



PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN NIGERIA

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>Nigeria operates a federal system of government, thus, both federal and state laws impact and apply to PPP projects. At the federal level, the relevant laws, regulations and policies are as follows: (1) Public Private Partnership Manual of the Infrastructure Concession Regulatory Commission 2012 (the “PPP Manual”); (2) the National Policy on Public Private Partnership 2008 (the “PPP Policy”); (3) Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act 2005 (the “ICRC Act”); (4) the Unsolicited Proposals Guidelines issued by the ICRC; and the Guidance on Contract Disclosure issued by the ICRC (the latter guidelines are still in draft version) (5) Public Procurement Act 2007 (the “Public Procurement Act” (PPA) (6) Public Procurement (Goods and Works) Regulations 2007 and Public Procurement (Consultancy Services) Regulations 2007 (the “Procurement Regulations”); (7) Public Procurement Procedure Manual 2011 (the “Procurement Manual”) (issued by the Bureau of Public Procurement, January 2011); and (8) the Public Enterprises (Privatization and Commercialization) Act 1998.</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	<p>Infrastructure Concession Regulatory Commission (ICRC Act): http://ppptoolkit.icrc.gov.ng/ Bureau of Public Procurement: http://www.bpp.gov.ng/index.php?option=com_joomdoc&view=documents&path=Public_Procurement_Act_2007.pdf&Itemid=614 Nigerian Investment Commission: http://nipc.gov.ng/ Bureau of Public Enterprises: http://www.bpeng.org/sites/bpe/Pages/home.aspx</p>
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	No

Please describe:	0
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	As of date, the bill for the amendment of the PPA that is the “Procurement Act 2007 (Amendment) Bill, 2016” has passed the third stage at the National Assembly, but has not been assented to by the President (Executive Arm) that will make it an Act of the National Assembly. The House of Representatives which is the lower House of the National Assembly has recently conducted a public reading of a Bill for the amendment of the ICRC Act to strengthen and enhance the supervisory role of the ICRC for effective private sector participation in government projects. It is believed that the review will accelerate the process of infrastructure development in the country.
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	No

<p>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.</p>	
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	n/a
<p>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</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	n/a
<p>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</p>	No
<p>If yes, specify and provide the relevant legal/regulatory provisions:</p>	n/a
<p>4. Does the regulatory</p>	No

<p>framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provision (if any):</p>	<p>n/a</p>
<p>5. Please identify the PPP procuring authorities in Nigeria and provide their website(s) (if available):</p>	<p>In Nigeria, all Federal Government Ministries, Departments, and Agencies (MDAs) as well as respective States Governments can procure PPP projects (with support of the Public Investment Division and Project Management Unit of the Ministry of Finance and Economic Planning (www.mofep.gov.ng)). Some of the important PPP procuring authorities include: 1. The Bureau of Public Enterprise (http://www.bpeng.org); 2. The Bureau of Public Procurement (http://www.bpp.gov.ng); 3. The Federal Ministry of Finance (www.finance.gov.ng);4. Federal Ministry of Works (www.works.gov.ng);5. Federal Ministry of Power;6. Federal Ministry of Transport;7. Federal Ministry of Agriculture and Rural Development;8. Federal Capital Territory Administration; 9. Federal Capital Development Agency Nigeria (www.fcda.gov.ng);10. Federal Ministry of Women Affairs;11. Federal Ministry of Lands, Housing and Urban Development (www.landsandhousing.gov.ng);12. Federal Ministry of Interior (www.interior.gov.ng);13. Nigerian Port Authority (NPA) www.nigerianports.org; 14. Federal Airports Authority of Nigeria (FAAN) (www.faannigeria.org)</p>
<p>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</p>	<p>Yes</p>
<p>If yes, please indicate its name, and its website (if available):</p>	<p>At national level the “Infrastructure Concession Regulatory Commission” (ICRC - website: www.icrc.gov.ng) is responsible for formulation of PPP policies, regulating PPPs and is a gatekeeping/approving authority for PPP procurements. It also issues guidelines on PPP policies, processes and procedures (including those for concessions), and acts as a national center of expertise in PPP (including the PPP Resource Centre with the PPP Toolkit), promotion and procurement. It includes the PPP Resource Centre (http://ppptoolkit.icrc.gov.ng/the-enabling-environment-for-ppps/the-nigerian-federal-institutional-framework), and finally the Bureau of Public Procurement is responsible for (i) Development of optimal means of financing PPPs and (ii) Custody of and monitoring performance of concession agreements (http://www.bpp.gov.ng/)</p>
<p>6.1 If yes, what are the main</p>	<p>Yes</p>

responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	
6.2 PPP capacity building for other public authorities.	Yes
6.3 PPP promotion among the public and/or private sectors in national and international forums.	Yes
6.4 Technical support in implementing PPP projects.	Yes
6.5 Identification and selection of PPP projects from the pipeline.	No
6.6 Revision of fiscal risks born by the Government.	No
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	No
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	n/a
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary	Yes

Authority approve the PPP project before launching the procurement process?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Section 6 of the PPP Policy “The Ministry of Finance will have an important role in public financial management of PPP projects, and in evaluating and managing fiscal risks that may result from the terms of the agreements. The Ministry will need to ensure that the forecast costs for the Government-including any subsidies that may be required to make a project financially viable or to ease the transition for poor households to a full cost recovery tariff-are affordable over the life of the contract and within the Medium Term Expenditure Framework. Costs and contingent liabilities will need to be reviewed as the project design and risk valuations are refined during the project preparation and procurement phases, and any significant changes to the initial estimates notified to the Ministry. Together with the Ministry of Finance, the Debt Management Office (DMO) will need to be satisfied that any contingent liabilities are manageable within the Government’s economic and fiscal forecasts. The DMO will need to be consulted in advance by project teams within an MDA which is considering the involvement of multilateral agencies such as IFC, MIGA or IDA in providing guarantees or other financial instruments”. Therefore, the relevant MDA will be required to submit its budget for any PPP project to the Ministry of Finance and the Debt Management Office for review and appraisal. The Budget will only be approved by the Federal Executive Council (FEC) after the MDA has considered any advice or revisions made to the budget by the Ministry of Finance and Debt Management Office. The relevant Ministry; Department or Agency involved in the proposed PPP should consult and engage with the Federal Ministry of Finance (FMOF) prior to commencing PPP projects, in order to minimize the risk and contingent liabilities arising from such projects. The (FMOF) will need to ensure that the forecast costs for the Government-including any subsidies that may be required to make a project financially viable or to ease the transition for poor households to a full cost recovery tariff-are affordable over the life of the contract and within the Medium Term Expenditure Framework. Costs and contingent liabilities will need to be reviewed as the project design and risk valuations are refined during the project preparation and procurement phases. Also the FMOF is notified of any significant changes to the initial estimates on the project. Essentially, the FMOF is consulted all through the life span of the PPP.</p>
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
8.2. Does the Ministry of	<p>No</p>

Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	No
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	(1) The authority that approves the preparation of PPP projects is the relevant Ministry, Department, Agency or Government Owned Enterprise seeking to concession an infrastructure project that would first categorize it as a 'priority project'. At the state level: Office of Public-Private Partnership (OPPP) (2) The Authority that approves procurement of PPP: The Federal Executive Council approves PPP projects before procurement. Section 6 of the National Policy on PPP requires the ICRC to provide opinion to FEC on whether projects submitted for FEC approval meet the requirements of the regulations (Note: last year: Our best contributor confirmed that the ICRC does not approve PPP. Projects are submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency (i.e. Procuring Entities). The ICRC gives support and recommendation to the Federal Executive Council on the projects to be procured as PPP), and finally,(3) (i) The Bureau of Public Procurement and (ii) The respective Tenders Boards of the various ministries, extra-ministerial bodies, government agencies, parastatals or corporations.
and provide the relevant legal/regulatory provisions (if any):	(1) Section 2 (1) of the ICRC Act establish "Every Federal Government Ministry, Agency, Corporation or body shall prioritize its infrastructure projects and such priority projects may be qualified for concession under this Act"(2) Section 2(2) of the ICRC Act that states "The projects mentioned in Subsection (1) of this section shall be submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency prior to entering into any contract under Section 1 of this Act", and finally, (3) Section 16(1) of the PPA provides that no public procurement shall be conducted by a procuring entity until it has obtained a certificate of No Objection to Contract Award from the BPP. Section 17 of the PPA provides that the Ministerial Tenders Board and the Parastatal Tenders Board shall approve the conduct of any public procurement. Section 19 of the same Act provides that a procuring entity shall in implementing its procurement plans, obtain approval of the approval authority (either

	the Ministerial Tenders Board or the Parastatal Tenders Board (whichever is applicable) prior to making an award.
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	A second approval of the priority project for concessioning from The Federal Executive Council is required in order to enter in PPP contract. In fact, Section 2(2) of the ICRC Act that states “The projects mentioned in Subsection (1) of this section shall be submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency prior to entering into any contract under Section 1 of this Act”
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):	The “ICRC Act”, under “12 Step Public Private Partnership Process”, provides in its Step 4 for the engagement of a Transaction Adviser by the procuring authority through a competitive bidding process as required under the PPA. The Transaction Adviser will prepare an Outline Business Case (OBC) that will aim to establish the need for the project and its outline parameters and scope, including its costs and bankability.
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>	<p>n/a</p>
<p>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>There is no specific procedure to ensure consistency of PPPs with other public investment priorities. However, Section 2 of the ICRC Act provides that every Federal Government Ministry, Agency, Corporation or body shall prioritize its infrastructure projects and such priority projects may be submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency. To this extent, there appears to be some integration of the prioritization of PPP projects and public investment projects in practice.</p>
<p>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of</p>	<p>No</p>

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?	No
If yes, please specify:	n/a
If no, please elaborate:	There is no explicit provision in the regulatory framework requiring such prioritization. In practice, prioritization is not always done. According to our PO, MDAs are now being encouraged to follow or adopt this practice for effective coordination and synergy.
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)	According to Section 9 of the PPP Policy Project Development of the PPP process will include the "(...) preparation of economic, social and environmental cost benefit analysis (...)".

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	The Socio-economic Analysis is done in practice when identifying and preparing a PPP in Nigeria
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	According to Section 9 of the PPP Policy Project Development of the PPP process will include the “budget allocation within the National Development Plan and, subsequently, the Medium Term Expenditure Framework (MTEF)”. This aspect is further discussed in paragraph 2.2 regarding specifically the affordability of the PPP Policy (Part 2 - Value for Money). Furthermore, Section 16(1)(b) of the PPA provides that no procurement proceedings shall be formalized until the procuring entity has, among other matters, ensured that funds are available to meet the obligations.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	According to our contributors, the affordability assessment is not done in practice when identifying and preparing a PPP
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Part 3 of the PPP Policy contains a Supplementary Note on Project Risk and PPP with the Federal Government with paragraph 3.1 expressly stating “The preparation of a PPP project-and the business cases that support the procurement or investment decisions-require that project risks are identified and quantified wherever possible. The process needs to be systematic and recorded, and will often involve technical advisers”. Additionally, Paragraph 4 of the ICRC PPP Process issued 17 February, 2014 requires the preparation of a Business Case prior to the procurement process (which, according to our best contributor, would certainly contain a risk matrix).

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	According to our contributors, a risk identification, allocation and assessment is not done in practice when identifying and preparing a PPP
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)	According to Section 9 of the PPP Policy Project Development of the PPP process will include the “value for money (Value for Money) and affordability testing of different procurement options”. Part 2 of the PPP Policy contains a Supplementary Note specifically on Value for Money where these provisions are detailed.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	According to our contributors, a comparative assessment is not done in practice when identifying and preparing a PPP
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	Paragraph 4 of the ICRC PPP Process issued 17 February, 2014 provides that a PPP over Federal Government Infrastructure would typically follow the steps below: A Transaction Adviser (TA) would be engaged by the MDA through competitive bidding process as required under the Public Procurement Act of 2007, to produce the report that would show the bankability of the project. This report is called an Outline Business Case (OBC) (A document prepared by the MDA’s TA that aims to establish the need for the project and its outline parameters and scope, including costs and bankability demonstration).
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a

Is the assessment done in practice?	No
Details:	According to our contributors, a financial viability or bankability assessment is not done in practice when identifying and preparing a PPP
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)	Section 18(c) of the Public Procurement Act requires the procuring entity to, in planning its procurement, carry out appropriate market and statistical surveys to inform preparation of analysis of cost implications of the proposed procurement. Also, according to Section 9 of the PPP Policy Procurement of the PPP process may include "market consultation, if appropriate".
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	According to our contributors, a market assessment is not done in practice when identifying and preparing a PPP
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	S.2 EIA Act provides that an environmental impact assessment is to be undertaken prior to the undertaking of any project. The definition of project under s. 61 is broad enough to capture a PPP project, especially when such project is described on the Mandatory Study List of the Schedule to the EIA Act (s. 12).
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	According to our contributors, an environmental assessment is not done in practice when identifying and preparing a PPP
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a

Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract	Yes

in the request for proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
If no, please elaborate	n/a
14.1. Are the tender documents published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and please specify the website:	n/a
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other	No

Government entity)	
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)	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
16.5. Obtaining the required right of way: 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)	Section 13 of the ICRC Act provides that “every contractor to whom any concession has been granted under this Act shall have a right of way or easement in respect of any land or property near to or bordering the project site or facility as may be reasonably necessary for the proper implementation of the project under this Act.”
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation	No

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.	
If yes, please provide the relevant legal/regulatory provisions (if any):	No
The bid evaluation committee members require sufficient qualification without specific details.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Part 1, Article 3.2 of the PPP Policy provides that: "...The evaluation of Expressions of Interest needs to be rigorous and use only the published evaluation criteria. The evaluation committee should include suitably qualified individuals and at least one person experienced in public procurement.</p> <p>In addition, section 19 (b) of the ICRC Act stipulates that a procuring entity shall, in implementing its procurement plans invite two credible persons as observers, each representing a recognized:</p> <ul style="list-style-type: none"> a. private sector professional organization whose expertise is relevant to the particular goods or service being procured, and b. non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations; <p>Finally, S. 22 of the PPA establishes a Tenders Board, which can create a technical evaluation sub-committee where there is need for pre-qualification, charged with the responsibility of evaluation of bids. The sub-committee shall be made up of professional staff of the procuring entity and the Secretary of the Tenders Board who shall chair the Committee.</p>
The bid evaluation committee members are not required to have any specific qualifications.	No
Please elaborate and provide examples:	n/a

19. Does the procuring authority issue a public procurement notice of the PPP project?	<p>Yes</p>
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Section 4 of the ICRC Act provides that upon approval of a project or contract, the Federal Government Ministry, Agency, Corporation or body concerned shall publish in at least three national newspapers and such other means of circulation, an invitation for open competitive public bid for such project or contract. Paragraphs 36.1 and 37.1 of the Procurement Procedures Manual provide for procurement notices (General and Special Procurement Notice) to be issued by the procurement entity. Furthermore, Paragraphs 7.1 and 7.2 of the Procurement Procedures Manual also provide for the publication of the procurement notices and solicitations on a public notice board and on the internet website (if any) of the procuring entity. Also, Section 25 (2) of the Public Procurement Act provides that “Every invitation to an open competitive bid shall : (i) in the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognized publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.</p>
19.1. If yes, is the public procurement notice published online?	<p>Yes</p>
If yes, please specify the website:	<p>www.bpp.gov.ng</p>
20. Are foreign companies prohibited from participating in the bidding process?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	<p>Yes</p>

If yes, please provide the relevant legal/regulatory provisions (if any):	Section 25 (2) of the Public Procurement Act provides for publication “not less than six weeks before the deadline for submission of the bids for the goods and works”.
and the time in calendar days:	42
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	Yes
Relevant legal/regulatory provision (if any)	Section 24 of the PPA states that: “Except as provided by this Act, all procurements of goods and works by all procuring entities shall be conducted by open competitive bidding.” Furthermore, Section 4 (1) of the ICRC Act 2005 states that the Federal Government Ministry or Agency shall invite open competitive public bid for the project or contract approved under the Act.
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Section 40 of the PPA permits restricted tendering in certain circumstances. It states that: “the procuring entity may for reasons of economy and efficiency engage in procurement by means of restricted tendering if the goods and services are only available from a limited number of suppliers or contractors or if the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods or services to be procured”.
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	No

Relevant legal/regulatory provision (if any)	n/a
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.6. Direct negotiation with only one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Section 42 of the PPA permits direct negotiation with only one candidate in certain instances such as where the contractor has exclusive rights to provide the goods, works or services.</p> <p>Furthermore, section 5 of the ICRC Act, provides for circumstances where competitive bidding may not be necessary after an advertisement in accordance with section 4 above has been complied with. The procuring authority may deal with only one candidate where only one contractor or project proponent applied or submits a bid or where only one contractor or project proponent meets the pre-qualification requirements. If only one project proponent meets the pre-qualification requirements, then the Ministry or Agency may undertake direct negotiation without competitive bidding for any contract to be entered into.</p>
22.7 Other. Specify:	Emergency Procurement
Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Section 43 of the PPA also permits an emergency procurement in certain situations such as where the country is seriously threatened by an act of war.
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>Section 46 of PPA provides the elements that a Request for proposals shall include, and it states at the end that: "The procuring entity shall provide the same information to every consultant requested to submit proposals".</p> <p>Furthermore, Section 41.4 of the Public Procurement Manual provides a list of elements that an Open Competitive Bid should include.</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):	Section 23 (1) of the PPA which provides that the procuring entity shall set out the precise criteria upon which it seeks to give consideration to the applications; and Sections 44 and 45 of the Public Procurement (Goods and Works) Regulations 2007 which provide that the invitation for pre-qualification shall contain a summary of the criteria and procedures for evaluation.
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):	No regulatory basis
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):	Section 23(4) of the Public Procurement Act of 2007 provides that “The procurement entity shall respond to any request by a supplier, contractor or consultant for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to prequalify”.
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring	Yes

authority disclose those questions and clarifications to all potential bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 23(6) of the PPA requires that “The response to any request that might reasonably be expected to be of interest to other supplier, contractor or consultant shall, without identifying the source of the request, be communicated to other suppliers or contractors or consultants provided with the prequalification documents by the procuring entity”.
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:	Our contributors explained that the Freedom of Information Act 2011, allow the public to demand for and obtain information about the questions asked by the bidders and clarifications provided by the procuring authority regarding the tender notice, and this happens in practice
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):	Para. 3.2 of Part 1 of the PPP Policy acknowledges that it may be helpful for the procuring entity to organize a bidders’ conference to provide further background (including possibly a site visit) and to demonstrate the procuring authority’s commitment to the project. These conferences may provide an opportunity for firms to identify potential bidding partners or advisers. However, the bidders’ conference could be restricted to the prequalified bidders, and may be held after the tender documents have been issued. The conference could serve as an opportunity to provide further clarification of the requirements of the project and the procurement process.
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to para. 2.3 of Part 1 of the PPP Policy, a record of any questions and answers at the pre-bid conference should be made and subsequently circulated to all the tenderers
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	Our contributors explained that the Freedom of Information Act 2011, allow the public to demand for and obtain information about the questions asked by the bidders and clarifications provided by the procuring authority during the pre-bidding conference, and this happens in practice
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):	According to Paragraph 4.3 of Part 1 of the PPP Policy “All of the pricing information, including financing costs, will be included in a financial model which will be submitted as part of the bid. This will be used to calculate the annual payment that the Authority will make (or, in the case of a concession, the tariffs to be paid by the user and/or the payments to be made to the Authority from the net project revenues) for the services provided”.
If no, please elaborate:	0
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):	Section 32(1) of the Public Procurement Act provides that “For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents”. Section 3.2 of Part 1 of the PPP Policy on states that “(...) The evaluation of

	Expressions of Interest needs to be rigorous and use only the published evaluation criteria (...)"
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	Yes
Please specify and provide the relevant legal/regulatory provisions (if any):	According to Section 111 of the Public Procurement, Goods and Works Regulations 2007, where the sole proposal submitted is: a) of good quality; b) meets the requirements of bid documents; c) is technically and financially responsive compared to market prices; d) and otherwise in order, the bid can be accepted, and following evaluation, awarded to the sole bidder. In addition, pursuant to Section 86, where only one proposal is received, it may still be considered that a competitive procedure has taken place. The Procuring entity may evaluate the sole consultant's proposal, and if satisfactory, invite it for contract negotiations, or continue with the one remaining candidate to negotiations and contract award.
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not award a PPP contract if only	No

one proposal is submitted.	
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Section 19(1)(j) of Public Procurement Act mandates to “Announce and publicize the award in the format stipulated by this Act and guidelines as may be issued by the Bureau from time to time. In this sense, Paragraph 64 of the Procurement Procedures Manual provides that the award of all contracts should be notified to the Bureau of Public Procurement and published in two national dailies.
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	www.bpp.gov.ng/
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):	Section 56 of the PPM requires that the procuring entity notify all bidders the result of the procurement process.
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Paragraph 56.3 of the Procurement Procedures Manual provides that: Once the Procuring Entity has evaluated the tenders and made a determination on the lowest evaluated responsive tender, and a decision has been made about the award, the Procuring Entity should NOT negotiate the award with the successful bidder without approval from the relevant authorities.

31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	The restriction on negotiations with the selected bidder between the award and the signature of the PPP contract is always respected in practice in Nigeria
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	No
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	No

with the full PPP contract without including all its annexes and appendixes	
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?	No
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):	Sections 10 and 12 of the Infrastructure Concession Regulatory Commission Act provide that: 10. the Ministry in charge of the project and the ICRC are required to conduct regular joint inspections of the project until the end of the contract; 12. requires the Federal Government Ministry, Agency, Corporation or body in charge of the project to supervise the project in respect of which the concession has been granted by it.
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a	Yes

PPP contract management team	
Relevant legal/regulatory provisions (if any):	<p>The Nigeria Public Private Partnerships Manual provides that in order to ensure effective management of PPP contracts the public authority will need a dedicated Contract Management Team comprised of experienced personnel. At minimum, a typical Contract Management Team should consist of the following personnel: Project officer, Accounting officer, Technical advisory team. However, since we were unable to access that manual online, we followed up with our best contributor to confirm the wording of the Manual. However, our best contributor answered that they were also unable to access a copy of the Manual online. However, based on their knowledge of the National Manual and the provisions of the Lagos State Manual (which is materially similar to the National Manual), the establishment of a contract management team is not compulsory. It is recommended to procuring agents as best practice. Moreover, the Public Procurement Manual issued by the Bureau of Public Procurement does not provide for the establishment of a contract management team. After following up, one of our best contributors confirmed that The Public Procurement Manual does not directly establish a PPP contract management team. However, there is a framework for contract management under the Public Procurement Manual. The Procurement function or the Technical Department concerned must ensure that routine monitoring of all current contracts is maintained so that prompt remedial or preventive action can be taken when problems arise or are foreseen. Sections 87 and 88 of the Public Procurement Manual. However, our other best contributor explained that the Public Procurement Manual contemplates the management of contract implementation by a Procurement & Stores Department or Technical Department (as appropriate) in the case of goods, and by a Supervising Engineer hired by the procuring entity in the case of services. The Manual does not expressly stipulate the technical experience of such Engineer, or personnel in such Department. From a practical perspective however, the Engineer and Department will be experienced in their respective mandates. The relevant provisions of the Manual are as follows: Paragraph 87.2: Contract supervision and administration for goods will be undertaken by the Procurement & Stores Department or the Technical Department as appropriate. Supervision and administration is straightforward in most contracts for goods. Monitoring delivery schedules, processing of documents and organizing/performing the inspection of goods are essential to ensure that the correct goods are delivered on time. Paragraph 87.3: Contract supervision and administration of works contracts is usually more complex than for goods due to the nature of works, the fact that they are usually implemented in the outside, in remote areas, and that the circumstances (soil, climate) may be different than what was foreseen at the time the detailed design of the works was made. The daily control and supervision of such contract is usually the responsibility of a Supervising Engineer appointed or hired by the Procuring Entity. The Procuring Entity must therefore ensure that it is kept informed of progress and problems which arise through routine reports. The Supervising Engineer is obliged to obtain approval from the Procuring Entity (the Procuring Entity) for major contract management decisions (e.g. issuing variation orders above a specified value, granting extension of time, approving additional payments, issuing taking-over or defect liability certificates). Where necessary, it is advisable for the procuring entity to establish a multi discipline monitoring and evaluation team for periodic field inspection and monitoring of projects.</p>
Participation of the members of the PPP contract	<p>No</p>

management team in the PPP procurement process and/or vice versa	
Relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document	No
Relevant legal/regulatory provisions (if any):	n/a
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	No
Relevant legal/regulatory provisions (if any):	n/a
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	No
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one):	Yes

<p>The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>The Nigeria Public Private Partnerships Manual provides that in order to ensure effective management of PPP contracts the public authority will need a dedicated Contract Management Team comprised of experienced personnel. At minimum, a typical Contract Management Team should consist of the following personnel: Project officer, Accounting officer, Technical advisory team. However, since we were unable to access that manual online, we followed up with our best contributor to confirm the wording of the Manual. However, our best contributor answered that they were also unable to access a copy of the Manual online.</p> <p>However, based on their knowledge of the National Manual and the provisions of the Lagos State Manual (which is materially similar to the National Manual), the establishment of a contract management team is not compulsory. It is recommended to procuring agents as best practice. Moreover, the Public Procurement Manual issued by the Bureau of Public Procurement does not provide for the establishment of a contract management team.</p> <p>After following up, one of our best contributors confirmed that The Public Procurement Manual does not directly establish a PPP contract management team. However, there is a framework for contract management under the Public Procurement Manual. The Procurement function or the Technical Department concerned must ensure that routine monitoring of all current contracts is maintained so that prompt remedial or preventive action can be taken when problems arise or are foreseen. Sections 87 and 88 of the Public Procurement Manual.</p> <p>However, our other best contributor explained that the Public Procurement Manual contemplates the management of contract implementation by a Procurement & Stores Department or Technical Department (as appropriate) in the case of goods, and by a Supervising Engineer hired by the procuring entity in the case of services. The Manual does not expressly stipulate the technical experience of such Engineer, or personnel in such Department. From a practical perspective however, the Engineer and Department will be experienced in their respective mandates.</p> <p>The relevant provisions of the Manual are as follows:</p> <p>Paragraph 87.2: Contract supervision and administration for goods will be undertaken by the Procurement & Stores Department or the Technical Department as appropriate. Supervision and administration is straightforward in most contracts for goods. Monitoring delivery schedules, processing of documents and organizing/performing the inspection of goods are essential to ensure that the correct goods are delivered on time.</p> <p>Paragraph 87.3: Contract supervision and administration of works contracts is usually more complex than for goods due to the nature of works, the fact that they are usually implemented in the outside, in remote areas, and that the circumstances (soil, climate) may be different than what was foreseen at the time the detailed design of the works was</p>

	<p>made. The daily control and supervision of such contract is usually the responsibility of a Supervising Engineer appointed or hired by the Procuring Entity. The Procuring Entity must therefore ensure that it is kept informed of progress and problems which arise through routine reports. The Supervising Engineer is obliged to obtain approval from the Procuring Entity (the Procuring Entity) for major contract management decisions (e.g. issuing variation orders above a specified value, granting extension of time, approving additional payments, issuing taking-over or defect liability certificates). Where necessary, it is advisable for the procuring entity to establish a multi discipline monitoring and evaluation team for periodic field inspection and monitoring of projects.</p>
<p>The PPP contract management team members are required to meet sufficient qualification without specific details.</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The PPP contract management team members are not required to meet any specific qualifications.</p>	No
<p>Please elaborate and provide examples:</p>	n/a
<p>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	No regulatory basis
<p>42.1. If yes, is the PPP contract construction performance information made</p>	No

available to the public?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	No
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	(1) Section 12 of the ICRC Act provides that the relevant procuring entity shall supervise the project in respect of which a concession has been granted by it. (2) Also, paragraph 88.1 of the Procurement Procedure Manual provides that the supplier, contractor, service provider or consultant's performance against the contract must be monitored on a routine basis. Furthermore, (3) Section 7.2 of the Nigeria Public-Private Partnerships Manual provides for a Contract Monitoring Framework. It goes on to state that given the large number of agreements that are involved in a typical PPP project, the monitoring of a PPP Company's compliance requires significant attention and resources from government. A best practice is to set-up a Contract Monitoring Framework which covers the following major elements: (i) Risk Mitigation: the process of identifying, monitoring and managing risk to minimize and mitigate the project risks. (ii) Service Delivery and Performance: Ensuring that the PPP Company is achieving required service delivery to contractually defined performance standards. (iii) Relationship Management: Managing the structure of authority and accountability within the PPP service delivery framework. (iv) Contract Administration: Following administrative processes required to make sure all procedural and documentation requirements issues, such as periodic reporting and service quality reviews, are followed. (There are two major components - a Contract Management Team and Contract Management Plan - which need to be established for government's overall contract management framework). (4) Finally, Section 20 of the ICRC Act empowers the ICRC to monitor compliance with the terms and conditions of any concession agreement.
43.1. If yes, which of the following	No

tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The PPP contract performance information must	No

be available to the public	
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?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
45.1. If yes, which of the following circumstances are specifically	n/a

<p>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>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</p>	<p>n/a</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>In other cases, flexibility to change the ownership structure and/or assign the contract.</p>	<p>n/a</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the</p>	<p>Yes</p>

modification or renegotiation of the PPP contract (once the contract is signed)?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Part 3, Section 2.6 of the ICRC National Policy on PPPs 2008 provides as follows; “Because PPP contracts are long-term, it is likely that the authority’s requirements will need to be modified at some point to provide levels of service that are appropriate to changing political or economic requirements. The extent of any changes should be reasonable and in proportion to the scope of the original requirement and the project team should try to anticipate the changes that may be required and factor them into the project requirements during the project preparation phase. However, in the event that changes to the requirement become necessary during the contract term, the authority will need to provide compensation or adjust payment to the contractor if additional construction or higher maintenance and operational costs result from the change. Some of these costs may be passed on to users through an adjustment to the tariff where appropriate. The contract will protect the position of the authority and may require additional works or services to go through a separate tender process or be benchmarked against market prices in order to ensure that the contractor’s costs are fair and reasonable. The Contractor must comply with all relevant legislation throughout the contract period, even if this results in higher costs. However, if new legislation discriminates against the contractor, or PPP projects generally, then the contractor may seek compensation”. Paragraph 88.3 of the Procurement Procedure Manual regulates Contract Amendment and states: Contract amendment may become necessary as a result of the application of additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices. The Supervising Department will: - Identify and agree with the Supplier, Contractor, Service Provider, or Consultant the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply; - Prepare a draft contract amendment document for approval by the relevant authority together with a report justifying the reasons for the amendment; - Obtain approval from the relevant authority (and no-objection to amendment of Contract terms from the Bureau); - Distribute copies in the same way as the original contract.</p>
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>According to para. 88.3 of the Manual: The Bureau of Public Procurement would be required to approve any amendments that would lead to an increase in the original amount of the contract price by more than 15%.</p>
46.2. If yes to question 46, which of the following circumstances are	<p>No</p>

specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the financial and/or economic balance of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Clause 88.3 of the Procurement Procedure Manual provides that Contract amendment may become necessary as a result of the application of additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices.</p> <p>Also regulation 20 of the Public Goods and Works Regulations 2007 provides that if an amendment to the contract, or change order, or extension would increase the original amount of the contract price by more than 15%, BPP has the right to approve or reject such changes, and in the latter case, to propose alternative less costly modifications or recommend a reduction in the scope and size of the contract.</p>
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant	<p>Clause 88.3 of the Procurement Procedure Manual provides that Contract amendment may become necessary as a result of the application of additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from</p>

legal/regulatory/standard contractual provisions (if any):	<p>accepted increases or decreases in prices.</p> <p>Also regulation 20 of the Public Goods and Works Regulations 2007 provides that if an amendment to the contract, or change order, or extension would increase the original amount of the contract price by more than 15%, BPP has the right to approve or reject such changes, and in the latter case, to propose alternative less costly modifications or recommend a reduction in the scope and size of the contract.</p>
46.3. Can the procuring authority unilaterally modify a PPP contract?	<p>No</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
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	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Paragraph 4.5 of the National Policy on Public Private Partnerships states that some events, such as war, terrorism, civil unrest, or extreme weather may result in the authority providing compensation to the contractor. Other events may result in the financial costs being shared. The allocation of Force Majeure risks will depend on the nature of the underlying asset and may be finalized by negotiation during the procurement phase of the project.</p> <p>The drafting of force majeure clauses in a contract and other means of allocating risk will eventually be standardized in consultation with public and private sector representatives through the issue of guidance by ICRC, which has a statutory responsibility to ensure effective implementation of the Government's policy on PPP.</p>
Material Adverse government action	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/st	<p>In practice, there is usually a clause providing for the consequences of a Material Adverse Government Action in PPP contracts. The PPP contract will include provisions to the effect that the procuring authority and the private partner would agree on the variations to the PPP contract and/or other measures to be taken to put the private partner in the same</p>

andard contractual provisions (if any):	financial position as it would have been in had the Material Adverse Government Action not occurred.
Change in the Law.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Paragraph 2.6 of the National Policy on Public Private Partnerships 2008 provides that the Contractor must comply with all relevant legislation throughout the contract period, even if this results in higher costs. However if new legislation discriminates against the contractor, or PPP projects generally, then the contractor may seek compensation.
Refinancing.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Paragraph 50.3(h) of the Procurement Procedures Manual provides that the bidding document should indicate the permitted levels of subcontracting and whether such subcontractor should be named on the bid; any bid not complying with such requirement may be treated as non-responsive. Where such indication is however not contained in the bidding document, the procuring authority is required to review the extent of subcontracting of major works by the bidder and if found to be excessive such that it affects the main responsibilities of the bidder, the bid may be considered as non-responsive.
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):	Section 16 (26) of the Procurement Act provides that “all procurement contract shall contain provisions for arbitral proceedings as the primary form of dispute resolution.

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)	Section 16 (26) of the Procurement Act provides that “all procurement contract shall contain provisions for arbitral proceedings as the primary form of dispute resolution.
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):	Section 31(1) of the Arbitration and Conciliation Act provides that an arbitral award shall be recognized as binding. Furthermore, section 32 of the PPA Act, shall, upon application in writing to the court, be enforced by the court.
International arbitration	Yes
If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):	Section 51 (1) of the Arbitration and Conciliation Act provides that an arbitral award shall, irrespective of the country in which it is made, be recognized as binding and subject to section 32 of the Act, shall, upon application in writing to the court, be enforced by the court.
Investor-State arbitration	Yes
If yes, please provide the relevant legal/	Nigeria is part of ICSID Convention

regulatory provisions/standard contractual provisions (if any):	
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Clause 4.4 ICRC National PPP Policy provides that “There will normally be a Direct Agreement between the lenders and the Authority giving them the option to step in and replace the contractor prior to any termination for contractor default”
50.1. If yes, which of the following options best	No

describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	
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):	<p>Clause 4.4 of the PPP Policy provides that “There will normally be a Direct Agreement between the lenders and the Authority giving them the option to step in and replace the contractor prior to any termination for contractor default”.</p>
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	No

establish the grounds for termination of a PPP contract?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Unsolicited Proposals	
34. Are unsolicited proposals in Nigeria: (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	No

done in practice, skip to section F)	
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	<p>The Infrastructure Concession Regulatory Commission Guidelines for Implementing Unsolicited Proposals for PPPs in Nigeria (the “ICRC Guidelines”): (http://ppptoolkit.icrc.gov.ng/wp-content/uploads/2012/09/Guide-for-Implementing-Unsolicited-Proposals.pdf): Clause 3.2 indicates a specific procedure to evaluate unsolicited proposals and states as the first condition for an unsolicited proposal to be implemented that “(a) The project serves a credible public interest; (b) The project is in line with the national development goals of the relevant MDA.”</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>According to Paragraph 3.2 of the Infrastructure Concession Regulatory Commission Guidelines for Implementing Unsolicited Proposals for PPPs in Nigeria, the procedure is as follows:</p> <p>(1) The Unsolicited proposal is submitted to and reviewed by the relevant Ministry, Department or Agency (MDA) with oversight for the relevant sector.</p> <p>(2) The MDA is required to review the proposal to determine that it meets the following criteria: (a) The project serves a credible public interest; (b) The project is in line with the national development goals of the relevant MDA; (c) The project falls within the category of critical infrastructure; (d) The project is viable and does not require viability gap funding; and (e) The project proponent possesses the requisite competence and profile to implement the project.</p> <p>(3) Following the review of the proposal by the MDA, the unsolicited proposal is then forwarded to ICRC for its review and issuance of “No Objection”, if the proposal is satisfactory</p>
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
36. Which of the following options best describe how	<p>Yes</p>

<p>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>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Paragraph 3.2 of the Infrastructure Concession Regulatory Commission Guidelines for Implementing Unsolicited Proposals for PPPs in Nigeria, the procedure is as follows:(1) The Unsolicited proposal is submitted to and reviewed by the relevant Ministry, Department or Agency (MDA) with oversight for the relevant sector. (2) The MDA is required to review the proposal to determine that it meets the following criteria: (a) The project serves a credible public interest; (b) The project is in line with the national development goals of the relevant MDA; (c) The project falls within the category of critical infrastructure; (d) The project is viable and does not require viability gap funding; and (e) The project proponent possesses the requisite competence and profile to implement the project. (3) Following the review of the proposal by the MDA, the unsolicited proposal is then forwarded to ICRC for its review and issuance of “No Objection”, if the proposal is satisfactory.(4) Technical and financial due diligence will then be carried out to ascertain the capability of the project proponent in implementing the project, if selected.(5) Following the issuance of “No Objection” from ICRC and success of the project proponent from the due diligence exercise, the proposal may then be approved at the ministerial level.(6) The project proponent is then issued a formal acknowledgement as the project author and the project commences to a competitive bidding stage.(7) Following the competitive procurement process (EOI, RFP, etc.) the project proponent is then requested to submit a Best and Final Offer, along with the preferred bidder.(8) The successful bidder is then determined by the most economically and financially viable submission</p>
<p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	<p>No</p>

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):	Paragraph 2.2 of the ICRC Guidelines on Unsolicited Proposals provides that “The overarching principle is that all unsolicited proposals are channeled to a transparent and competitive process where challengers have a free chance of winning the tender. The Swiss Challenge System will be applied to allow submission of competing bids, to all qualifying unsolicited proposals, by other potential proponents, via a transparent process. This system however recognizes the investments made by the Project Proponent (PP) in preparing the proposal to the requisite OBC standard, as such the original proponent is granted the right to counter-match the best offer and secure the contract. Also, Paragraph 3.2 of the ICRC Guidelines on Unsolicited Proposals provides that the project shall commence to a competitive bid stage upon the issuance of a formal acknowledgment of the Project proponent as the Project Author.
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant	Section 48 of the Public Procurement Act provides that the procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than 30 days between the issue of the notice or request and the deadline for submission of proposals.

legal/regulatory provisions (if any):	
and the time in calendar days:	30
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	No
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	Yes
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	Paragraph 2.2 of the ICRC Guidelines provides that: the Swiss Challenge System will be applied such that the original proponent is granted the right to counter-match the best offer and secure the contract