Finance’s policy to consider PPP projects for government accomodation projects with a budget of EUR 25 million or higher and infrastructure projects of EUR 60 million or higher. The Ministry uses the “Public-Private Comparator Tool” (https://www.rijksoverheid.nl/onderwerpen/publiek-private-samenwerking-pps-bij-het-rijk/documenten/richtlijnen/2013/05/03/handleiding-publiek-private-comparator-kopie) to consider the advantages and disadvantages of using the PPP structure, after which a decision is made. Regional and local authorities decide themselves whether a project will be launched in the market as a PPP project.</p> <p>Furthermore, the decision to apply a tender procedure and conclude a DBFMO Agreement depends on the outcome of the PPC, its use is not an aim in itself. The PPC works on the basis of balancing elements of quality and quantity and is meant to identify potential efficiency gains. Based on this assessment it is decided whether to apply a tender procedure and include a DBFMO Standard Agreement for the project.</p>
<p>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</p>	No
<p>If yes, please elaborate:</p>	n/a
<p>The procuring authority does not evaluate PPPs against existing government priorities.</p>	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:	Generally done in practice
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)	Module 3 of the PPC Provides for conducting the Socio-Economic Analysis. Furthermore, the PPC defines cost-benefit analysis as: “in a cost-benefit analysis, the (expected) costs are compared with the (expected) income, with the purpose of determining whether or not a Project is useful”. In a cost-benefit analysis, it is important to know which elements are identified as costs and income and how they are quantified. In a social cost-benefit analysis, negative and positive external effects of government acts or omissions are also included in the calculation.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Module 3 of the PPC Provides for conducting the Socio-Economic Analysis. Furthermore, the PPC defines cost-benefit analysis as: “in a cost-benefit analysis, the (expected) costs are compared with the (expected) income, with the purpose of determining whether or not a Project is useful”. In a cost-benefit analysis, it is important to know which elements are identified as costs and income and how they are quantified. In a social cost-benefit analysis, negative and positive external effects of government acts or omissions are also included in the calculation.
Is the assessment done in practice?	Yes
Details:	Majority of our contributors stated that this happens in practice
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and	Yes

implicit, direct and contingent liabilities)	
Relevant legal/regulatory provision (if any)	<p>According to the PPC: In case of a long-term contract between the government and a market player for construction, financing and maintenance, for instance of a road, these parties make agreements beforehand about the quality of said road. If the market player complies with the agreements, it receives periodic compensation with which it may recover the investment and the maintenance expenses. The agreements and the compensation are laid down in a contract. This makes it more difficult for the government to adjust the budget for management and maintenance downwards in case of future cutbacks. (This is only possible after amending the contract.) In this case, the disadvantage of the private implementation scenario is the limited budget flexibility. The advantage is that quality is guaranteed for the entire duration of the contract and is not influenced by short-term cutbacks. For both the public and the private implementation scenario, the PPC starts from the premise that there is sufficient budget for the anticipated maintenance costs”</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>According to the PPC: In case of a long-term contract between the government and a market player for construction, financing and maintenance, for instance of a road, these parties make agreements beforehand about the quality of said road. If the market player complies with the agreements, it receives periodic compensation with which it may recover the investment and the maintenance expenses. The agreements and the compensation are laid down in a contract. This makes it more difficult for the government to adjust the budget for management and maintenance downwards in case of future cutbacks. (This is only possible after amending the contract.) In this case, the disadvantage of the private implementation scenario is the limited budget flexibility. The advantage is that quality is guaranteed for the entire duration of the contract and is not influenced by short-term cutbacks. For both the public and the private implementation scenario, the PPC starts from the premise that there is sufficient budget for the anticipated maintenance costs”</p>
Is the assessment done in practice?	Yes
Details:	The majority of our contributors stated that this happens in practice
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	<p>Module 3 of the PSC Contains the need to conduct a Risk Analysis, as well as a methodology for conducting such an analysis</p> <p>Furthermore, Module 3 of the PPC also contains provisions for evaluating</p>

	risks, as well as methodologies for conducting it (including Risk Matrix, defining types of risks, etc)
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Module 3 of the PSC Contains the need to conduct a Risk Analysis, as well as a methodology for conducting such an analysis</p> <p>Furthermore, Module 3 of the PPC also contains provisions for evaluating risks, as well as methodologies for conducting it (including Risk Matrix, defining types of risks, etc)</p>
Is the assessment done in practice?	Yes
Details:	The majority of our contributors stated that this happens 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 money analysis, public sector comparator)	Yes
Relevant legal/regulatory provision (if any)	<p>Under Module 3 of the PPC the following two models will be done</p> <p>Action 3B Quantifying the public implementation scenario</p> <p>Action 3C Quantifying the private implementation scenario and any other implementation scenario</p> <p>Action 3D Calculating the net cash value and conducting a sensitivity analysis</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Under Module 3 of the PPC the following two models will be done</p> <p>Action 3B Quantifying the public implementation scenario</p> <p>Action 3C Quantifying the private implementation scenario and any other implementation scenario</p> <p>Action 3D Calculating the net cash value and conducting a sensitivity analysis</p> <p>Furthermore, Appendix 7 of the PPC contains a section on Determining differences between the public and the private implementation scenarios</p>
Is the assessment done in practice?	Yes
Details:	The majority of our contributors stated that this happens in practice
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	<p>Under the PPC: In principle, the discount rate is the same as the return the investments which are necessary to realise the Project would have made if the money were spent in a different but similar manner.</p> <p>The similar manner means an investment in a project with a similar scope and</p>

	<p>risk. The required return on high-risk projects is higher, because an investor requires a higher return for a higher risk. After all, investors do not like risks and always choose the investment with the least risk at a particular return, or vice versa. The level of the return always reflects the amount of risks incurred in a project.</p> <p>Theoretically, the discount rate can be divided into the following components:³⁰</p> <ul style="list-style-type: none"> • the risk-free interest rate;³¹ • risk premium. ³²
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Under the PPC: In principle, the discount rate is the same as the return the investments which are necessary to realise the Project would have made if the money were spent in a different but similar manner.</p> <p>The similar manner means an investment in a project with a similar scope and risk. The required return on high-risk projects is higher, because an investor requires a higher return for a higher risk. After all, investors do not like risks and always choose the investment with the least risk at a particular return, or vice versa. The level of the return always reflects the amount of risks incurred in a project.</p> <p>Theoretically, the discount rate can be divided into the following components:³⁰</p> <ul style="list-style-type: none"> • the risk-free interest rate;³¹ • risk premium. ³²
Is the assessment done in practice?	Yes
Details:	The majority of our contributors stated that this happens in practice
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)	The PPC describes the need and method of conducting a market consultation. It describes market consultation as: A method by which information from private parties can be gathered to substantiate the private implementation scenario(s). The information may be qualitative, for instance where market players see opportunities for optimisation, and/or it may concern financial information about prices and costs in the market.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	The PPC describes the need and method of conducting a market consultation. It describes market consultation as: A method by which information from private parties can be gathered to substantiate the private implementation scenario(s). The information may be qualitative, for instance where market players see opportunities for optimisation, and/or it may concern financial information about prices and costs in the market.
Is the assessment done in practice?	Yes

Details:	The majority of our contributors stated that this happens in practice
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	EU Directive 2011/92
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Appendix 5 of the PPC defines Pure risks and deals with the issue of the extent to which the project is susceptible to damage to the environment, for instance damage to adjoining premises, the public roads and the public space. It describes the need and guidelines for assessing impact and risk to environment
Is the assessment done in practice?	Yes
Details:	The majority of our contributors stated that this happens 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)?	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?	n/a
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):	The government has published standard PPP documentation, which is often used in PPP projects. More specifically the DBFMO Standard agreement exists and PPPs in the Netherlands are prepared using this document. Contributors confirmed that such documents are made available to bidders.
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):	<p>Pursuant to Article 2.62 of the Procurement Act:</p> <p>1 The contracting authority which intends to award a public contract hereby announces an announcement of the public contract.</p> <p>2 The announcement of the announcement shall be by electronic means using the electronic procurement system.</p> <p>3 The contracting authority shall use the form made available for this purpose by means of the electronic procurement system for the publication of the notice.</p> <p>4 The first paragraph does not apply if:</p> <p>a. the contracting authority applies the negotiated procedure without notice;</p> <p>b. it is a public contract for social and other specific services as referred to in Annex XIV to Directive 2014/24 / EU to which the negotiated procedure could be applied without notice;</p> <p>c. A pre-announcement has been made of a public contract for social and other specific services as referred to in Annex XIV to Directive 2014/24 / EU.</p>
and please specify the website:	www.tenderned.nl
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:	<p>DBFMO Standard Agreement for Public Works version 4.3:</p> <p>https://www.rijksoverheid.nl/onderwerpen/publiek-private-samenwerking-pps-bij-het-rijk/documenten/richtlijnen/2016/06/01/dfbm-overeenkomst-rijkswaterstaa</p>
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits:	No

Procuring authority (or other Government entity)	
Private Partner	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)	<p>According to Article 18.3 of the DBFMO Standard Agreement:</p> <p>(a) The Contractor must acquire all permits necessary for the Works with the exception of permits under [the Flora and Fauna Act, the Nature Conservancy Act and the Forestry Act], which the Contracting Authority shall acquire in its own name.</p> <p>(b) The Contractor must ensure that all permits that it must acquire in accordance with paragraph (a) are placed in its name, [with the exception of notifications under the Forestry Act, which must be drawn up in the name of the Contracting Authority].</p> <p>(c) The Contractor must comply with Schedule 9, Part 3, Annex 1 (Coordination Regulations for Permits), or regulations introduced in the place of those regulations, when applying for Permits in the Development Phase.</p> <p>(d) For the purpose of the Works of the Contractor, the Contracting Authority must endeavour to have Permits that are granted in the Contracting Authority's name and concern the Existing Infrastructure placed in the name of the Contractor, insofar as necessary. The Contractor must grant its full cooperation in this regard.</p> <p>(e) The Contractor must ensure that all Permits issued in its name concerning a part of Third Party Infrastructure as referred to in Article 5.4 (a) are placed in the name of the administrator of the part of the Third Party Infrastructure in question on the date of the issue of the relevant Partial Completion Certificate as referred to in Article 5.4 (a).</p> <p>(f) The Contractor hereby grants the Contracting Authority an irrevocable power of attorney to issue Permits that have been issued in the name of the Contractor in the name of a substitute contractor, in the event of a restructuring as referred to in Article 8 of the Direct Agreement, or in the name of the step-in entity should a replacement DBFM Agreement enter into effect as referred to in the Direct Agreement.</p> <p>(g) The Contractor herewith grants irrevocable power of attorney to the Contracting Authority have the Permits, issued at that time in the name of the Contractor, issued (or to issue them) in the name of the Contracting Authority as of the Expiry Date or as of the date of earlier termination of this Agreement.</p>
16.2. Obtaining the required environmental permits: 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)	<p>According to Article 18.3 of the DBFMO Standard Agreement:</p> <p>(a) The Contractor must acquire all permits necessary for the Works with the exception of permits under [the Flora and Fauna Act, the Nature Conservancy Act and the Forestry Act], which the Contracting Authority shall acquire in its own name.</p> <p>(b) The Contractor must ensure that all permits that it must acquire in accordance with paragraph (a) are placed in its name, [with the exception of notifications under the Forestry Act, which must be drawn up in the name of the Contracting Authority].</p> <p>(c) The Contractor must comply with Schedule 9, Part 3, Annex 1 (Coordination Regulations for Permits), or regulations introduced in the place of those regulations, when applying for Permits in the Development Phase.</p> <p>(d) For the purpose of the Works of the Contractor, the Contracting Authority must endeavour to have Permits that are granted in the Contracting Authority's name and concern the Existing Infrastructure placed in the name of the Contractor, insofar as necessary. The Contractor must grant its full cooperation in this regard.</p> <p>(e) The Contractor must ensure that all Permits issued in its name concerning a part of Third Party Infrastructure as referred to in Article 5.4 (a) are placed in the name of the administrator of the part of the Third Party Infrastructure in question on the date of the issue of the relevant Partial Completion Certificate as referred to in Article 5.4 (a).</p> <p>(f) The Contractor hereby grants the Contracting Authority an irrevocable power of attorney to issue Permits that have been issued in the name of the Contractor in the name of a substitute contractor, in the event of a restructuring as referred to in Article 8 of the Direct Agreement, or in the name of the step-in entity should a replacement DBFM Agreement enter into effect as referred to in the Direct Agreement.</p> <p>(g) The Contractor herewith grants irrevocable power of attorney to the Contracting Authority have the Permits, issued at that time in the name of the Contractor, issued (or to issue them) in the name of the Contracting Authority as of the Expiry Date or as of the date of earlier termination of this Agreement.</p>
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)	<p>According to Article 18.3 of the DBFMO Standard Agreement:</p> <p>(a) The Contractor must acquire all permits necessary for the Works with the exception of permits under [the Flora and Fauna Act, the Nature Conservancy Act and the Forestry Act], which the Contracting Authority shall acquire in its own name.</p> <p>(b) The Contractor must ensure that all permits that it must acquire in accordance with paragraph (a) are placed in its name, [with the exception of notifications under the Forestry Act, which must be drawn up in the name of the Contracting Authority].</p> <p>(c) The Contractor must comply with Schedule 9, Part 3, Annex 1 (Coordination Regulations for Permits), or regulations introduced in the place of those regulations, when applying for Permits in the Development Phase.</p> <p>(d) For the purpose of the Works of the Contractor, the Contracting Authority must endeavour to have Permits that are granted in the Contracting Authority's name and concern the Existing Infrastructure placed in the name of the Contractor, insofar as necessary. The Contractor must grant its full cooperation in this regard.</p> <p>(e) The Contractor must ensure that all Permits issued in its name concerning a part of Third Party Infrastructure as referred to in Article 5.4 (a) are placed in the name of the administrator of the part of the Third Party Infrastructure in question on the date of the issue of the relevant Partial Completion Certificate as referred to in Article 5.4 (a).</p> <p>(f) The Contractor hereby grants the Contracting Authority an irrevocable power of attorney to issue Permits that have been issued in the name of the Contractor in the name of a substitute contractor, in the event of a restructuring as referred to in Article 8 of the Direct Agreement, or in the name of the step-in entity should a replacement DBFM Agreement enter into effect as referred to in the Direct Agreement.</p> <p>(g) The Contractor herewith grants irrevocable power of attorney to the Contracting Authority to have the Permits, issued at that time in the name of the Contractor, issued (or to issue them) in the name of the Contracting Authority as of the Expiry Date or as of the date of earlier termination of this Agreement.</p>
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)	<p>According to Article 18.3 of the DBFMO Standard Agreement:</p> <p>(a) The Contractor must acquire all permits necessary for the Works with the exception of permits under [the Flora and Fauna Act, the Nature Conservancy</p>

	<p>Act and the Forestry Act], which the Contracting Authority shall acquire in its own name.</p> <p>(b) The Contractor must ensure that all permits that it must acquire in accordance with paragraph (a) are placed in its name, [with the exception of notifications under the Forestry Act, which must be drawn up in the name of the Contracting Authority].</p> <p>(c) The Contractor must comply with Schedule 9, Part 3, Annex 1 (Coordination Regulations for Permits), or regulations introduced in the place of those regulations, when applying for Permits in the Development Phase.</p> <p>(d) For the purpose of the Works of the Contractor, the Contracting Authority must endeavour to have Permits that are granted in the Contracting Authority's name and concern the Existing Infrastructure placed in the name of the Contractor, insofar as necessary. The Contractor must grant its full cooperation in this regard.</p> <p>(e) The Contractor must ensure that all Permits issued in its name concerning a part of Third Party Infrastructure as referred to in Article 5.4 (a) are placed in the name of the administrator of the part of the Third Party Infrastructure in question on the date of the issue of the relevant Partial Completion Certificate as referred to in Article 5.4 (a).</p> <p>(f) The Contractor hereby grants the Contracting Authority an irrevocable power of attorney to issue Permits that have been issued in the name of the Contractor in the name of a substitute contractor, in the event of a restructuring as referred to in Article 8 of the Direct Agreement, or in the name of the step-in entity should a replacement DBFM Agreement enter into effect as referred to in the Direct Agreement.</p> <p>(g) The Contractor herewith grants irrevocable power of attorney to the Contracting Authority to have the Permits, issued at that time in the name of the Contractor, issued (or to issue them) in the name of the Contracting Authority as of the Expiry Date or as of the date of earlier termination of this Agreement.</p>
16.5. Obtaining the required right of way: 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)	<p>According to Article 18.3 of the DBFMO Standard Agreement:</p> <p>(a) The Contractor must acquire all permits necessary for the Works with the exception of permits under [the Flora and Fauna Act, the Nature Conservancy Act and the Forestry Act], which the Contracting Authority shall acquire in its own name.</p> <p>(b) The Contractor must ensure that all permits that it must acquire in accordance with paragraph (a) are placed in its name, [with the exception of</p>

	<p>notifications under the Forestry Act, which must be drawn up in the name of the Contracting Authority].</p> <p>(c) The Contractor must comply with Schedule 9, Part 3, Annex 1 (Coordination Regulations for Permits), or regulations introduced in the place of those regulations, when applying for Permits in the Development Phase.</p> <p>(d) For the purpose of the Works of the Contractor, the Contracting Authority must endeavour to have Permits that are granted in the Contracting Authority's name and concern the Existing Infrastructure placed in the name of the Contractor, insofar as necessary. The Contractor must grant its full cooperation in this regard.</p> <p>(e) The Contractor must ensure that all Permits issued in its name concerning a part of Third Party Infrastructure as referred to in Article 5.4 (a) are placed in the name of the administrator of the part of the Third Party Infrastructure in question on the date of the issue of the relevant Partial Completion Certificate as referred to in Article 5.4 (a).</p> <p>(f) The Contractor hereby grants the Contracting Authority an irrevocable power of attorney to issue Permits that have been issued in the name of the Contractor in the name of a substitute contractor, in the event of a restructuring as referred to in Article 8 of the Direct Agreement, or in the name of the step-in entity should a replacement DBFM Agreement enter into effect as referred to in the Direct Agreement.</p> <p>(g) The Contractor herewith grants irrevocable power of attorney to the Contracting Authority to have the Permits, issued at that time in the name of the Contractor, issued (or to issue them) in the name of the Contracting Authority as of the Expiry Date or as of the date of earlier termination of this Agreement.</p>
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PPP Procurement

18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to	Yes

have any specific qualifications.	
Please elaborate and provide examples:	No regulatory basis
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):	<p>Pursuant to Article 2.62 of the Procurement Act:</p> <p>1 The contracting authority which intends to award a public contract hereby announces an announcement of the public contract.</p> <p>2 The announcement of the announcement shall be by electronic means using the electronic procurement system.</p> <p>3 The contracting authority shall use the form made available for this purpose by means of the electronic procurement system for the publication of the notice.</p> <p>4 The first paragraph does not apply if:</p> <p>a. the contracting authority applies the negotiated procedure without notice;</p> <p>b. it is a public contract for social and other specific services as referred to in Annex XIV to Directive 2014/24 / EU to which the negotiated procedure could be applied without notice;</p> <p>c. A pre-announcement has been made of a public contract for social and other specific services as referred to in Annex XIV to Directive 2014/24 / EU.</p>
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	www.tendernet.nl
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):	<p>Pursuant to Article 2.71 of the Procurement Act:</p> <p>1 For public procedures, the period for the submission of tenders shall be 45 days from the date of dispatch of the notice.</p> <p>2 For non-public procurement and negotiation procedures, the deadline for submitting requests for participation shall be at least 30 days from the date of the announcement of the public contract.</p> <p>3 For procedures of the competitive partnership and procedures of the Innovation Partnership, the deadline for submitting requests for participation shall be at least 30 days from the date of the announcement of the public contract.</p>

	<p>4 In the case of restricted procedures, the time limit for the submission of tenders shall be at least 40 days from the date of submission of the invitation to tender and for negotiated competition procedures, the period for the submission of the first tenders shall also be at least 40 days , from the date of submission of the invitation to tender.</p> <p>5 If the contracting authority has made a pre-announcement as referred to in section 2.3.2.1 , it may shorten the deadline for submission of tenders referred to in paragraphs 1 and 4 to 29 days, but in no case to less than 22 days .</p> <p>6 The termination of the deadline referred to in paragraph 5 is only permitted if the pre-announcement contains all information contained in the notice of the public contract referred to in Annex V, Part B, Section I of Directive 2014/24 / EU, is required insofar as this information is available at the time of the announcement of the notice and provided that this notice has been sent for publication at least 52 days and no more than 12 months before the date of the announcement of the public contract.</p>
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	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>According to Article 2.26 of the Procurement Act:</p> <p>The contracting authority applying the public procedure goes through the following steps. The contracting authority:</p> <ol style="list-style-type: none"> announces the public procurement notice; checks whether an tenderer falls under a ground of exclusion provided by the contracting authority; checks whether a non-excluded tenderer complies with the eligibility requirements imposed by the contracting authority; checks whether tenders meet the technical specifications, requirements and standards set by the contracting authority; evaluates the valid tenders based on the award criteria set by the contracting authority referred to in article 2.114 and the further criteria referred to in article 2.115 ; makes a report of the assignment; shares the award decision; can conclude the agreement; announces the announcement of the awarded assignment.
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>According to Article 2.27 of the Procurement Act:</p> <p>The contracting authority applying the non-public procedure goes through the following steps. The contracting authority:</p>

	<ul style="list-style-type: none"> a. announces the public procurement notice; b. checks whether a candidate falls within the scope of a contract by the contracting authority; c. checks whether a non-excluded candidate complies with the eligibility requirements imposed by the contracting authority; d. assesses the non-excluded or non-rejected candidates on the basis of the selection criteria set by the contracting authority; e. invites selected candidates to sign up; f. checks whether tenders meet the technical specifications, requirements and standards set by the contracting authority; g. evaluates the valid tenders based on the award criteria set by the contracting authority referred to in article 2.114 and the further criteria referred to in article 2.115 ; h. makes a report of the assignment; i. shares the award decision; j. can conclude the agreement; k. announces the announcement of the awarded assignment.
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.4. Competitive dialogue: Available	No
Default	Yes
Relevant legal/regulatory provision (if any)	<p>Pursuant to Article 2.28 of the Procurement Act: The contracting authority may apply the procedure of competitive dialogue in the following cases:</p> <ul style="list-style-type: none"> a. in respect of works, supplies or services meeting one or more of the following criteria: <ul style="list-style-type: none"> 1 °. The needs of the contracting authority cannot be met without adaptation of readily available solutions; 2 °. These include design or innovative solutions; 3 °. The public contract may not be awarded without prior negotiations due to specific circumstances relating to the nature, complexity or legal and financial conditions or due to the risks involved. 4 °. The technical specifications cannot be accurately determined by the contracting authority on the basis of a standard, European technical assessments, a common technical specification or a technical reference within the meaning of points 2 to 5 of Annex VII to Directive 2014/24 / EU; b. in respect of works, supplies or services for which only unlawful or unacceptable tenders have been submitted in the context of a public or restricted procedure. <p>2 In cases referred to in paragraph (b), the contracting authority is not obliged to announce the public contract if the contracting authority only allows the tenderers to:</p> <ul style="list-style-type: none"> a. are not excluded under Article 2.86 or Article 2.87 and comply with the eligibility requirements and which

	<p>b. have submitted an invitation to tender during the previous public or restricted procedure meeting the formal requirements of that tendering procedure, provided that the original terms for the public offer are not substantially changed.</p> <p>3 Irregular subscriptions as referred to in subsection (1) (b) shall in any event be registered:</p> <p>a. which do not meet the requirements in the tender documents,</p> <p>b. who have arrived late,</p> <p>c. where there are demonstrable agreements or corruption, or</p> <p>d. which were assessed by the contracting authority as being abnormally low.</p> <p>4 Non-eligible tenders as referred to in subsection (1) (b) are in any case subscriptions:</p> <p>a. of tenderers who fail to meet the eligibility requirements or</p> <p>b. whose price is determined and documented by the contracting authority before the procurement procedure commences.</p>
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:	Innovative Procedure
Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	According to Article 2.31a of the Procurement Act, a contracting authority may apply the Innovation Partnership procedure to a public contract aimed at developing and acquiring an innovative product or work or an innovative service that is not already available on the market.
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 37 of the EU Directive:</p> <p>4. The contracting authority or contracting entity shall communicate the description of the envisaged organisation of the procedure and an indicative completion deadline to all participants. Any modification shall be communicated to all participants and, to the extent that they concern elements disclosed in the concession notice, advertised to all economic operators.</p> <p>5. The contracting authority or contracting entity shall provide for appropriate</p>

	recording of the stages of the procedure using the means it judges appropriate, subject to compliance with Article 28(1)
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Article 2.90 of the Procurement Act:</p> <p>A contracting authority may, after using the online database of e-Certis certificates, set eligibility requirements for candidates and tenderers.</p> <p>2 The eligibility requirements referred to in the first paragraph may concern:</p> <ol style="list-style-type: none"> a. the financial and economic capacity; b. technical skills and professional competence; c. professional competence. <p>3 If the contracting authority proposes eligibility requirements as referred to in paragraph 2 (a), these requirements do not relate to the total turnover and turnover of the business activity which is the subject of the public contract unless the contracting authority Heavy arguments motivate in the tender documents.</p> <p>4 The contracting authority solely sets out eligibility requirements that can ensure that a candidate or tenderer has the legal capacity and financial resources and the technical ability and professional ability to perform the public contract.</p> <p>5 If the eligibility requirements referred to in paragraph 2 (a) relate to the total turnover and turnover of the business activity that is the subject of the public contract, that requirement is not higher than:</p> <ol style="list-style-type: none"> a. three times the estimated value of the assignment; b. If the assignment is divided into plots, three times the value of a plot or cluster of plots to be executed simultaneously; c. if it is a contract under a framework agreement, three times the value of the specific assignments that must be carried out simultaneously; d. if it is a contract under a framework agreement, the value of the specific assignments is unknown, three times the value of the framework agreement; e. if it is a dynamic purchasing system, three times the expected maximum size of the specific assignments granted under that system. <p>6 The contracting authority may require that the candidate or tenderer, when making the eligibility requirements referred to in paragraph 2, part a,</p> <ol style="list-style-type: none"> a. Provides information about its financial statements; b. Has an appropriate level of occupational risk insurance. <p>7 If the contracting authority requires information on data from the financial statements, it shall indicate in the tender documents the transparent, objective and non-discriminatory methods and criteria according to which the requested information must be established.</p> <p>8 In the preparation and conclusion of an agreement, a contracting authority shall only require the tenderer and the registration relating to and which are in a reasonable proportion to the subject matter of the contract.</p>

22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	All of our contributors indicated that this happens in practice
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):	According to Article 2.53 of the Procurement Act: 1. An entrepreneur can ask for information about a specific tender. 2. The contracting authority answers the questions asked in a note of information which it sends to all candidates or tenderers. 3. An entrepreneur may request the contracting authority not to include certain information in the note of intelligence if disclosure of this information would damage the legitimate economic interests of the company.
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 Article 2.53 of the Procurement Act: 1. An entrepreneur can ask for information about a specific tender. 2. The contracting authority answers the questions asked in a note of information which it sends to all candidates or tenderers. 3. An entrepreneur may request the contracting authority not to include certain information in the note of intelligence if disclosure of this information would damage the legitimate economic interests of the company.
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:	Notice of information is a standard procedure.
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	No regulatory basis

legal/regulatory provisions (if any):	
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	Tenders Electronic Daily (TED, http://ted.europa.eu/TED/main/HomePage.do)
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):	Pursuant to Schedule 10 of the DBFMO Standard Agreement where it concerns PPP projects that will be contracted on the basis of the DBFMO Standard Agreement, the bidders are required by the procuring authority to submit a financial model with their proposals. The financial model will become part of the PPP contract documentation and is required to achieve financial close of the project
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 2.113 of the Procurement Act, the contracting authority shall examine the tenders submitted to the tenderer's specifications, functional requirements and performance requirements.
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	No

only one)? The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	
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 only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 2.134 of the Public Procurement Act:</p> <ol style="list-style-type: none"> 1) The contracting authority awarding a public contract announces the announcement of the public tender awarded by the electronic system for tendering within 30 days of the award of that public contract. 2) The contracting authority shall use the form made available for this purpose by means of the electronic procurement system for the communication of the result of the procedure. 3) A contracting authority may bundle the results referred to in paragraph 1, which include awarded public contracts for social and other specific services referred to in Annex XIV to Directive 2014/24 / EU. If the contracting authority chooses to do so, it shall send the aggregated results within 30 days of the end of each quarter. 4) A contracting authority does not announce the announcement of the assignment or its contents in any other way than after receiving a confirmation of receipt of the notice of the European Commission. 5) By way of derogation from the fourth paragraph, the contracting authority may announce the contract notice or its contents if it does not acknowledge receipt of the notice of receipt of the notice of receipt by the European Commission within 48 hours of receipt of the acknowledgment of receipt of the notice of the European Commission. The European Commission has received.

	6) If the contracting authority also announces the announcement of the awarded public contract in a manner other than using the electronic procurement system, that notice contains no information other than that sent to the European Commission and, in any case, contains the Date of transmission to the European Commission.
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	www.tenderned.nl
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 2.128 of the Public Procurement Act:</p> <p>1) An interested tenderer as referred to in article 2.127, second paragraph , is any tenderer who is not definitively excluded. The exclusion is definitive when the tenderers concerned have been informed and when the exclusion has been legally found by a court or there can no longer be a remedy against the exclusion.</p> <p>2) An interested candidate as referred to in Article 2.127, second paragraph , shall be any candidate whose contracting authority has not provided information about the rejection of his request for participation before the tenderers concerned have been notified of the award decision.</p>
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 2.130 of the Public Procurement Act:</p> <p>1) The notice of the award decision to each tenderer or candidate concerned shall contain the relevant reasons for that decision as well as a precise definition of the suspension period referred to in Article 2.127, paragraph 1 , which applies.</p> <p>2) For the purposes of the first paragraph, for relevant reasons, in any event, the characteristics and relative advantages of the selected tender and the name of the beneficiary or parties to the framework agreement shall be understood.</p> <p>3) The communication referred to in the first paragraph shall in any case be transmitted electronically or by fax to the tenderers concerned and the relevant candidates.</p>
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 2.127 of the Public Procurement Act: 1) A contracting authority shall take a suspensive period before concluding the agreement envisaged by the award decision. 2) The suspension period referred to in the first paragraph shall commence on the day following the date on which the notice of decision has been sent to the tenderers concerned and the relevant candidates. 3) The suspension period referred to in the first paragraph shall be at least 20 calendar days. 4) A contracting authority need not apply to the first member if: a. this Act does not require publication of the public contract notice through the electronic procurement system; b. The sole tenderer concerned is the one to whom the public contract is awarded and there are no interested candidates; c. These are contracts based on a framework agreement or specific assignments based on a dynamic purchasing system as referred to in Section 2.4.2 .
and the time in calendar days:	20
30.1. Is the standstill period set out in the notice of intention to award?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 2.130 (1) of the Public Procurement Act the notice of the award decision to each tenderer or candidate concerned shall contain the relevant reasons for that decision as well as a precise definition of the suspension period referred to in Article 2.127, paragraph 1 , which applies.
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):	Pursuant to Article 37 (6) of the EU Directive, The contracting authority or contracting entity may hold negotiations with candidates and tenderers. The subject-matter of the concession, the award criteria and the minimum requirements shall not be changed during the course of the negotiations.
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	The majority of our contributors stated that the restriction is respected
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a

32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	n/a
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	n/a
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 8 of the DBFMO Standard Agreement sets up the Quality Assurance system for the contract. More specifically: Pursuant to Article 8.1 (Management System) of the DBFMO Standard Agreement: (a) The Contractor must set up and maintain a Management System that

	<p>applies to the Work, including the Work carried out by Agents of the Contractor.</p> <p>(b) The Management System must be described in the Management Plan. The Management System and its description in the Management Plan must be organised according to and comply with the requirements of NEN-ISO/IEC 15288:2008, and with the requirements as described in the Management Specifications.</p> <p>(c) The Contractor’s performance of the Work must comply with the plans laid down in the Management Specifications, Management Plan and the plans contained in [Schedule 8 (Qualitative Part of the Submission)].</p> <p>(d) For all system components of the Management System, the Contractor must obtain a quality system subcertificate based on the NEN-ISO 9001:2008 standard that applies to the processes that are part of the relevant subsystem.</p> <p>(e) The Contractor must retain the subcertificate referred to in paragraph (d) from the date of issue and throughout the remaining term of this Agreement.</p> <p>(f) The component certificate referred to under (d) must be issued by a certifying body that is recognised as such by a national accreditation organisation (in the Netherlands: the Raad voor Accreditatie - Dutch Accreditation Council)</p> <p>Article 8.2 (Performance Management System):</p> <p>(a) The Contractor must design and construct the Performance Measurement System in accordance with the Management Specifications and the Management Plan.</p> <p>(b) The Contractor must ensure that the Performance Measurement System performs and is maintained in accordance with the Management Specifications and the Management Plan throughout the period from the Commencement Date to the Expiry Date.</p> <p>Article 8.3 (Inspections):</p> <p>(a) The Contracting Authority may at any time inspect (or have inspected) whether the Contractor is fulfilling its obligations pursuant to the Agreement. In the context of inspections, the Contractor must provide the Contracting Authority with access to the locations and offices where Work is prepared or performed.</p> <p>(b) The Contractor must provide the Contracting Authority, upon the latter’s request and in the shortest time possible, any information the Contracting Authority reasonably considers necessary for conducting an inspection.</p> <p>(c) In conducting an inspection, the Contracting Authority must endeavour not to obstruct the performance of the Work.</p> <p>(d) The Contracting Authority must provide the Contractor within a reasonable time period with the results of the inspection for information purposes.</p> <p>(e) The Contracting Authority is not required to exercise its right to carry out inspections.</p>
41.1. If yes, which of the following tools does it include (check all that apply)?:	Yes

Establishment of a PPP contract management team	
Relevant legal/regulatory provisions (if any):	No regulatory basis
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
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.)	Yes
Relevant legal/regulatory provisions (if any):	Pursuant to Article 8.2 of the DBFMO Standard Agreement: (a) The Contractor must design and construct the Performance Measurement System in accordance with the Management Specifications and the Management Plan. (b) The Contractor must ensure that the Performance Measurement System performs and is maintained in accordance with the Management Specifications and the Management Plan throughout the period from the Commencement Date to the Expiry Date.
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	n/a

legal/regulatory provisions (if any):	
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):	<p>Dell 3 of Schedule 9 of the DBFMO Standard Agreement states that “The requirements that the Contractor’s Management System must fulfil and the descriptions of the procedures that are to be followed”.</p> <p>Furthermore, Article 8 (Contact Persons) of Deel 5 of Schedule 9 of the DBFMO standard agreement states that:</p> <ol style="list-style-type: none"> 1. During the performance of this agreement, shall act on behalf of the Stakeholder as representative and contact person for both RWS and the DBFM Contractor. 2. During the performance of this agreement, shall act on behalf of RWS as representative and contact person for the Stakeholder. 3. After completion of the Tender Procedure, the DBFM Contractor shall notify the Stakeholder in writing of the person who will act as the representative or the DBFM Contractor during the performance of this agreement.
The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 8.1 (Management System) of the DBFMO Standard Agreement:</p> <ol style="list-style-type: none"> (a) The Contractor must set up and maintain a Management System that applies to the Work, including the Work carried out by Agents of the Contractor. (b) The Management System must be described in the Management Plan. The Management System and its description in the Management Plan must be organised according to and comply with the requirements of NEN-ISO/IEC 15288:2008, and with the requirements as described in the Management Specifications. (c) The Contractor’s performance of the Work must comply with the plans laid down in the Management Specifications, Management Plan and the plans contained in [Schedule 8 (Qualitative Part of the Submission)]. (d) For all system components of the Management System, the Contractor must obtain a quality system subcertificate based on the NEN-ISO 9001:2008 standard that applies to the processes that are part of the

	<p>relevant subsystem.</p> <p>(e) The Contractor must retain the subcertificate referred to in paragraph (d) from the date of issue and throughout the remaining term of this Agreement.</p> <p>(f) The component certificate referred to under (d) must be issued by a certifying body that is recognised as such by a national accreditation organisation (in the Netherlands: the Raad voor Accreditatie - Dutch Accreditation Council)</p>
42.1. If yes, is the PPP contract construction performance information made available to the public?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	n/a
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Article 8 of the DBFMO Standard Agreement sets up the Quality Assurance system for the contract. More specifically:</p> <p>Pursuant to Article 8.1 (Management System) of the DBFMO Standard Agreement:</p> <p>(a) The Contractor must set up and maintain a Management System that applies to the Work, including the Work carried out by Agents of the Contractor.</p> <p>(b) The Management System must be described in the Management Plan. The Management System and its description in the Management Plan must be organised according to and comply with the requirements of NEN-ISO/IEC 15288:2008, and with the requirements as described in the Management Specifications.</p> <p>(c) The Contractor's performance of the Work must comply with the plans laid down in the Management Specifications, Management Plan and the plans contained in [Schedule 8 (Qualitative Part of the Submission)].</p> <p>(d) For all system components of the Management System, the Contractor must obtain a quality system subcertificate based on the NEN-ISO 9001:2008 standard that applies to the processes that are part of the relevant subsystem.</p> <p>(e) The Contractor must retain the subcertificate referred to in paragraph (d) from the date of issue and throughout the remaining term of this Agreement.</p>

	<p>(f) The component certificate referred to under (d) must be issued by a certifying body that is recognised as such by a national accreditation organisation (in the Netherlands: the Raad voor Accreditatie - Dutch Accreditation Council)</p> <p>Article 8.2 (Performance Management System):</p> <p>(a) The Contractor must design and construct the Performance Measurement System in accordance with the Management Specifications and the Management Plan.</p> <p>(b) The Contractor must ensure that the Performance Measurement System performs and is maintained in accordance with the Management Specifications and the Management Plan throughout the period from the Commencement Date to the Expiry Date.</p> <p>Article 8.3 (Inspections):</p> <p>(a) The Contracting Authority may at any time inspect (or have inspected) whether the Contractor is fulfilling its obligations pursuant to the Agreement. In the context of inspections, the Contractor must provide the Contracting Authority with access to the locations and offices where Work is prepared or performed.</p> <p>(b) The Contractor must provide the Contracting Authority, upon the latter's request and in the shortest time possible, any information the Contracting Authority reasonably considers necessary for conducting an inspection.</p> <p>(c) In conducting an inspection, the Contracting Authority must endeavour not to obstruct the performance of the Work.</p> <p>(d) The Contracting Authority must provide the Contractor within a reasonable time period with the results of the inspection for information purposes.</p> <p>(e) The Contracting Authority is not required to exercise its right to carry out inspections.</p>
<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</p>	<p>Yes</p>
<p>Relevant legal/regulatory provisions (if any)</p>	<p>Article 8.2 (Performance Management System):</p> <p>(a) The Contractor must design and construct the Performance Measurement System in accordance with the Management Specifications and the Management Plan.</p> <p>(b) The Contractor must ensure that the Performance Measurement System performs and is maintained in accordance with the Management Specifications and the Management Plan throughout the period from the Commencement Date to the Expiry Date.</p>
<p>The procuring or contract management authority can abate (reduce) payments for</p>	<p>Yes</p>

non-performance of operating obligations under the PPP contract	
Relevant legal/regulatory provisions (if any)	<p>Article 3 of Schedule 9 of the DBFMO Standard Agreement provides for Performance Corrections. More specifically:</p> <p>Article 3.2 of Schedule 9 states: The Performance Deduction Percentage (PD%) is equal to the number of Penalty Points that the Contracting Authority records in the concerned Payment Period multiplied by 0.1%. If the Contracting Authority assesses Penalty Points in the period as from the Agreement Date until the Commencement Date, then these Penalty Points are deemed to have been determined in the Quarter in which the Commencement Date falls. If the applicable part of the Gross Availability Payment reduced by the Availability Adjustment is insufficient in the Quarter in question to charge the full amount of the Performance Correction in that Quarter, then the largest possible number of the Penalty Points assessed between the Agreement Date and the Commencement Date are deemed to have been assessed in a subsequent Quarter that is as much later as necessary to effectively enable full deduction of the Performance Correction ensuing from these Penalty Points from the applicable part of the Availability Payment reduced by the Availability Adjustment.</p>
The private partner must provide the procuring or contract management authority with periodic operational and financial data	<p>Yes</p>
Relevant legal/regulatory provisions (if any)	<p>Pursuant to Article 8.3 (Inspections) of the DBFMO Standard Agreement:</p> <p>(a) The Contracting Authority may at any time inspect (or have inspected) whether the Contractor is fulfilling its obligations pursuant to the Agreement. In the context of inspections, the Contractor must provide the Contracting Authority with access to the locations and offices where Work is prepared or performed.</p> <p>(b) The Contractor must provide the Contracting Authority, upon the latter's request and in the shortest time possible, any information the Contracting Authority reasonably considers necessary for conducting an inspection.</p> <p>(c) In conducting an inspection, the Contracting Authority must endeavour not to obstruct the performance of the Work.</p> <p>(d) The Contracting Authority must provide the Contractor within a reasonable time period with the results of the inspection for information purposes.</p> <p>(e) The Contracting Authority is not required to exercise its right to carry out inspections.</p>
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	<p>Yes</p>

Relevant legal/regulatory provisions (if any)	<p>Pursuant to Article 8.3 (Inspections) of the DBFMO Standard Agreement:</p> <p>(a) The Contracting Authority may at any time inspect (or have inspected) whether the Contractor is fulfilling its obligations pursuant to the Agreement. In the context of inspections, the Contractor must provide the Contracting Authority with access to the locations and offices where Work is prepared or performed.</p> <p>(b) The Contractor must provide the Contracting Authority, upon the latter's request and in the shortest time possible, any information the Contracting Authority reasonably considers necessary for conducting an inspection.</p> <p>(c) In conducting an inspection, the Contracting Authority must endeavour not to obstruct the performance of the Work.</p> <p>(d) The Contracting Authority must provide the Contractor within a reasonable time period with the results of the inspection for information purposes.</p> <p>(e) The Contracting Authority is not required to exercise its right to carry out inspections.</p>
The PPP contract performance information must be available to the public	<p>No</p>
Relevant legal/regulatory provisions (if any)	<p>n/a</p>
43.2. Is PPP contract performance information made publicly available online?	<p>No</p>
If yes, please specify the website:	<p>n/a</p>
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</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>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>The DBFMO Standard Agreement provides that the transfer or issuing of a share in the capital of the contractor leading to a change of control over the contractor's business may take place only with the permission of the contracting authority under the DBFMO Standard Agreement or in accordance with the direct agreement. Such permission is not required in the event of a share transfer to a legal entity that is part of the same group as the</p>

	<p>transferring shareholder in the contractor, within the meaning of article 2:24b DCC (article 15 (a) and (b) DBFMO Standard Agreement). The DBFMO Standard Agreement also provides that, where this leads to the transfer of control of the business of the entity in question, the permission of the contracting authority under the agreement shall also be required with regard to the transfer of a share in the capital of a natural person or legal entity which (i) has direct or indirect control over the contractor's business or (ii) is a sole custodian or manager, a sole managing partner or a sole administrator of a fund that has direct or indirect control over the contractor's business. Permission in such events is not required if it concerns a share transfer (i) to a legal entity that is part of the same group as the transferring legal entity, as referred to in article 2:24b DCC, or (ii) through trading on any stock exchange established in the European Union or the United States of America (article 15 (c) and (d) DBFMO Standard Agreement. Assignment Dutch contracting law provides that the assignment of a contract requires a contract take-over in the form of a writ (in Dutch: akte) signed by the assigning contracting party and the assignee (article 6:159 DCC). For such contract take-over the cooperation of the counterparty to the contract is mandatory (article 6:159 DCC). The DBFMO Standard Agreement provides that the transfer by a contractparty of its rights based on the DBFMO Standard Agreement is only possible with permission of the counterparty, except in cases involving a transfer of rights based on a finance agreement, the direct agreement or a security agreement based on a finance agreement or the direct agreement (article 24.3 (a) DBFMO Standard Agreement). The contracting authority can transfer its legal relationship with the contractor based on the DBFMO Standard Agreement to a third party provided that it guarantees the third party's performance of the obligations stemming from the agreement. In the DBFMO Standard Agreement the contractor grants its permission to such transfer in advance (article 24.3 (b) DBFMO Standard Agreement).</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>No</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>Yes</p>

<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Pursuant to Article 2.163a of the Public Procurement Act, an amendment to a public contract during its termination may only take place without a new procurement procedure as referred to in Part 2 of this Act in the cases referred to in this Chapter.</p> <p>Furthermore, Pursuant to Article 43 (d) of the EU Directive: where a new concessionaire replaces the one to which the contracting authority or the contracting entity had initially awarded the concession as a consequence of either:</p> <ul style="list-style-type: none"> (i) an unequivocal review clause or option in conformity with point (a); (ii) universal or partial succession into the position of the initial concessionaire, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or (iii) in the event that the contracting authority or contracting entity itself assumes the main concessionaire’s obligations towards its subcontractors where this possibility is provided for under national legislation
<p>In other cases, flexibility to change the ownership structure and/or assign the contract.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Pursuant to Article 15 of the DBFMO Agreement (titled Shareholders):</p> <ul style="list-style-type: none"> a) The transfer or issuing of a share in the capital of the Contractor leading to a change of Control over the company of the Contractor, may only take place with the Contracting Authority’s consent or in accordance with the Direct Agreement. b) In derogation from the provisions of paragraph (a) consent of the Contracting Authority is not required in case of a transfer of a share to a legal entity belonging to the same group as the transferring shareholder, as referred to in Article 2:24b of the Dutch Civil Code. (c) Should this lead to the transfer of Control over the company of the relevant legal entity, the consent of the Contracting Authority is also required for the transfer of a share in the capital of a (legal) entity that: <ul style="list-style-type: none"> (i) directly or indirectly has Control over the company of the Contractor; or (ii) is a custodian or manager, managing partner or an administrator, of a fund that directly or indirectly has Control over the company of the Contractor. (d) In derogation from the provisions of paragraph (c), the consent of the Contracting Authority is not required where the transfer of a share is concerned: <ul style="list-style-type: none"> (i) to a legal entity that belongs to the same group as the transferring legal entity, as referred to in Article 2:24b of the Dutch Civil Code; or (ii) by means of trading on any stock exchange established in the European Union or the United States of America. (e) The Contracting Authority provide the consent referred to in paragraphs (a) and (c) within 20 Working Days after the Contractor has submitted a completed BIBOB (Public Administration (Probity in Decision-

	<p>making) Act) questionnaire or a comparable document deriving from regulations introduced in the place thereof that demonstrates with respect to the acquirer that no Grounds for Exclusion are present, unless the Contracting Authority demonstrates during this period that Grounds for Refusal apply to the acquirer or to a (legal) entity of which the acquirer is a subsidiary in the sense of Article 2:24a of the Dutch Civil Code or that belongs, with the acquirer, to the same group, as referred to in Article 2:24b of the Dutch Civil Code.</p> <p>(f) If the Contracting Authority provides consent as referred to in paragraphs (a) or (c) with regard to the new shareholder no Grounds for Exclusion are considered to exist.</p>
<p>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Pursuant to Article 13 (1) of the DBFMO standard agreement, the Parties can only change this Agreement by way of a document prepared and signed by the Parties for that purpose.</p> <p>Furthermore, Article 13 (3) of the DBFMO standard agreement states that:</p> <p>a) If the Contractor proposes a change to [Schedule 8 [(Qualitative Part of Submission)] or the Schedule of Requirements, this is designated a Contractor Change.</p> <p>(b) If the adoption of measures or recommendations arising from Req. of the Management Specifications results in an amendment of the Contractor Schedules, then the Parties must introduce the change as a Contractor Change.</p> <p>(c) If the Contractor Schedules impose an action in conflict with Regulations, other than as a consequence of a Relevant Change in Law, or with intellectual or industrial property rights of a Third Party and this can be remedied by an amendment of the Agreement then the Parties must introduce that change as a Contractor Change.</p> <p>(d) A Contractor Change may not result in the Contractor having to act contrary to Regulations.</p> <p>(e) The Contractor may propose a change to the documents enclosed in Schedule 9, Part 5 (Implementation Agreements) and Part 6 (Agreements with Stakeholders), provided that this change relates to the obligations imposed on the Contractor pursuant to Article 5.2(a) or Article 18.4, subject to the condition that the relevant Stakeholder demonstrably agrees in writing to the change and subject to the condition that the Contractor continues to fulfil its other obligations arising from this Agreement. The Contractor must submit any such changed document, signed by the relevant interested party, to the Contracting Authority for the Contracting Authority's signature for approval. The Contracting Authority must sign the changed document within 20 Working Days after receipt, unless the change:</p>

	<p>(i) is detrimental to the Contracting Authority's position; or</p> <p>(ii) is detrimental to the position of other interested parties. The change will only come into force once the changed document has been signed by the Contracting Authority. Once signed by the Contracting Authority, the changed documents are assumed to be included in Schedule 9, Part 5 (Implementation Agreements)) [and Part 6 (Agreements with Stakeholders)]. Article 13.3 is not applicable to this Contractor Change.</p> <p>(f) To the extent that the Parties have not agreed otherwise, the consequences of a Contractor Change are borne by the Contractor.</p>
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Ministry of Finance
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):	Pursuant to Article 43 of the EU Directive
A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
A change in the financial and/or economic balance of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 43 of the EU Directive
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard	No regulatory basis

contractual provisions (if any):	
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Purasant to Article 43 of the EU Directive
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):	<p>The DBFMO Standard Agreement details the situations that are qualified as a force majeure event. The DBFMO Standard Agreement specifically provides that the parties have set out an exhaustive regulation of the events and circumstances pursuant to which a default cannot be attributed to a Party within the meaning of article 6:75 DCC and that a contracting party therefore cannot rely on such provision in any situation other than in these events and circumstances (article 9.7 (b) DBFMO Standard Agreement).</p> <p>Force Majeure Events</p> <p>In the DBFMO Standard Agreement a Force Majeure Event is defined as the circumstance that the contractor is inevitably unable to comply with its obligations under the agreement or is only able to comply therewith while incurring a financial loss, or if the contracting authority under the agreement is inevitably unable to comply with its obligations under the agreement, insofar as this circumstance (i) does not qualify as a compensation event under the agreement and (ii) is the result of one or more of the following events or circumstances:</p> <p>(a) a Disruption of the Financial markets occurring prior to Financial Close;</p> <p>(b) war, civil war, acts of terrorism, hostile acts, rebellion or armed rebellion in the Netherlands;</p> <p>(c) nuclear explosions or detonations of explosive substances, insofar as they are not caused by the Contractor;</p> <p>(d) ionising radiation or radioactive, chemical, or biological contamination at or close to the RWS Area insofar as this arises after the Date of Agreement and</p>

insofar as it is not caused by the Contractor;
(e) a crashing aircraft or spacecraft (or part thereof) or a pressure wave as a result of a supersonic aircraft;
(f) impact of a meteorite or a volcanic eruption;
(g) an earthquake with a force greater than 6 on the Richter scale;
(h) a flood caused by inadequacy of a flood defence or pumping station outside the RWS Area, insofar as it is not caused by the Contractor.

Force Majeure on the side of the contractor

Under the DBFMO Standard Agreement, if the contractor has stated in the notification to the contracting authority that a force majeure event on the side of the contractor has occurred and the contracting authority accepts this, the parties shall determine in consultations what measures the contractor can take in order to mitigate the negative consequences of the force majeure event, without being obliged to repair damage to the RWS Infrastructure as a consequence of the force majeure event (article 9.5 (a) DBFMO Standard Agreement). If a force majeure event occurs on the side of the contractor, the obligations of the contractor that cannot be fulfilled or that can only be fulfilled at a financial loss as a result of the force majeure event shall be suspended for the duration thereof. If the agreement is terminated pursuant to Article 10.6 (Termination due to a Force Majeure Event), these obligations shall be deemed to have expired (article 9.5 (b) DBFMO Standard Agreement). If a force majeure event on the side of the contractor occurs: (i) the contractor must take all measures that are reasonably possible in order to mitigate the negative consequences of the force majeure event, without being obliged to repair damage to the RWS Infrastructure as a consequence of the force majeure event; (ii) the parties must consult about the possibilities of continuing the agreement, in amended form or otherwise. In this regard, the contracting authority can instruct the contractor to remedy the consequences of a force majeure event, with payment of compensation for the associated Financial Loss; and (iii) the contracting authority must pay compensation to the Contractor in accordance with annex 3, unless it concerns a Disruption of the Financial markets occurring prior to Financial Close (article 9.5 (c) DBFMO Standard Agreement).

Force Majeure on the side of the contracting authority

Under the DBFMO Standard Agreement, if the contracting authority is aware of the occurrence of an event or circumstance which it believes constitutes a force majeure event on its side, the contracting authority must inform the contractor as soon as possible of: (i) the event or circumstance which in its opinion forms the force majeure event; (ii) the reason(s) why the relevant event or circumstance constitutes such event; (iii) the obligations pursuant to this agreement that cannot be fulfilled as a result of the force majeure event; and (iv) the expected duration of the inability to fulfil said obligations (article 9.6 (a) DBFMO Standard Agreement). If a force majeure event occurs on the side of the contracting authority, the obligations of the contracting authority that cannot be fulfilled as a result of

	<p>the force majeure event shall be suspended for the duration thereof and the parties must consult about the possibilities of continuing the agreement, in amended form or otherwise. If the agreement is terminated pursuant to Article 10.6 (Termination due to a Force Majeure Event), these obligations shall be deemed to have expired (article 9.6 (b) DBFMO Standard Agreement).</p> <p>Liability force majeure event</p> <p>Without prejudice to the payment obligations that may arise pursuant to a force majeure event on the side of the contractor, under the DBFMO Standard Agreement the parties shall not be liable towards each other for any loss as a consequence of a Force Majeure Event. Any loss that is incurred must be borne in full by the party that has incurred the loss (article 9.7 (a) DBFMO Standard Agreement).</p>
Material Adverse government action .	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Under Schedule 1 of the DBFMO Standard Agreement, Changes in Law are a part of compensation events. Specifically Compensation Event section states: The circumstance as a result of which the Contractor is unable to comply with its obligations pursuant to the Agreement or is only able to comply while incurring a Financial Loss, insofar as this results from one or more of the following events or circumstances and to the extent that it is not the result of a Contractor Default or a Force Majeure Event:</p> <ul style="list-style-type: none"> (a) a Contracting Authority Default (b) a Contracting Authority Change; (c) a Relevant Change in Law; (d) the Contractor's observance of instructions or the employment of traffic measures in terms of Article 18.7 (Incident Management, prevention of slippery conditions, traffic accidents, and abnormal loads); (e) the implementation of measures as referred to in Article 18.6 ((Traffic Safety); (f) the Contracting Authority's granting of access to third parties to the RWS Area during the Development Period, or the exercise by third parties of rights of access to the RWS Area with which the Contractor has to comply in accordance with Article 4.2 (Access); (g) damage to the Infrastructure that is the result of an Incident or of Incident Management, the consequences of which arise after the Commencement Date and that is not the result of acts or omissions of the Contractor; (h) damage to the RWS Infrastructure other than the due to the use of grit to control ice caused by work carried out after the Commencement Date (i) by third parties under the orders of an manager of the Third Party Infrastructure or (ii) by cable or conduit managers or by third parties on the order of these managers; (i) carrying out work to make up a Critical Delay, Critical Delay in Completion or a part thereof at the request of the Contracting Authority (as referred to in

	<p>paragraph (b) of Article 9.2 (Delay Event) or Article 9.5 (Delayed Completion Event);</p> <p>(j) implementing measures on the grounds of Article 9.2(c) (Force Majeure Event) paragraph (b) under (ii);</p> <p>(k) a manager of the Third Party Infrastructure does not comply with the relevant Implementation or Elaboration Agreement for a period that is longer than 6 months after the period of 30 Working Days as referred to in Section 5.2 paragraph (d).</p> <p>(l) a manager of Category 2 or 3 Cables and Conducts does not comply with the relevant Project Agreement longer than 6 months following 30 Working Days, as stipulated in Article 6.3 paragraph (a) or 6.4 (g);</p>
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Under Schedule 1 of the DBFMO Standard Agreement, Changes in Law are a part of compensation events.</p> <p>Specifically Compensation Event section states:</p> <p>The circumstance as a result of which the Contractor is unable to comply with its obligations pursuant to the Agreement or is only able to comply while incurring a Financial Loss, insofar as this results from one or more of the following events or circumstances and to the extent that it is not the result of a Contractor Default or a Force Majeure Event:</p> <p>(a) a Contracting Authority Default</p> <p>(b) a Contracting Authority Change;</p> <p>(c) a Relevant Change in Law;</p> <p>(d) the Contractor’s observance of instructions or the employment of traffic measures in terms of Article 18.7 (Incident Management, prevention of slippery conditions, traffic accidents, and abnormal loads);</p> <p>(e) the implementation of measures as referred to in Article 18.6 ((Traffic Safety);</p> <p>(f) the Contracting Authority’s granting of access to third parties to the RWS Area during the Development Period, or the exercise by third parties of rights of access to the RWS Area with which the Contractor has to comply in accordance with Article 4.2 (Access);</p> <p>(g) damage to the Infrastructure that is the result of an Incident or of Incident Management, the consequences of which arise after the Commencement Date and that is not the result of acts or omissions of the Contractor;</p> <p>(h) damage to the RWS Infrastructure other than the due to the use of grit to control ice caused by work carried out after the Commencement Date (i) by third parties under the orders of an manager of the Third Party Infrastructure or (ii) by cable or conduit managers or by third parties on the order of these managers;</p> <p>(i) carrying out work to make up a Critical Delay, Critical Delay in Completion or a part thereof at the request of the Contracting Authority (as referred to in paragraph (b) of Article 9.2 (Delay Event) or Article 9.5 (Delayed Completion Event);</p> <p>(j) implementing measures on the grounds of Article 9.2(c) (Force Majeure Event) paragraph (b) under (ii);</p> <p>(k) a manager of the Third Party Infrastructure does not comply with the</p>

	<p>relevant Implementation or Elaboration Agreement for a period that is longer than 6 months after the period of 30 Working Days as referred to in Section 5.2 paragraph (d).</p> <p>(l) a manager of Category 2 or 3 Cables and Conducts does not comply with the relevant Project Agreement longer than 6 months following 30 Working Days, as stipulated in Article 6.3 paragraph (a) or 6.4 (g);</p>
Refinancing.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Pursuant to Article 3.4 (Refinancing) of the DBFMO Standard Agreement:</p> <p>(a) The Contractor may not enter into a new Financing Agreement with a Financer other than an existing Financer and may not transfer any Financial Agreement to any other than the existing Financer if Grounds for Exclusion or Grounds for Refusal apply to the new Financer.</p> <p>(b) The Contractor must ask the Contracting Authority for authorisation before entering into the new Financing Agreement with a Financer other than an existing Financer. This authorisation must be given within 20 Working Days after the Contractor has demonstrated that there are no Grounds for Exclusion with regard to the new Financer, unless the Contracting Authority demonstrates that Grounds for Refusal apply to the new Financer (or a (legal) entity of which the new Financer is a subsidiary in the meaning of Article 2:24a of the Dutch Civil Code or belongs to the same group as the Financer, as referred to in Article 2:24b of the Dutch Civil Code).</p> <p>(c) The Contractor must inform the Contracting Authority in advance of any Refinancing other than that referred to in paragraph (b).</p>
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 16 of the DBFMO Standard Agreement discusses the issue of subcontractors.
48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Pursuant to Article 4.26 of the Public Procurement Act:</p> <p>If arbitration has been agreed upon in the case of a tendering dispute:</p> <p>a. the chairman of the tribunal meets the requirements mentioned in articles 1c and 1d of the law of judicial officials ;</p> <p>b. may be brought against an arbitral verdict for a claim for destruction as referred to in article 1.064 of the Code of Civil Procedure .</p> <p>Furthermore Article 21 of the DBFMO Standard Agreement discusses the issue of Dispute Resolution.</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>“Pursuant to Article 4.26 of the Public Procurement Act: If arbitration has been agreed upon in the case of a tendering dispute: a. the chairman of the tribunal meets the requirements mentioned in articles 1c and 1d of the law of judicial officials ; b. may be brought against an arbitral verdict for a claim for destruction as referred to in article 1.064 of the Code of Civil Procedure .</p> <p>Furthermore Article 21 of the DBFMO Standard Agreement discusses the issue of Dispute Resolution.”</p> <p>Pursuant to Article 21.1 (b) of the DBFMO Standard Agreement: Should the dispute not be resolved by means of consultations within 20 Working Days then the dispute shall, upon request of one of the Parties, be submitted to a Dispute Resolution Board in accordance with the provisions of Article 21.2 (Expert opinion).</p> <p>Article 21.2 of the DBFMO Standard Agreement States: (a) The Dispute Resolution Board consists of three members unless the Parties agree that the Dispute Resolution Board shall consist of one member. (b) If the Dispute Resolution Board consists of three members, then each Party must appoint one member to the Dispute Resolution Board within 15 Working Days after the deadline referred to in Article 21.1 (b). These appointed members of the Dispute Resolution Board must jointly appoint a third member of the Dispute Resolution Board, who shall act as the chairman of the Dispute Resolution Board, within 10 Working Days after they have both been appointed.</p> <p>Article 21.3 Choice of Forum (a) Disputes arising on the basis of this Agreement, or further agreements ensuing thereof, are settled by The Hague District Court. (b) The plaintiff’s claim is denied for procedural reasons, if the dispute has not been submitted to an Dispute Resolution Board according to the provisions of Articles 21.1 and 21.2.</p> <p>Lastly, the Netherlands is a member of the New York Convention and ICSID</p>
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes

If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Pursuant to Article 4.26 of the Public Procurement Act: If arbitration has been agreed upon in the case of a tendering dispute: a. the chairman of the tribunal meets the requirements mentioned in articles 1c and 1d of the law of judicial officials ; b. may be brought against an arbitral verdict for a claim for destruction as referred to in article 1.064 of the Code of Civil Procedure .
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	The Netherlands is a member of the New York Convention
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	The Netherlands is a member of ICSID
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?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>A direct agreement is part of the contract documentation concluded to reach financial close of the project (article 3.1 (e) DBFMO Standard Agreement). The direct agreement provides for a possibility of restructuring prior to insolvency (article 8 annex 6 DBFMO Standard Agreement).</p> <p>Under the direct agreement the contracting authority may not terminate the agreement pursuant to an immediate termination event or contractor default, file for bankruptcy of the contractor or make a claim under the performance bond or transfer guarantee under the agreement without first notifying the security agent and contractor thereof (article 3.1 annex 6 DBFMO Standard Agreement). Such notification triggers an interim period (article 3.4 annex 6 DBFMO Standard Agreement). During the interim period the security agent can file a rectification notification, after which it must provide the contracting authority with a rectification report (article 4.1 and 5.1 annex 6 DBFMO Standard Agreement). Five days after the conclusion of such rectification report, the interim period terminates and is replaced by a step-in period (article 6.1 (f) jo article 7.1 annex 6 DBFMO Standard Agreement).</p> <p>Pursuant to the direct agreement (article 8.1 annex 6 DBFMO Standard Agreement), at any time during the Step-In Period the Security Agent may initiate a restructuring by:</p> <p>(a) transferring the Contractor’s rights and obligations under the DBFMO agreement (or have it transferred) to a suitable substitute contractor by way</p>

	<p>of a transfer of contract as referred to in article 6:159 DCC; or (b) implementing changes in the contractual structure, the company structure, the management structure or the control structure of, and/or concerning the contractor (including changes and/or terminations of finance agreements and/or contracts with Subcontractors) to the extent that, in the reasonable view of the contracting authority, the contractor can be regarded as being adequately equipped to perform the work as appropriate throughout the term of the DBFMO agreement.</p> <p>The procedure to effectuate the restructuring is detailed in article 8 of the direct agreement (annex 6 DBFMO Standard Agreement) and in the Public Procurement Act 2012 (Aanbestedingswet 2012).</p>
<p>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?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>A direct agreement is part of the contract documentation concluded to reach financial close of the project (article 3.1 (e) DBFMO Standard Agreement). The direct agreement provides for a step-in right of the lenders.</p> <p>Under the direct agreement, the Security Agent is entitled to permit a legal entity under Dutch law (the Step-In Entity) to enter into this Agreement. This legal entity assumes all the rights and obligations of the Step-In Entity arising from this Agreement (including those from the Replacement DBFM Agreement)(article 21.1 annex 6 DBFMO Standard Agreement). The step-in right applies when the original DBFMO Agreement terminates automatically at the time of insolvency of the contractor (and irrespective of whether a notice of termination has been given) (article 10.1 annex 6 DBFMO Standard Agreement). From that, the existing contractor and the contracting authority shall be discharged from their obligations under the original DBFMO Agreement and a replacement DBFMO Agreement shall enter into force and the step-in entity appointed by the lenders shall become the contractor under the replacement DBFMO Agreement (article 10.2 and 10.3 annex 6 DBFMO Standard Agreement).</p> <p>The procedure to effectuate the step-in and the applicable payments related thereto are detailed in article 10 and 11 of the direct agreement (annex 6 DBFMO Standard Agreement).</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>No</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>A direct agreement is part of the contract documentation concluded to reach financial close of the project (article 3.1 (e) DBFMO Standard Agreement). The direct agreement provides for a step-in right of the lenders.</p> <p>Under the direct agreement, the Security Agent is entitled to permit a legal entity under Dutch law (the Step-In Entity) to enter into this Agreement. This legal entity assumes all the rights and obligations of the Step-In Entity arising from this Agreement (including those from the Replacement DBFM Agreement)(article 21.1 annex 6 DBFMO Standard Agreement). The step-in right applies when the original DBFMO Agreement terminates automatically at the time of insolvency of the contractor (and irrespective of whether a notice of termination has been given) (article 10.1 annex 6 DBFMO Standard Agreement). From that, the existing contractor and the contracting authority shall be discharged from their obligations under the original DBFMO Agreement and a replacement DBFMO Agreement shall enter into force and the step-in entity appointed by the lenders shall become the contractor under the replacement DBFMO Agreement (article 10.2 and 10.3 annex 6 DBFMO Standard Agreement).</p> <p>The procedure to effectuate the step-in and the applicable payments related thereto are detailed in article 10 and 11 of the direct agreement (annex 6 DBFMO Standard Agreement).</p>
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	<p>No</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
Other.	<p>No</p>

Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>The DBFMO Standard Agreement provides for grounds for premature termination of the PPP contract as follows.</p> <p>Immediate termination</p> <p>The DBFMO Standard Agreement lists several grounds for immediate termination of the agreement (article 10.1 (a) and annex 1 DBFMO Standard Agreement), being one of the following events or circumstances, insofar as such does not result from a default on the side of the contracting authority or a force majeure event:</p> <ul style="list-style-type: none"> (a) no Bank Guarantee is provided in accordance with Articles 3.2 (Financial Close Bond) 3.3 (Performance Bond) or 7.3 (Transfer Guarantee); (b) the Commencement Certificate is not issued within the period referred to in Article 4.1 (Issuing of the Commencement Certificate), paragraph (a); (c) Financial Close has not been achieved (or it is certain that the Financial Close will not be achieved) within the period referred to in Article 3.1 (Financial Close); (d) the Certificate of Availability is not issued (or it is certain that the Certificate of Availability will not be issued) within [x] months after the Scheduled Availability Date; (e) the Completion Certificate is not issued (or it is certain that the Completion Certificate will not be issued) within [x] months after the Scheduled Completion Date; (f) a share is transferred in contravention of Article 15 (Shareholders); (g) the Contractor acts contrary to Article 3.4 (Refinancing); (h) the Contractor suspends the execution of practically all Work for a period of 15 successive Business Days (unless this is envisaged in planning previously delivered by the Contractor to the Contracting Authority); (i) payment obligation of the contractor pursuant to a Finance Agreement is accelerated in accordance with the grounds for early repayment in the Finance Agreement to an event of default, other than (i) on the grounds of Refinancing, or (ii) the accelerated claiming of a facility that bridges the capital contribution on shares in the Contractor or the Shareholder Loans to be provided, insofar as the bridging facility is at least repaid up to the amount of the accelerated claim within 10 Business Days after the accelerated claim; or (j) the Contractor (i) makes an application for a (provisional) suspension of payments or is awarded a (provisional) suspension of payments, (ii) files a petition for voluntary bankruptcy or is declared bankrupt, or (iii) is dissolved. <p>In case of termination on the basis of a ground for immediate termination, a compensation is due by either the contracting authority under the agreement towards the contractor or vice versa in accordance with a compensation mechanism detailed in an annex to the DBFMO Standard Agreement (article</p>

10.1 (b) DBFMO Standard Agreement and annex 4).

Termination due to a default on the side of the contractor

The DBFMO Standard Agreement contains provisions to terminate the agreement in case of a contractor default. The contracting authority may terminate the agreement on a date specified by it if there is a contractor default that consists of the non-fulfilment of a so-called Category A Requirement if: (i) the application of availability adjustments in accordance with Schedule 2 results in the net availability payment during a consecutive period of at least 3 payment periods amounting in each of those payment periods to less than (A) 1% of the gross availability payment for the payment periods beginning prior to the availability date; or (B) 50% of the gross availability Payment for the payment periods beginning after the availability date, and (ii) the contractor fails to rectify the contractor default within a reasonable period of time set thereafter by the contracting authority as referred to in Article 11.1 (Contractor Default) paragraphs (a) and (b), unless the contractor default, in view of the situation's extraordinary nature or minimal significance, does not warrant termination with all of the associated consequences (article 10.2 (a) DBFMO Standard Agreement).

Furthermore, the contracting authority may terminate the agreement on a date specified by it if there is a contractor default other than the non-fulfilment of a so-called Category A Requirement if: (i) the contracting authority has allocated penalty points for (the failure to rectify) this contractor default in more than three consecutive payment periods; and (ii) the contractor fails to remedy the contractor default within a reasonable period of time set once more thereafter by the contracting authority as referred to in Article 11.1 (Contractor Default) paragraphs (a) and (b), unless the contractor default, in view of the situation's extraordinary nature or minimal significance, does not warrant termination with all of the associated consequences (article 10.2 (b) DBFMO Standard Agreement).

In the event of termination as set out above, the contracting authority must pay compensation to the contractor, or vice versa, in accordance with annex 4 of the DBFMO Standard Agreement (article 10.2 (c) DBFMO Standard Agreement).

Termination due to a default on the side of the contracting authority

The DBFMO Standard Agreement also contains provisions to terminate the agreement in case of a default on the side of the contracting authority under the agreement. The contractor may terminate the agreement on a date specified by it in the event of a contracting authority default arising and where the contracting authority fails to remedy the said default within a reasonable period of time as referred to in Article 11.2 (Contracting Authority Default),

paragraphs (a) and (b), unless the contracting authority default, in view of the extraordinary nature or minimal significance thereof, does not warrant termination with all of the associated consequences (article 10.3 (a) DBFMO Standard Agreement). In the event of termination the contracting authority must pay compensation to the contractor in accordance with annex 4 of the DBFMO Standard Agreement (article 10.2 (c) DBFMO Standard Agreement).

Termination at the contracting authority's discretion

Under the DBFMO Standard Agreement, the contracting authority may terminate the agreement at any time on a date that it specifies (article 10.4 (a) DBFMO Standard Agreement). Also, if its performance of the agreement or the contents of its schedules are or come to be in conflict with Legislation, and this conflict cannot be corrected by a contracting authority change under the DBFMO Standard Agreement, the contracting authority must terminate the Agreement (article 10.4 (b) DBFMO Standard Agreement). In case of such termination at the contracting authority's discretion, the contracting authority must pay compensation to the contractor in accordance with annex 4 of the DBFMO Standard Agreement (article 10.4 (c) DBFMO Standard Agreement).

Termination due to a prolonged delay event or prolonged delayed completion event

The DBFMO Standard Agreement identifies situations in which a prolonged delay event and pro-longed delayed completion event applies (annex 1 DBFMO Standard Agreement). In such situations, the agreement may be terminated by the contractor or the contracting authority under the DBFMO Standard Agreement.

The contractor may terminate the agreement with immediate effect:

(i) if there is a delay event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement) and the critical delay lasts longer than, or it is certain that the critical delay will last longer than, 2 years, and the contracting authority chooses, or is deemed to have chosen, to pay the compensation referred to in Schedule 3, paragraph 1.3 sub (a) under (ii).

(ii) if there is a delay event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement) and the critical delay together with the previous critical delay of all previous delay events, not being an event as referred to under (c) of the definition of a delay event, lasts longer than 2 years, and the contracting authority chooses, or is deemed to have chosen, to pay the compensation referred to in Schedule 3, paragraph 1.3 sub (a) under (ii).

(iii) if there is a delayed completion event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement) and the critical delay in

completion lasts longer than, or it is certain that the critical delay in completion will last longer than, 2 years, and the contracting authority chooses, or is deemed to have chosen, to pay the compensation referred to in

Schedule 3, paragraph 4.3 sub (a) under (ii).

(iv) if there is a delayed completion event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement), and the Critical Delay in Completion: (A) whether or not together with the previous critical delay in completion of all previous delayed completion events (not being an event as referred to under (c) of the definition of a delay event); (B) whether or not together with the previous critical delay of all previous delay events (not being an event as referred to under (c) of the definition of a delay event); and (C) (if the availability date falls before the scheduled availability date) reduced by the number of calendar days that the availability date falls before the scheduled availability date, lasts longer than 2 years, and the contracting authority has chosen, or is deemed to have chosen, to pay the compensation referred to in Schedule 3, paragraph 4.3 sub (a) under (ii).

The contracting authority may terminate the agreement with immediate effect:

(i) if there is a delay event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement) and the critical delay lasts longer than, or it is certain that the critical delay will last longer than, 2 years, and the contracting authority does not choose, or is deemed not to have chosen, to pay the compensation referred to in Schedule 3, paragraph 1.3 sub (a) under (ii);

(ii) if there is a delay event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement) and the critical delay together with the previous critical delay of all previous delay events not being an event as referred to under (c) of the definition of a delay event lasts longer than 2 years, and the contracting authority does not choose, or is deemed not to have chosen, to pay the compensation referred to in Schedule 3, paragraph 1 sub (a) under (ii);

(iii) if there is a delayed completion event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement) and the critical delay in completion lasts longer than, or it is certain that the critical delay in completion will last longer than, 2 years, and the contracting authority does not choose, or is deemed not to have chosen, to pay the compensation referred to in Schedule 3, paragraph 4.3 sub (a) under (ii); or

(iv) if, in the case of a delayed completion event (not being a compensation event, a force majeure event, or the lenders making use of their rights under the direct agreement) the critical delay in completion: (A) whether or not together with the previous critical delay in completion of all previous delayed completion events (not being an event as referred to under (c) of the definition of a delay event); (B) whether or not together with the previous critical delay of all previous delay events (not being an event as referred to under (c) of the definition of a delay event); and (C) (if the availability date falls before the scheduled availability date) reduced by the number of calendar days that the availability date falls before the scheduled availability date, lasts longer than 2 years, and the contracting authority does not choose, or is deemed not to have chosen, to pay the compensation referred to in

Schedule 3, paragraph 4.3 sub (a) under (ii).

In the above events, the contracting authority must pay a compensation to the contractor in accordance with annex 4 of the DBFMO Standard Agreement (article 10.5 (c) DBFMO Standard Agreement).

Termination due to a force majeure event

Pursuant to the DBFMO Standard Agreement, force majeure events may give rise to termination with immediate effect in the following situations (article 10.6 DBFMO Standard Agreement).

If a force majeure event, not being a force majeure event that prevents the attainment of financial close as referred to in Article 3.1 paragraph (c), continues for 180 business days and the parties have not reached an agreement concerning the continuation of the agreement, or as much earlier as it is certain that the agreement is not to be continued as a consequence of a force majeure event, either of the parties has the right to terminate the agreement with immediate effect (article 10.6 (a) DBFMO Standard Agreement).

Either of the parties may terminate the agreement with immediate effect if there is a force majeure event, not being a force majeure event that prevents the attainment of financial close as referred to in Article 3.1 paragraph (c), the critical delay together with the previous critical delay of all previous delay events not being an event as referred to under (c) of the definition of a delay event lasts longer than 2 years. The contractor may only terminate the agreement on this ground after the contracting authority has chosen, or is deemed to have chosen, to pay the compensation referred to in Schedule 3, paragraph 3.1 sub (b) in conjunction with paragraph 1.3 sub (a) under (ii). The contracting authority may only terminate the agreement on this ground after the contracting authority has chosen not to, or is deemed not to have chosen, to pay the compensation referred to in Schedule 3, paragraph 3.1 sub (b) in conjunction with paragraph 1.3 sub (a) under (ii) (article 10.6 (b) DBFMO Standard Agreement).

Either of the parties may terminate the DBFMO agreement with immediate effect if there is a force majeure event, and the total critical delay in completion, lasts longer than 2 years. The contractor may only terminate the agreement on this ground after the contracting authority has chosen, or is deemed to have chosen, to pay the compensation referred to in Schedule 3, paragraph 3.1 sub (c) in conjunction with paragraph 4.3 sub (a) under (ii). The contracting authority may only terminate the agreement on this ground after the contracting authority has chosen not to, or is deemed not to have chosen, to pay the compensation referred to in Schedule 3, paragraph 3.1 sub (b) in conjunction with paragraph 4.3 sub (a) under (ii) (article 10.6 (c) DBFMO Standard Agreement).

Compensation

	<p>In the above events, the contracting authority must pay a compensation to the contractor in accordance with annex 4 of the DBFMO Standard Agreement (article 10.6 (d) DBFMO Standard Agreement).</p> <p>Direct agreement</p> <p>All of the above-mentioned rights of premature termination of the DBFMO Standard Agreement can only be exercised subject to the provisions in the lenders direct agreement annexed to the DBFMO Standard Agreement (article 10.7 jo annex 6 DBFMO Standard Agreement).</p>
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 10.8 of the DBFMO Standard Agreement: The Parties must determine the compensation referred to in this Article 10 (Premature Termination). If the Parties cannot reach an agreement within 40 Working Days after termination of this Agreement, the compensation shall be determined in accordance with the provisions of Article 21 (Dispute Resolution)
Unsolicited Proposals	
34. Are unsolicited proposals in Netherlands: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	Yes
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	In the Netherlands unsolicited proposals are not goverend by a specific legal framework for that purpose. In the Netherlands, in practice, unsolicited proposals are very rare. Pursuant to governmental policy documentation, assessment of unsolicited proposals is done to the procuring authority's discretion and in general the following criteria are applied: originality, function and added value, completeness and practicability.
35. Does the procuring authority conduct an assessment to evaluate	Yes

unsolicited proposals? (if not, skip to question 37)	
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	In the Netherlands unsolicited proposals are not governed by a specific legal framework for that purpose. In the Netherlands, in practice, unsolicited proposals are very rare. Pursuant to governmental policy documentation, assessment of unsolicited proposals is done to the procuring authority's discretion and in general the following criteria are applied: originality, function and added value, completeness and practicability.
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):	In the case of infrastructure projects, the procuring authority evaluates unsolicited proposals taking into account the Multiannual Programme Infrastructure, Environment and Transport (Meerjarenprogramma Infrastructuur, Ruimte en Transport). In general, the assessment of the unsolicited proposal by the procuring authority will also include an evaluation of the consistency with existing government (policy) priorities.
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?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Assuming the procuring authority will be considered a 'contracting authority' (aanbestedende dienst) as defined in article 1.1 of the Public Procurement Act 2012 (Aanbestedingswet 2012) and the PPP contract value exceeds the applicable threshold as set in Directive 2014/24/EU, the procuring authority will be obligated to initiate a competitive PPP procurement procedure in accordance with the Public Procurement Act 2012.</p>
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 2.71 of the Procurement Act:</p> <ol style="list-style-type: none"> 1) For public procedures, the period for the submission of tenders shall be 45 days from the date of dispatch of the notice. 2) For non-public procurement and negotiation procedures, the deadline for submitting requests for participation shall be at least 30 days from the date of the announcement of the public contract. 3) For procedures of the competitive partnership and procedures of the Innovation Partnership, the deadline for submitting requests for participation shall be at least 30 days from the date of the announcement of the public contract. 4) In the case of restricted procedures, the time limit for the submission of tenders shall be at least 40 days from the date of submission of the invitation to tender and for negotiated competition procedures, the period for the submission of the first tenders shall also be at least 40 days , from the date of submission of the invitation to tender. 5) If the contracting authority has made a pre-announcement as referred to in section 2.3.2.1 , it may shorten the deadline for submission of tenders referred to in paragraphs 1 and 4 to 29 days, but in no case to less than 22 days . 6) The termination of the deadline referred to in paragraph 5 is only permitted if the pre-announcement contains all information contained in the notice of the public contract referred to in Annex V, Part B, Section I of Directive 2014/24 / EU, is required insofar as this information is available at the time of the announcement of the notice and provided that this notice has been sent for publication at least 52 days and no more than 12 months before the date of the announcement of the public contract.
and the time in calendar days:	<p>45</p>
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the	<p>No</p>

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