

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN NEW ZEALAND

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:	There is no dedicated PPP law in New Zealand. PPP projects are based on a standard form Project Agreement published by the Treasury, that contains the core commercial principles and structure of the New Zealand PPP model. The Treasury has also published various guidelines, including an overview of the procurement process. Given that the procurement of PPPs in New Zealand depends heavily on relevant Government policy, there is no specific legislation which enables the procuring of PPPs generally. However, there is some sector specific legislation which enables the procuring of PPPs, such as the Land transport Act of 1998. For purposes of our analysis, we will refer to the PPP model, the different PPP related guidelines, and the Land Transport Act 1998 that includes provisions allowing for “road controlling authorities”.
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	http://www.treasury.govt.nz/statesector/ppp
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	No
Please describe:	n/a
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	The New Zealand Treasury regularly reviews New Zealand’s approach to PPP, the regulatory framework, procurement approach and other generally followed practices. This includes market sounding exercises and comparisons with other jurisdictions. The government is currently revising the procurement policy including the Standard Form PPP Project Agreement
3.1 Besides national defense and other	No

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

explicitly prohibit or restrict PPPs in any of the following sectors?: Other	
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	No
If yes, please specify and provide the relevant legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in New Zealand and provide their website(s) (if available):	<p>PPPs are generally procured by Government Ministries responsible for the underlying project (Transport, Education, Justice etc.) with dedicated assistance in each project from the Treasury's PPP Team.</p> <p>The New Zealand Treasury maintains a PPP Team responsible for developing PPP policy and standard procedures, and assisting government agencies with procurement and implementation of PPP projects.</p> <p>http://www.treasury.govt.nz/statesector/ppp</p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name, and its website (if available):	The New Zealand Treasury (the PPP Team: Commercial Operations Group) www.treasury.govt.nz/ppp
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	Yes
6.2 PPP capacity building for other public authorities.	Yes
6.3 PPP promotion among the public and/or private sectors in national and international forums.	Yes
6.4 Technical support in implementing PPP projects.	Yes

6.5 Identification and selection of PPP projects from the pipeline.	Yes
6.6 Revision of fiscal risks born by the Government.	No
6.7 Consultation with affected communities on potential impact of PPP projects.	Yes
6.8 Approval of PPP projects.	Yes
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>According to the Government Rules of Sourcing (http://www.procurement.govt.nz/procurement/for-agencies/key-guidance-for-agencies/the-new-government-rules-of-sourcing/6-other-rules-you-need-to-know#rule62)</p> <p>Rule 62:</p> <p>Agencies considering Public Private Partnership (PPP) procurement must:</p> <ol style="list-style-type: none"> consult with the Treasury PPP Team early in the development of the project's business case; follow relevant Treasury guidance and instructions; involve the Treasury PPP Team in the economic and financial assessment and advice to Ministers; invite the Treasury PPP Team to participate in relevant project steering and working groups, and in the selection panels for all key PPP advisor appointments; use the Treasury's Standard Form PPP Project Agreement as the basis for any contract and consult with the Treasury PPP Team over any proposed modifications. (These are available at www.treasury.govt.nz/ppp) <p>The role of the PPP Team at the Treasury is to support agencies undertaking PPP projects. It provides consistency across projects and maintains the government's integrity in how it implements these types of arrangements.</p>
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>The Treasury (Ministry of Finance) performs two gatekeeper roles - the first in relation to the PPP team's role in determining the suitability of the project as a PPP and secondly, the Treasury Vote team who recommend (or not) the fiscal appropriation to support the project. Cabinet Ministers make the formal decision as to whether the project proceeds.</p> <p>In fact, the procuring agencies are required to consult with the Treasury PPP Team</p>

	<p>prior to launching procurement, and consider other procurement options, as well as PPP. In addition, Cabinet agreement needs to be secured for the related expenditure before a procurement process is launched.</p> <p>These and other conditions are set out in the Government Rules of Sourcing and Principles of Government Procurement (publicly available at: http://www.procurement.govt.nz/procurement/for-agencies/key-guidance-for-agencies/the-new-government-rules-of-sourcing).</p>
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	During the preferred bidder stage, the procuring entity will need to prepare for any internal approvals, Ministerial approvals and statutory consents or delegations that are required prior to signing the PPP contract. The procuring entity will also be required to report back to Cabinet prior to Financial Close on the actual level of benefits contracted for compared with those outlined in the proposal previously approved by Cabinet and to report in compliance with the Public Sector Comparator. The Cabinet agrees on the final contractual terms before the contract is signed and the Treasury PPP team support this recommendation. (Additionally, the PPP team controls the standard form project agreement and must approve any variation to that).
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?:	Yes

Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	
Accounting and reporting according to other international standard (e.g. European System of Accounts).	No
Please specify:	n/a
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.)?	Yes
If yes, please specify the relevant authority	The Cabinet
and provide the relevant legal/regulatory provisions (if any):	Cabinet circular: CO (15) 5: Investment Management and Asset Performance in the State Services: http://www.dpmmc.govt.nz/cabinet/circulars/co15/5 . Article 19 of the Circular provides the following: Cabinet approval is also required for: 19.1 any PPP investment proposals by agencies, even if funded from agency baselines and balance sheets, as these can have significant fiscal and policy implications and can affect the government's reputation in the marketplace; 19.2 other investments or asset divestments set out in Annex 1, Table 1...
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

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to the Public Private Partnership Programme: The New Zealand PPP Model and Policy: http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf:</p> <p>6.7 The Treasury PPP team is able to provide agencies valuable assistance through: ... • established relationships with market participants including advisors, investors, contractors and service providers</p> <p>7.12 To participate in a procurement process, the private sector partner will also require a full range of specialist advisors including commercial and financial advisors, legal advisors and technical advisors.</p> <p>Finally, 7.6 provides an indicative organizational chart exposing that: The procuring entity will need to supplement this project team with specific advisory assistance throughout the planning and implementation of the PPP procurement process. This would typically include:</p> <ul style="list-style-type: none"> • Commercial and financial advisors – including the provision of advice in relation to the commercial terms, the performance regime and performing a due diligence review of the financial model and financing proposal • Legal advisors – including the provision of advice in relation to contractual, commercial, property, and resource management matters and performing a due diligence review of the legal and commercial structure proposal • Technical advisors – including the provision of advice in relation to the design and construction outcomes and requirements and performing a due diligence review of the design and construction programme, and • Service provision advisors (where included) – including the provision of advice in relation to the development of service outcomes, integration of service provision with the asset and performing a due diligence review of the service provision proposal.
<p>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and</p>	<p>Yes</p>

<p>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>	<p>Under the Investment Management and Asset Performance in the State Services http://www.dpmc.govt.nz/cabinet/circulars/co15/5</p> <p>The circular gives effect to Cabinet’s intention that there is active stewardship of government resources, and strong alignment between individual investments and the government’s long-term priorities. (Section 2 under introduction).</p> <p>In order to reach its objectives, the system must 15.1 enable Cabinet and agencies to prioritize and coordinate significant investments according to government and State services long term priorities.</p> <p>Additionally, the planning phase 17.4. involves further developing investment proposals, assessing these and prioritizing investments according to the value of the proposal. In this phase there is a deeper examination of options through business case processes.</p> <p>We can also read that 20 Ministers can help create the conditions for effective investment and asset management by: 20.1 setting, and when necessary reconciling, government priorities and being clear about the desired outcomes for New Zealanders;</p> <p>Finally, the system will operate on several principles, and among them is: 48.5. governance and decision-making processes enable agencies to be responsive to whole-of-government investment priorities;</p> <p>For Long term investment plans 49 The effectiveness of the investment management system depends on high quality information on agency investment intentions and performance linked to outcomes. Such information informs all of government prioritization processes, decisions on fiscal policy settings and the affordability of current policies and future service delivery strategies.</p>
<p>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency</p>	<p>No</p>

of PPPs with other government investment priorities in practice.	
If yes, please elaborate:	n/a
The procuring authority does not evaluate PPPs against existing government priorities.	No
Please elaborate and provide examples:	n/a
11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?	Yes
If yes, please specify:	Based on the relatively small number of projects which have reached close to date in New Zealand, all of them were subjected to the integration according to prioritization of PPP projects with other public investment project prioritization
If no, please elaborate:	n/a
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	Yes
Relevant legal/regulatory provision (if any)	<p>According to http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf:</p> <p>5.3 The Government Rules of Sourcing require agencies that are considering PPP procurement to:</p> <ul style="list-style-type: none"> • consult with the Treasury PPP Team early in the development of the project's business case • follow relevant Treasury guidance and instructions • involve the Treasury PPP Team in the economic and financial assessment and advice to Ministers
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	In Better Business Case Methodology, under "Economic Case", http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/cbax , the methodology for the socio-economic assessment is exposed

Is the assessment done in practice?	Yes
Details:	The socio-economic analysis is always conducted for PPP projects in New Zealand
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	No regulatory basis
Is the assessment done in practice?	Yes
Details:	The Affordability assessment including the identification of the required long term public commitments are done in practice in New Zealand
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	According to http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf : 4.27 Even where it may not be value for money to transfer a risk to the private sector partner, the risk identification and quantification process has tangible benefits for the procuring entity through providing a greater understanding of those risks it will retain and how these should be managed.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	No regulatory basis
Is the assessment done in practice?	Yes
Details:	The risk identification assessment is always conducted in practice in New Zealand
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)	Under the PPP Guidance titled: Public Private Partnership Programme: The New Zealand PPP Model and Policy: http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf , we read: 5.14 If, on the basis of the initial qualitative assessment and market sounding, PPP procurement is considered a short list option then joint Ministers should be

	<p>consulted prior to submission of the IBC to Cabinet. This provides Ministers with full visibility of the analysis and assumptions which underpin the project and allow them to consider whether there are any programme or external factors which may also impact the likely success of PPP procurement. For example, if the timing of another project, for which a different agency is considering PPP procurement, may clash then Ministers may consider intervening.</p> <p>5.15 If joint Ministers agree that PPP procurement is an appropriate option, then further analysis will be required as part of the preparation of the DBC. The IBC should short list two procurement options for further evaluation in the DBC which include PPP procurement and the preferred form of conventional procurement. This is important as the preferred form of conventional procurement will form the basis for the calculation of the PSC and will ensure a second option is available if further analysis as part of the DBC results in PPP procurement being discarded.</p>
<p>Is there a specific methodology for the assessment?</p>	<p>Yes</p>
<p>If yes, please elaborate</p>	<p>We can find guidance on developing the Public Sector Comparator (PSC) and undertaking quantitative value for money assessment for a PPP project under The Public Sector Comparator and Quantitative Assessment http://www.treasury.govt.nz/statesector/ppp/guidance/public-sector-comparator.</p> <p>Additionally, under Public Private Partnership Programme: The New Zealand PPP Model and Policy: http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf, Action 19a titled: Development of a public sector comparator, we read:</p> <p>5.23 Additional quantitative, or value for money, analysis is required for PPP procurement.</p> <p>This analysis compares the cost of procuring a project as a PPP with a PSC that represents the cost if the procuring entity were to deliver the asset and services itself using conventional procurement. This assessment requires detailed consideration of costs associated with:</p> <ul style="list-style-type: none"> • the design and construction of the asset • the maintenance and management of the asset throughout a prescribed period of operations • the delivery of services from the asset (where these are to be included under a DBFMO model), and • those risks relating to the asset and service delivery that are proposed to be transferred to the private sector under PPP procurement. <p>5.24 The PSC must then be compared with a Proxy Bid Model (PBM), which in addition to those costs included within the PSC also seeks to replicate those additional costs associated with PPP procurement (such as additional procurement costs and private sector costs of financing the project). The DBC must satisfy decision makers that there is sufficient scope for the private sector to introduce innovation and whole of life cost savings (through asset design, maintenance and risk transfer) to offset any difference between the PSC and PBM.</p> <p>5.25 This analysis is important as PPP procurement will only be approved for a</p>

	<p>project where it offers value for money over the life of the project; that is, a PPP must deliver the outcomes sought from the project for the same or lower cost than the procuring entity could have itself (as established by the PSC). This is safeguarded through the requirement for Cabinet approval of the value for money case before a PPP project agreement may be signed for any PPP project.</p> <p>5.26 Further guidance on the development of a PSC and quantitative value for money analysis has been published by the Treasury PPP Team (Public Sector Comparator and Quantitative Assessment).</p>
Is the assessment done in practice?	Yes
Details:	The comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives is always done in practice in New Zealand
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	<p>According to http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf:</p> <p>5.3. Agencies considering PPPs are required to involve the Treasury PPP Team in the economic and financial assessment and advice to Ministers</p> <p>Additionally, (5.17) Action 19 provides: The Financial Costing Model – the development of a PSC will be required to confirm that PPP procurement offers value for money over more conventional procurement approaches.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Under Section 5, Action 19 of http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf, we can read:</p> <p>Action 19a: Development of a public sector comparator</p> <p>5.23 Additional quantitative, or value for money, analysis is required for PPP procurement. This analysis compares the cost of procuring a project as a PPP with a PSC that represents the cost if the procuring entity were to deliver the asset and services itself using conventional procurement. This assessment requires detailed consideration of costs associated with:</p> <ul style="list-style-type: none"> • the design and construction of the asset • the maintenance and management of the asset throughout a prescribed period of operations • the delivery of services from the asset (where these are to be included under a DBFMO model), and • those risks relating to the asset and service delivery that are proposed to be transferred to the private sector under PPP procurement. <p>5.24 The PSC must then be compared with a Proxy Bid Model (PBM), which in addition to those costs included within the PSC also seeks to replicate those additional costs associated with PPP procurement (such as additional procurement costs and private sector costs of financing the project). The DBC must satisfy decision makers that there is sufficient scope for the private sector to introduce innovation and whole</p>

	<p>of life cost savings (through asset design, maintenance and risk transfer) to offset any difference between the PSC and PBM.</p> <p>5.25 This analysis is important as PPP procurement will only be approved for a project where it offers value for money over the life of the project; that is, a PPP must deliver the outcomes sought from the project for the same or lower cost than the procuring entity could have itself (as established by the PSC). This is safeguarded through the requirement for Cabinet approval of the value for money case before a PPP project agreement may be signed for any PPP project.</p> <p>5.26 Further guidance on the development of a PSC and quantitative value for money analysis has been published by the Treasury PPP Team (Public Sector Comparator and Quantitative Assessment).</p>
Is the assessment done in practice?	Yes
Details:	The financial viability or bankability assessments are conducted in practice in PPP projects in New Zealand
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	<p>According to http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf:</p> <p>Action 8a: Market Sounding</p> <p>5.11 Engaging with a representative sample of potential private sector partners (the market) early in the planning process for a project can provide real value to a procuring entity as it can help inform the opportunity for all parties – both in terms of readying the market for the project as well as helping the procuring entity resolve the optimal scope and scale of the project.</p> <p>5.12 While care must be taken to ensure that appropriate probity processes are observed, market sounding provides the procuring entity with an opportunity to gain a better understanding of the appetite of the market for the project as well as any preferences or challenges the market may have with certain scope and scale permutations.</p> <p>5.13 The procuring entity must ensure that it is well prepared for the market sounding process and that it presents a coherent and considered opportunity to the market. If the procuring entity is not well prepared and has not considered a range of options or attempts to use the market sounding process to 'crowdsource' innovation or intellectual property then it is likely to damage the market's appetite for the project.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>The methodology used differ on a project to project basis. According to http://www.treasury.govt.nz/statesector/ppp/guidance/model-and-policy/ppp-public-model-and-policy-sep15.pdf, there is always two rounds of market soundings:</p> <p>Action 14a: A second market sounding</p>

	<p>5.19 A second market sounding is required during the preparation of the DBC (often late in the process) and serves two key purposes:</p> <ul style="list-style-type: none"> • It provides the procuring entity a final opportunity to test its proposed solution with the market. This is important as private sector parties will not respond positively to a project which it considers is underdeveloped or likely to change, and • It allows private sector parties to understand the objectives and outcomes sought by the procuring entity and form credible consortiums and teams to respond to a possible procurement process. It is important that procuring entities allow the market sufficient time prior to the release of an EOI to ensure complete and competitive responses <p>Additionally, methodology for Market assessment is exposed in the tools under http://www.procurement.govt.nz/procurement/for-agencies/guides-and-tools/procurement-lifecycle-stage-2-identify-needs-analyse-the-market</p>
Is the assessment done in practice?	Yes
Details:	Market sounding and assessment is always done in PPP projects in New Zealand in order to show evidence of investors' interest in the market for the project
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	The Resource Management Act of 1991 (http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html)
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	The Environmental Protection and Enhancement Procedures details the methodology for environmental assessment (https://www.scribd.com/document/85824102/The-New-Zealand-EIA-System)
Is the assessment done in practice?	Yes
Details:	An environmental impact assessment is always conducted in practice in New Zealand for PPP projects
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the	No

request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to the Government Rules of sourcing, 4.11 The procuring entity is required to publish the invitation for EOI on the Government Electronic Tenders Service (GETS) or appropriate equivalent. Further communication between respondents and the procuring entity during the EOI stage should be through a single point of contact (to be nominated in the invitation for EOI) or through arranged formal briefing sessions. (http://www.treasury.govt.nz/statesector/ppp/guidance/procurement-process/ppp-procurement-process-sep15.pdf)</p> <p>However, the RFP is only released to shortlisted parties (via electronic data room)</p>
and please specify the website:	https://www.gets.govt.nz/ExternalIndex.htm This would cover the initial tender documents. The RFP would only be made available to the relevant bidders, typically via an electronic data room.
15. In a case comparable to the case study assumptions, have	Yes

standardized PPP model contracts and/or transaction documents been developed?	
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	The Treasury has developed, published and revised a standard form Project Agreement and related documents such as financial model proforma schedules. Guidance for procuring agencies has also been published. the current version 3 is available at: http://www.treasury.govt.nz/statesector/ppp/standard-form-ppp-project-agreement
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No

Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	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 have any specific qualifications.	Yes
Please elaborate and provide examples:	There are no specific requirements, however all evaluation committee members are senior representatives of their respective organizations and have particular technical, operational or commercial expertise to support the role of the committee.
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):	Public notifications by the procuring agency, and on the NZ Government's electronic tendering website https://www.gets.govt.nz/ExternalIndex.htm Government Electronic Tenders Service (GETS) is the only public procurement service. Rule 14 of the Government Rules of sourcing requires procuring agencies to openly advertise on GETS and does not require any other forms of advertising (although it states that agencies may advertise using other media as well as GETS). https://www.procurement.govt.nz/procurement/pdf-library/agencies/rules-of-sourcing/government-rules-of-sourcing-April-2013.pdf
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	https://www.gets.govt.nz/ExternalIndex.htm
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	Yes

minimum period of time to submit their bids?	
If yes, please provide the relevant legal/regulatory provisions (if any):	The EOI/ RFP will include the respective date for submission of an expression of interest/ proposal. The timing follows Treasury guidance that 4-6 weeks should be allowed for an EOI and 16-24 weeks for proposal submission: http://www.treasury.govt.nz/statesector/ppp/guidance/procurement-process/ppp-procurement-process-sep15.pdf (page 7)
and the time in calendar days:	140
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	According to the PPP procurement process described in http://www.treasury.govt.nz/statesector/ppp/guidance/procurement-process/ppp-procurement-process-sep15.pdf : 2.1 Overview of the PPP procurement process. It describes the following core stages: .. • The Expression of Interest (EOI) stage, during which the procuring entity conducts an open process to short list a predetermined number of respondents to participate in the Request for Proposals (RFP) stage...
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	According to Rule 31. of the Government Rules of Sourcing (http://www.procurement.govt.nz/procurement/pdf-library/agencies/rules-of-sourcing/procurement-government-rules-of-sourcing-v3.pdf): b. Multi-step processes A multi-step process can include: › a Registration of Interest followed by a Request for Tender (RFT) or Request for Proposal (RFP), or › an Invitation to Participate in a Competitive Dialogue process followed by a RFT or RFP...
22.4. Competitive dialogue: Available	Yes
Default	No

Relevant legal/regulatory provision (if any)	<p>According to http://www.procurement.govt.nz/procurement/pdf-library/agencies/rules-of-sourcing/procurement-government-rules-of-sourcing-v3.pdf:</p> <p>Competitive Dialogue is a technical term for a type of open procurement process used for high value, unique or complex projects where there is no known solution in the market place. It involves a structured dialogue phase with each shortlisted supplier who invents a possible solution to meet the agency's needs. An independent probity auditor is often appointed to ensure the integrity of the process.</p> <p>Key features of Competitive Dialogue include: › open advertising of an Invitation to Participate that states that it is a Competitive Dialogue process › shortlisted suppliers are often paid for their participation in the dialogue phase › the agency writes its specification of requirements during or at the end of the dialogue phase › the agency then issues a Request for Tender or Request for Proposal to all shortlisted suppliers.</p>
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	0
22.6. Direct negotiation with only one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	No
Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Rule 37 of the government rules of sourcing (https://www.procurement.govt.nz/procurement/pdf-library/agencies/rules-of-sourcing/procurement-government-rules-of-sourcing-v3.pdf):</p> <ol style="list-style-type: none"> 1. Suppliers may ask questions about any Notice of Procurement. 2. An agency must promptly reply to all questions and reasonable requests for information from suppliers. If an agency is unable to promptly reply to a question, it should consider extending the deadline for responses. 3. When an agency responds to a supplier's question, it must not give information that might give that supplier an unfair advantage over the other suppliers. If an

	<p>agency wishes to disclose advantageous information, it must make it available to all suppliers at the same time.</p> <p>4. When an agency responds to a supplier's question, it must not discuss or disclose another supplier's confidential or commercially sensitive information</p>
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>Rule 53 of the government rules of sourcing provides: 4. To establish a Pre-qualified Suppliers List an agency must:</p> <p>a. publish an Invitation to Qualify (a type of Notice of Procurement) on GETS and make it continuously available</p> <p>b. allow suppliers to respond to the invitation at any time or by specific deadlines for responses ...</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):	The prequalification criteria specified in the tender documents are always respected in practice in New Zealand
If no, please elaborate:	n/a
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>In the Government Rules of Sourcing, (http://www.treasury.govt.nz/statesector/ppp/guidance/procurement-process/ppp-procurement-process-sep15.pdf), under the section titled Objectives of the RFP, we can read:</p> <p>5.6 It is critical that the RFP contains sufficient information on all aspects of the project and must therefore be detailed and comprehensive. It is important that potential respondents have the opportunity to clarify any questions they may have on the material provided within the RFP. Responses to questions should be timely and, unless there are good reasons for treating a specific question and response as commercial-in-confidence, shared with all respondents to ensure equal access to information for all parties. These considerations should be included in the Probity and Process Deed.</p>
23.1. If yes, notwithstanding confidential information	Yes

pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	Information which relate to clarification of the RFP will always be disclosed in practice to all short listed tenderers as respondent notices by an online Data room
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	No regulatory basis
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	In practice, the information shared during the pre-bid conferences is disclosed to all bidders
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to	Yes

prepare and present a financial model with their proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
If no, please elaborate:	n/a
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one?): The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	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):	The award notice should be published on GETS and Ministers/ agency will make appropriate press releases. No regulatory basis
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	According to RULE 45 of the Government Rules of Sourcing, regarding Contract Award Notice 1. An agency must publish a Contract Award Notice on GETS when it has awarded a contract that is subject to the Rules. This Notice must be published whether or not the contract was openly advertised, unless it is: a. an opt-out procurement (Rule 13) or b. secondary procurement (Rule 15.9.i).
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to RULE 46 of the Government Rules of Sourcing, about Debriefing suppliers: 1. All suppliers must have the opportunity to be debriefed following a procurement. An agency must offer each unsuccessful supplier a debrief. 2. When a supplier asks an agency for a debrief, the agency must debrief that supplier within 30 business days of the date the contract was signed by all parties, or 30 business days of the date of the request, whichever is later. 3. At the debrief, an agency must not disclose another supplier's confidential or commercially sensitive information (Rule 5). ...
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):	According to Rule 46 of the Government Rules of Sourcing, ... 4. An agency should provide information at the debrief that helps the supplier to improve future tenders or responses. At a minimum, the debrief must: a. include the reason/s the proposal was not successful b. explain how the supplier's proposal performed against the criteria or any pre-conditions (Rule 25) and its relative strengths and weaknesses

	c. explain the relative advantage/s of the successful proposal d. address the supplier's concerns and questions.
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
32.1. If yes, which of the following options best describes this publication	Yes

(choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	
Publication of the full PPP contract without including all its annexes and appendixes	No
Publication of a summary of the PPP contract without publishing the full PPP contract	No
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	No
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	No
32.2. If yes, is it published online?	Yes
If yes, please specify the website:	Different procuring authorities' websites. Note: The government is working towards having these contracts published on the Treasury's website
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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):	No regulatory basis
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of	Yes

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	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	No
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	No
If yes, please specify and provide the relevant	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):	No regulatory basis
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):	According to clause 25.4 of the Standard-form PPP Project Agreement, for Reporting purposes, during the course of work provisioning, the contractor must submit: (1) a monthly report to the Crown, ... (20 such other reports that may be required..., (3) such additional reports and information relating to the project as the Crown may reasonably request...
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	Yes

implementation after construction?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	According to point 58 of the Standard-form PPP Project Agreement, entitled General indemnities: the contractor shall be responsible for, and indemnify ... from and against all claims, losses and liabilities arising from: ... the performance and non-performance by the contractor of the services ... and other obligations under the agreement
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	Point 5.8 of the Standard-form PPP Project Agreement provides a provision of information and inputs. The contractor is required to provide promptly all data, inputs and other information in relation to the Base Case, and any reviewed Base Case that the Crown may request from time to time
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a

43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Changes in the ownership structure are set out in the Project Agreement. Clauses cover any changes of ownership or risk position and specify the required notice periods and limitations. In some circumstances an ownership lock in period will apply, and the government can withhold consent for changes of ownership in some situations. (Standard Form Project Agreement)
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to clause 91 of the Standard-form PPP Project Agreement, titled change of ownership: 91.1. restriction on change of ownership: (a) ... must not occur during the lock-in period without the prior consent of the Crown, to be given or withheld at the Crown's discretion ... (c) the contractor must at all times remain a wholly owned subsidiary ...
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Contractual provision: http://www.treasury.govt.nz/statesector/ppp/standard-form-ppp-project-agreement Provisions 16.1 and 16.2 are about subcontracting, and 90 and 91 are about assignments and changes of ownership
In other cases, flexibility to change the ownership structure and/or assign the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to the Standard Form PPP Agreement 91.4. (Exceptions): The restrictive rules do not apply in respect of a change in ownership of HoldCo or any shareholder Debt : (1) as part of an intra group transfer, restructure or reorganization ... and there is no resulting change in the ultimate beneficial shareholding; (2) where the transferee is an existing shareholder; (3) where the transferee is a corporate or unincorporated fund managed by the transferor ...
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Contractual provisions: Modifications and renegotiations of the PPP contract are dealt with by the "Changes" provisions of the Project Agreement. (Part 12 of the Standard-form PPP Project Agreement)
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):	No regulatory basis
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a

A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Standard Form PPP: page 133: (b) if the contractor is the sender of the change notice, then the Crown may ...(ii) ... refuse the change if it determines that the change would materially affect the risks or costs to which the Crown is, or may be exposed...
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):	Standard Form PPP: 51. Refinancing
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	The Standard Form PPP provide for extension circumstances of the PPP contract
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	The Standard Form PPP provides for a system to recalculate the price provided for in the PPP contract (for example when the contractor does not fulfill their obligations)
46.3. Can the procuring authority unilaterally modify a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	The Change provisions in the standard-form Project Agreement limit the rights of the Contractor to refuse the change.
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):	Standard contractual provision: The Standard Form PPP provides that one of the extension events is the Force Majeure event; it also provides a list of Force Majeure events as part of the definition (page 18), and also provides for it under "Uninsurable events"

Material Adverse government action .	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Under Clause 8 of the Standard Form PPP titled “Nature of the Crown’s Obligations”, it is made clear that the Crown is not restricted from exercising any of its executive or statutory powers or functions. However, to the extent that it does and that exercise is contrary to an express obligation of the Crown under a Project Document, the Contractor can make a claim.
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	The Standard Form PPP deals with “change in law: which expressly and exclusively apply to the project...”
Refinancing.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Clauses 51 to 53 of the Standard-form PPP Project Agreement expose the permitted refinancing, the restrictions on funders, general provisions, the Crown consent requirement, the permitted and core refinancing conditions...
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Clause 16 of the Standard-form PPP Project Agreement provides the conditions under which a contractor is allowed to sub-contract services
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):	The Project Agreement clearly specifies the dispute resolution procedure, including the rights and obligations of each party, the composition of a Disputes Panel, rights of appeal (under Part 21 of the Standard Form PPP)
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	No
International arbitration	No
Investor-State Dispute Settlement (ISDS)	No
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	Standard contractual provisions: Part 21 of the Standard-form PPP Project Agreement: (1) Local courts: Under 87.4: Where a Dispute has been determined under the Accelerated Dispute Resolution Procedures, and the amount in dispute exceeds the thresholds, ... either party may refer the Dispute to the competent courts of New Zealand for resolution; (2) mediation: Accelerated Dispute Resolution
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	n/a
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
International arbitration	n/a
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
Investor-State arbitration	No
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	n/a
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the	Yes

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?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
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.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Contractual provisions in the Project Agreement and Financier Direct Deed provide that a Financier Direct Deed would be signed between the senior lender and the procuring agency. The terms would be project-specific, but consistent with precedent projects in the NZ market.
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	No
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for	Yes

termination of a PPP contract?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Contractual provision: Part 9 of the Standard-form PPP Project Agreement, titled Termination, provides for all the termination events and procedures
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):	Part 9 of the Standard PPP Project Agreement contains detailed termination provisions and will include a schedule providing for calculation of compensation on termination (depending on the reason for termination)
Unsolicited Proposals	
34. Are unsolicited proposals in New Zealand: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	<p>Government Rules of Sourcing provides for unsolicited proposals in its Rule 15.: j. Unsolicited unique proposal: Where an agency receives an unsolicited proposal, as described in MBIE’s Guide to unsolicited unique proposals, and all of the following apply:</p> <ul style="list-style-type: none"> i. the proposal is unique ii. the proposal aligns with government objectives iii. the goods, services or works are not otherwise readily available in the market place iv. the proposal represents value for money ... <p>Furthermore, the Ministry of Business, Innovation and Employment has published procurement guidance for government agencies that receive unsolicited proposals.</p>

35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	<p>Government Rules of Sourcing provides that unsolicited proposals need to be:</p> <ul style="list-style-type: none"> i. unique ii. aligned with government objectives iii. the goods, services or works are not otherwise readily available in the market place iv. represents value for money ...
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Government Rules of Sourcing provides in Rule 15 that unsolicited proposals need to be:</p> <ul style="list-style-type: none"> i. unique ... iii. the goods, services or works are not otherwise readily available in the market place <p>An unsolicited unique proposal is an approach initiated by a supplier proposing a unique solution which is not available in the market place.</p>
36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>Government Rules of Sourcing provides for unsolicited proposals in its Rule 15.: j. Unsolicited unique proposal: Where an agency receives an unsolicited proposal, as described in MBIE’s Guide to unsolicited unique proposals, and all of the following apply:</p> <ul style="list-style-type: none"> ... ii. the proposal aligns with government objectives
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific	<p>No</p>

procedures to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	No
Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	No
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original	No

proponent has the option to match the winning bid and win the contract).	
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a