



PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN PHILIPPINES

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>Section 20, Article II of the Philippine Constitution states that “The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.”</p> <p>The regulatory framework for PPPs in the Philippines is made primarily of the following texts : (i) Republic Act No. (“RA”) 6957, entitled “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by The Private Sector and for Other Purposes”, as amended by RA 7718 (hereinafter the BOT Law) ; (ii) Revised implementing rules and regulations of R.A. no. 6957, “an act authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector and for other purposes”, as amended by R.A. no. 7718 (hereinafter the IRR) ; (iii) Executive Order No. (“EO”) 8, series of 2010, as amended by EO 136, series of 2013, related to the PPP center (iv) Executive Order No. 78 Mandating the inclusion of provisions on the use of alternative dispute resolution mechanisms in all contracts involving public-private partnership projects, build-operate and transfer projects, joint venture agreements between the government and private entities and those entered into by local government units</p> <p>Many policy circulars issued by the PPP Governing Board detail those texts, in particular (i) Guidelines on the identification, selection and prioritization of public private partnerships projects, Policy Circular No 02-2015, PPP Governing Board, 25 march 2015 (Circular 02-2015) ; (iii) Institutionalization of best practices in the PPP process, Policy Circular No. 03-2015, 25 march 2015, PPP Governing Board ; (iv) Policy Circular No. 06-2015, Termination Payment for PPP Projects, 25 march 2015, PPP Governing Board (Circular 06-2015) ; (iv) Policy Circular No. 07-2015, PPP Monitoring Framework and Monitoring Protocols, PPP Governing Board ; (v) Policy Circular No. 01A-2016, March 7, 2016, Guidelines and procedures for the appraisal of public-private partnership (PPP) projects ; (vi) Policy Circular No. 09A-2016, June 21, 2016, which amends Policy Circular No. 09-2016-Assessing Value for Money in PPP Projects (vii) Policy Circular No. 10-2016, June 21, 2016, Policy on public consultation and engagement for PPP projects.</p> <p>The following analysis will be based on the regulations above.</p> <p>Other laws, regulation and issuances that impact PPP procurement include: (i) the National Economic and Development Authority (NEDA) joint ventures (JVs) for Government-Owned and Controlled Corporations, (ii) various PPP Governing Board Policy Circulars such on Viability Gap Funding (Circular No.</p>

	<p>04-2015, March 2015), Appointment of Probity Advisors for PPP Procurement (Circular No. 05A-2016, March 7, 2016), and Managing Government Employees Affected by PPP Projects (Circular No. 08-2016), (iii) Generic Preferred Risks Allocation Matrix (GPRAM) 2014, (iv) The Local Government Code (RA 7160) and its implementing rules and regulations, and various circulars of the Department of Interior and Local Government on PPPs, including enjoining all local chief executives to establish a PPP Sub-Committee in the Local Development Councils, (v) NEDA, Department of Finance (DOF), Department of Budget and Management (DBM) and BOT Center (now PPP Center) Guidelines in the Processing of Receipt Arising from BOT Transactions and its Variant Schemes (Joint Circular No. 03-01, December 2003), and (vi) Guidelines on the Preparation, Review and Approval and Implementation of ICT Projects Proposed for Financing Under BOT Law. The list is not exhaustive; there are other laws and guidelines that applies to all infrastructure projects that can also impact PPPs such as the right of way act (RA 10752), various government guidelines in the formulation of investment priorities and allocating budget appropriations, and expediting implementation of infra projects by prohibiting lower courts to issue temporary restraining orders (RA 8975).</p>
<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>	<p>The BOT and IRR are available on: http://ppp.gov.ph/wp-content/uploads/2015/01/BOT-IRR-2012_FINAL.pdf Policy circulars are available on the following: https://ppp.gov.ph/?page_id=28622</p>
<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?</p>	<p>Yes</p>
<p>Please describe:</p>	<p>(i) Policy Circular No. 01A-2016, March 7, 2016, Guidelines and procedures for the appraisal of public-private partnership (PPP) projects, supersedes and replaces Policy Circular No. 01-2015 (ii) Policy Circular No. 08A-2016 June 21, 2016, Policy on managing government employees affected by PPP projects (iii) Policy Circular No. 09A-2016, June 21, 2016, Policy on assessing value for money in public-private partnership (PPP) projects, Policy Circular No. 09-2016-Assessing Value for Money in PPP Projects (iv) Policy Circular No. 10-2016, June 21, 2016, Policy on public consultation and engagement for PPP projects (v) Policy Circular No. 05B-2017, February 14, 2017, Policy circular on appointment of probity advisors for PPP procurement</p>

2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	Legislative amendments are in preparation.
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No

If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes
If yes, please specify and provide the relevant legal/regulatory provision (if any):	<p>Under Section 13.2 of the R.A. 7718 (“BOT Law”) IRR, the Philippine Government may grant project proponents the following investment incentives:</p> <p>(a) Projects undertaken through Contractual Arrangements authorized under these Revised IRR costing more than PhP 1.0 billion shall, upon registration with the Board of Investments (“BOI”), be entitled to incentives as provided for under the Omnibus Investment Code.</p> <p>Fiscal Incentives</p> <ul style="list-style-type: none"> - Income tax holiday; - Exemption from taxes and duties on imported spare parts; - Exemption from wharfage dues and export tax, duty, impost and fees; - Reduction of the rates of Duty on Capital Equipment, Spare parts and Accessories by Virtue of EO 528; - Tax exemption on breeding stocks and genetic materials; - Tax Credits; and - Additional deductions from Taxable Income; <p>Non-Fiscal Incentives</p> <ul style="list-style-type: none"> - Employment of Foreign Nationals; - Simplification of customs procedures; - Importation of consigned equipment; - Privilege to operate a bonded manufacturing/trading warehouse; <p>(b) Projects undertaken through Contractual Arrangements authorized under these Revised IRR costing PhP 1.0 billion or less may, upon registration with BOI, avail of incentives provided for under the Omnibus Investment Code subject to inclusion of the project activity or sector in the current Investment Priorities Plan (“IPP”) of BOI.</p> <p>(c) Projects undertaken through Contractual Arrangements authorized under these Revised IRR shall also be entitled to other incentives, as provided under existing laws, such as, but not limited to incentives under P.D. 535 (1974), otherwise known as the “Tourism Incentives Program of 1974,” and R.A. 7156, otherwise known as the “Mini-Hydroelectric Power Incentives Act”.</p> <p>(d) LGUs may provide additional tax incentives, exemptions, or reliefs, subject to the provisions of the Local Government Code (LGC) of 1991 and other pertinent laws.”</p> <p>Local Government Units (LGUs) may also provide additional tax incentives,</p>

	<p>exemptions, or reliefs, subject to the provisions of the Local Government Code (Republic Act 7160). While there is no specific tax regime for PPP transactions, the above mentioned tax incentives are available provided that the implementing agency/proponent meet other conditions as provided by the specific law. Under the same light, there are tax incentives under Sec. 15 and 16, Article IV of RA 9182, otherwise known as Special Purpose Vehicle Act of 2002.</p>
<p>5. Please identify the PPP procuring authorities in Philippines and provide their website(s) (if available):</p>	<p>Section 3 of the BOT Law: All government infrastructure agencies, including government-owned and -controlled corporations (GOCCs) and local government units (LGUs), are authorized to enter into contracts with duly pre-qualified project proponents for any financially viable infrastructure or development facility.</p> <p>Section 2.1 of the IRR of the BOT Law: All departments, bureaus, offices, commissions, authorities or agencies of the national government, including GOCCs, government financial institutions (GFIs), state universities and colleges (SUCs), and LGUs authorized by law or their charters to undertake infrastructure or development projects are authorized to enter into contractual arrangements under the BOT Law and its IRR.</p> <p>Examples of PPP procuring authorities: Department of Transportation, Department of Public Works and Highways, Mactan Cebu International Airport Authority, Department of Education, Metropolitan Waterworks and Sewerage System, Light Rail Transit Authority</p> <p>Specialized agencies such as the Bases Conversion and Development Authority can also pursue PPPs on their own, including developing its own guidelines.</p> <p>Websites: www.dotr.gov.ph www.dpwh.gov.ph www.mciaa.gov.ph www.deped.gov.ph www.lrta.gov.ph www.mwss.gov.ph</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>Public-Private Partnership Center (PPPC) http://ppp.gov.ph/ By virtue of the Executive Order No. 8 series of 2010, as amended by Executive Order No. 136 series of 2013, the PPP Center is mandated to facilitate the implementation of the country's PPP Program and Projects. The PPP Center is the main driver of the PPP Program. It serves as the central coordinating and monitoring agency for all PPP projects in the Philippines. Through Executive Order No. 136, the PPP Center shall act as the Secretariat of the PPP</p>

	Governing Board. The Board is the overall policy-making body for all PPP-related matters, including the Project Development and Monitoring Facility. It shall be responsible for setting the strategic direction of the Philippine PPP Program and creating an enabling policy and institutional environment for 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.	No
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.	No
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	Yes
6.11 please specify:	(a) Manage and administer a revolving fund to be known as the Project Development and Monitoring Facility for the preparation of business case, pre-feasibility and feasibility studies and tender documents of PPP programs and projects; (b) Establish and manage a central database system of PPP Programs and Projects; (c) Recommend improvements to timelines in processing PPP programs and project proposals, and monitor compliance of all agencies/LGUs; (d) Prepare reports on the implementation of the PPP programs and projects of the government for submission to the President at the end of each year; and, (e) Perform such other functions which may be critical in expediting and implementing effectively the PPP Programs and Projects of the Government.
Please provide the relevant legal/regulatory provisions:	Pursuant to BOT IRR Section 14.1 : the PPP Center shall be responsible for the coordination and monitoring of projects implemented under Contractual Arrangements or schemes authorized under these Revised IRR. Project monitoring will be undertaken to ensure that the project complies with these

	<p>Revised IRR, including the proponent’s required environmental clearances from the DENR. For this purpose, concerned Agencies/LGUs shall periodically submit to the PPP Center information on the status of projects implemented by them. In addition, all concerned Agencies/LGUs shall submit to the PPP Center a copy of all Unsolicited Proposals that they receive and all other related documents. The PPP Center is also hereby mandated to guide the Agency/LGU in the preparation and development of the project. At the end of every calendar year, PPP Center shall report to the ICC, President, and the Congress on the progress of all projects implemented under these Revised IRR.</p> <p>Also, the PPP Center Charter Executive Order No. 8, series of 2010, as amended by Executive Order 136, series of 2013, the PPP Center is mandated to facilitate the implementation of the country’s PPP Program and Projects.</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):	No regulatory basis
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):	Section 2.8 of the BOT Law IRR states that the Department of Finance (DOF) must review the draft before the head of the implementing agency or the LGU approves a contract for projects of national government agencies, local projects that will involve funds of the national government, and local projects requiring Investment Coordinating Council (“ICC”) approval.
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Department of Budget and Management National Budget Circular No. 564, issued on 8 June 2016 covers all departments, agencies, bureaus and offices of the National Government, including State Universities and Colleges and Commissions or Offices under the Constitutional Fiscal Autonomy Group, undertaking solicited multi-year PPP projects approved by the NEDA Board. Section 5 of Department of Budget and Management National Budget Circular No. 564 requires that a government agency covered by the Circular shall submit to the Department of Budget and Management (DBM), within ten (10) calendar days from the date the financial evaluation of the bid for the PPP project is completed, a request for the issuance of an Letter of Commitment (LOC) together with the required supporting documents under Item 6.0 of National Budget Circular No. 564. The DBM shall issue the LOC within thirty (30) calendar days from receipt of the request and required supporting

	documents. Under Section 4.2. of the same National Budget Circular, it s provided that “notwithstanding the issuance of an LOC, the obligation to be incurred by a government agency in any given year under a PPP contract shall in no case exceed the allotment released for the purpose during the same year. “
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to the PPP Governing Board Policy Circular No. 01A-2016, the DOF, as member of the Technical Working Group, reviews contingent liabilities that may arise from a PPP project, among others. Under item 4.3.1 (a), DOF’s review include the following: (i) Assess financial commitments and opportunity costs of the government, including financial risks of the project; (ii) Determine the potential project risks including government exposure with regards to retained risks on the project; and (iii) Assess project structure components that will mitigate government exposure and provide the best value for government.
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Under the PPP Governing Board Policy Circular No. 01A-2016 (Guidelines and Procedures for the Appraisal of PPP Projects), the Department of Finance shall apprise the risk structure and allocation of the project’s fiscal requirements and government undertakings, the project’s financial internal rate of return and its impact on fiscal sustainability through assessment of government’s direct, contingent and opportunity costs.
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.	Yes
Please specify:	The Department of Finance has its own accounting and reporting procedures pursuant to the PPP Governing Board Policy Circular No. 01A-2016.
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.	Yes

Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	
If yes, please specify the relevant authority	<p>The NEDA Board, upon recommendation of the ICC, approves PPP-negotiated national projects (regardless of amount) and PPP national projects costing more than P300 million. The Investment Coordination Committee of the NEDA approves PPP projects costing up to P300 Million and local projects costing above P200 Million. For local PPP projects, approval is also required from the Regional Development Councils and local development councils.</p>
and provide the relevant legal/regulatory provisions (if any):	<p>Section 2.6 of the BOT Law IRR - The approval of projects proposed under this Act shall be in accordance with the following: a. National Projects - The projects must be part of the Agency's development programs, and shall be approved as follows:</p> <p>ii. projects costing more than PhP 300 million, shall be submitted to the NEDA Board for approval upon the recommendation of ICC.</p> <p>Section 4 of the BOT Law provides for the approval of the local development councils for local projects: The list of local projects to be implemented by the local government units concerned shall be submitted, for confirmation, to the municipal development council for projects costing up to Twenty million pesos; those costing above Twenty up to Fifty million pesos, to the provincial development council; those costing up to Fifty million, to the city development council; above Fifty million up to Two hundred million pesos, to the regional development councils; and those above Two hundred million pesos, to ICC of NEDA.</p> <p>Section 2.8 of the IRR provides: For projects of national government agencies, local projects which will involve funds of the national government, and local projects requiring ICC review/approval, the draft contract must also be reviewed by the Department of Finance (DOF) before the Head of Agency/LGU approves the same.</p>
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>The head of the Implementing Agency/LGU approves the Draft Contract, after review of the Office of the Government Corporate Counsel (OGCC), the Office of the Solicitor General (OSG) or any other entity prescribed by law/issuances as the statutory counsel of GOCCs and LGUs, and/or DOF (as the case may be). The Draft Contract must also be in accordance with the parameters, terms, and conditions approved by the NEDA Board or ICC. Section 2.8 of the BOT Law IRR provides for the review of the draft contract of the OGCC, OSG, and/or DOF, as the case may be, prior to the Head of Agency or LGU's approval of the draft contract.</p> <p>Section 2.8 of the BOT Law IRR states that the head of the implementing</p>

	<p>agency shall review and approve the contract which shall be based on the bid parameters, terms, and conditions set forth by the NEDA Board or ICC, as the case may be.</p> <p>For solicited projects, changes in the terms and conditions of the draft contract after its approval by the Head of Agency/LGU may be allowed prior to submission of bids provided that the Head of Agency/LGU shall secure approval of the appropriate Approving Body (NEDA Board or ICC) for any of the following changes:</p> <ol style="list-style-type: none"> a. Changes which reduce the service levels to the public; b. Changes which reduce the economic internal rate of return below the hurdle rate used in the original analysis of the project; c. Changes which increase the total government subsidy to a project by at least five percent (5%) of the total project cost; and d. Changes in the risk profile which are detrimental to the best interest of the government. <p>The concerned Agency/LGU shall inform in writing the concerned statutory counsel as provided in this section of such changes. Changes to the terms and conditions of the draft contract after bid submission and prior to contract execution shall not be allowed except for changes to contract terms affected or decided by the winning bidder's bid.</p>
<p>10. Does the procuring authority use transaction advisors during the PPP project cycle?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 3 of the BOT Law provides that all government infrastructure agencies, when entering into PPP contracts, "are enjoined to solicit the expertise of individuals, groups, or corporations in the private sector who have extensive experience in understanding infrastructure or development projects."</p> <p>The use of transaction advisors are mentioned in the Project Development and Monitoring Facility (PDMF) Guidelines</p> <p>2.1 The general objective of the PDMF is to provide a facility to fund and facilitate pre-investment activities of potential PPP projects such as undertaking the pre-feasibility and feasibility studies and develop a robust pipeline of viable and well-structured PPP projects for IAs/LGUs.</p> <p>3.4. The PPP Center shall establish (i) a Project Study Committee (PSC) to oversee the work of the Transaction Advisor/Consultant; (ii) a Special Bids and Awards Committee (SBAC) to be responsible for the selection/recruitment of the Transaction Advisor/Consultant; and (iii) a Technical Working Group (TWG) to support the SBAC.</p> <p>3.5. The PPP Center shall sign the consulting contract with the selected Project Development Consultants/Transaction Advisors with conformity of the IA/LGU.</p> <p>3.6. The selected Consultants/Transaction Advisors shall conduct the pre-investment studies, prepare draft tender documents, and provide PPP transaction advisory services.</p> <p>5.5. The PDMF will fund the recruitment of consultants/transactions advisors</p>

	<p>to conduct the pre-investment activities mentioned in Section IV of these Guidelines. The recruitment process will start after the PDMF Board has approved the application of the IA and a Technical Assistance Agreement (TAA) has been executed between the PPP Center and the IA.</p> <p>The procuring agency also may tap technical assistance or other sources for transaction advisory support such as from multilateral agencies (e.g. International Finance Corporation, Asian Development Bank, among others).</p>
<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 details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 2.3 of the BOT Law IRR mandates concerned agencies and LGUs to prepare their infrastructure or development programs in order to identify specific priority projects that may be subject of PPP, and to submit them for approval to the NEDA Board or ICC, as the case may be. The list of priority projects shall be consistent with the Philippine Development Plan and Provincial Development and Physical Framework Plan.</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 of PPPs with</p>	<p>No</p>

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:	Implementing agencies expect that the ICC shall determine if a proposed project is consistent with the Philippine Development Plan and sector master plan.
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)	The ICC Guidelines and other related ICC and NEDA Board instructions details the project evaluation standards and procedures in assessing development projects, including PPPs, to ensure their technical, financial and economic and social merits. Also, PPPGB Policy Circular No. 01A-2016 , section 4.1 Socio-Economic Appraisal reflects the provision that : the analysis is made by NEDA. The Economic appraisal contains the appraisal of project's costs and benefits, the measurement of economic desirability, sensitivity and economic feasibility. The social appraisal contains: takes into account income distribution, employment, access to land, internal migration and resettlement, health, in general the quality of life.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Basic project evaluation procedures for development projects, including PPPs, are based on the ICC Project Evaluation Procedures and Guidelines. Section II to V of the ICC Guidelines cover procedures in undertaking the financial, economic, technical and institutional evaluation of programs and projects. Also, Section 4.1 of PPPGB Policy Circular No. 01A-2016 provides for a social appraisal, which includes: Income Distribution, Employment, Access to Land, Internal Migration and Resettlement, Nutrition and Health, Other Indicators of

	<p>the Quality of Life, Gender and Other Appropriate -social Safeguards. The economic appraisal includes an Appraisal of project costs and benefits: Economic Costs, Sunk costs, Benefits, Externalities, Secondary benefit (Economic valuation of costs and benefit, Measurement of economic desirability, sensitivity analysis and selection of projects based on economic feasibility indicators, estimation of the economic stream of costs and benefits which includes Shadow exchange Rate, Shadow Wage Rate, Social Discount Rate). The sensitivity parameters used during the financial appraisal shall likewise be applied in the economic appraisal of projects. The basis will be the cost-benefit flows (adjusted to economic terms). Probability weights for the above sensitivity analysis may later be assigned as validated by the ICC Secretariat.</p> <p>Circular 02-2015 provides furthermore that a social impact analysis of a project's outcomes requires an examination of the financial returns and externalities that affect each of these major stakeholder groups (annex E, 6.).</p>
Is the assessment done in practice?	Yes
Details:	The NEDA-Infrastructure Staff undertakes this assessment and submits an evaluation report on their analysis.
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)	Basic project evaluation procedures for development projects, including for PPPs, are based on the ICC Project Evaluation Procedures and Guidelines. Section II to V of the ICC Guidelines cover procedures in undertaking the financial, economic, technical and institutional evaluation of programs and projects. Also, Section 4.3.2 of PPPGB Policy Circular No. 01A-2016: The appraisal of fiscal requirements shall determine the explicit (arising from the contract) and implicit (arising from public expectations) fiscal commitments of the government from the PPP project and its sustainability during the tenure of the contract period.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Section 4.3.2 of PPPGB Policy Circular No. 01A-2016: The appraisal of fiscal requirements shall determine the explicit (arising from the contract) and implicit (arising from public expectations) fiscal commitments of the government from the PPP project and its sustainability during the tenure of the contract period. The DOF shall take into consideration the fiscal impacts of the Project as a long-term sustainability issue that extends over the lifetime of the PPP contract. The following aspects shall be considered in the assessment of the fiscal sustainability aspects of the project:</p> <p>a) Assessing and evaluating the cost of the fiscal commitments implied by the</p>

	<p>project structure, including the amount of viability gap funding that the Project may require as well as public undertakings, including but not limited to the assumption of tax obligations or the provision of right-of-way by government, if any;</p> <p>b) Conducting a preliminary appraisal of the involved contingent liabilities;</p> <p>c) Assessing the fiscal commitments and opportunity costs to determine whether these are fiscally responsible; and</p> <p>d) Adopting appropriate strategies in the budget of the government to plan for the fiscal commitments.</p>
Is the assessment done in practice?	Yes
Details:	Affordability assessment is done in practice, as required under Section 4.3.2 of PPPGB Policy Circular No. 01A-2016.
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	<p>Section 4.3.1 of PPPGB Policy Circular No. 01A-2016 indicates for risk analysis the following: iii. Assessing the risk analysis to evaluate whether: iii1. all risks relevant to the financial appraisal of the project have been identified in the risk allocation matrix as given in Annex E;</p> <p>iii2. identified risks have been allocated to the party best able to manage them;</p> <p>iii3. an appropriate strategy has been developed to mitigate retained risks</p> <p>iv. Determining the unmitigated retained risks for the Government to get a perspective of the contingent liability and potential financial exposure for the government; and</p> <p>v. Reviewing the overall project financing structure based on user tariff, payment mechanism, and type and expected sources of funds to determine whether it is achievable.</p> <p>It furthermore refers to Annex E for its risk allocation analysis to be undertaken by the Department of Finance (DOF). Annex E is the Generic Preferred Risk Allocation Matrix (GPRAM), adopted by the ICC - Cabinet Committee on December 7, 2010, which serves as a guide for government entities and the private sector in structuring PPP projects with regard to the risks to be borne by the government, the private sector, and the risks to be shared by both parties. GPRAM was amended by the ICC on December 22, 2014.</p>
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	The GPRAM identifies the risks to a PPP project, and provides for a proposed risk allocation scheme and possible risk mitigation strategies. The identified risks are: site risks; design, construction, and commissioning risks; sponsor and financial risks; operating risks; demand risks; network and interface risks; industrial relations risks; and legislative and government policy risks.
Is the assessment done in practice?	Yes
Details:	Risk identification, allocation and assessment are done in practice, as required under Section 4.3 and Annex E of PPPGB Policy Circular No. 01A-2016.

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)	<p>Yes</p>
Relevant legal/regulatory provision (if any)	<p>Section 4.4 of PPPGB Policy Circular No. 01A-2016 provides for the Value for Money (VfM) appraisal to be undertaken by the PPP Center.</p>
Is there a specific methodology for the assessment?	<p>Yes</p>
If yes, please elaborate	<p>Section 4.4 of PPPGB Policy Circular No. 01A-2016 provides that the VfM analysis undertaken on the project will compare the net present cost (NPC) of alternate project delivery model - one using the public procurement route and the other the estimated PPP NPC to determine whether the PPP model provides the lowest NPC for the project. The appraisal process will involve an assessment of the following aspects:</p> <ul style="list-style-type: none"> i. determining the unadjusted cost of public procurement; ii. adjusting the above for expected cost and/or time overruns from a public procurement; iii. adjusting for any benefits that will accrue to a government agency for a public procurement; and iv. risks retained by the government. <p>The NPC of the public procurement will need to be represented in the form of a Public Sector Comparator (PSC) which will be calculated as given in the below table. The NPC of the total. PSC will be compared to the prospective PPP bid to determine VfM.</p>
Is the assessment done in practice?	<p>Yes</p>
Details:	<p>Comparative assessment is done in practice, as required under Section 4.4 of PPPGB Policy Circular No. 01A-2016.</p>
12.5. Financial viability or bankability assessment	<p>Yes</p>
Relevant legal/regulatory provision (if any)	<p>Section 4.3 of PPPGB Policy Circular No. 01A-2016 provides for a financial appraisal of the PPP project to be undertaken by DOF.</p>
Is there a specific methodology for the assessment?	<p>Yes</p>
If yes, please elaborate	<p>Section 4.3 of PPPGB Policy Circular No. 01A-2016 provides: b) In terms of the procedures, the financial appraisal process to be undertaken for determining the financial viability of the PPP project, will include the following assessments:</p> <ul style="list-style-type: none"> i. Reviewing the project viability that covers the whole of project life, including the construction and operations phases, to assess the project viability from an appraisal of the following aspects: <ul style="list-style-type: none"> i1. Tariff structure for ‘user pays’ concession model or annual ‘availability payments’ model with proposed periodic escalations, thereof;

	<p>i2. Reviewing financing plan and debt: equity structure;</p> <p>i3. Assessing the debt costs and repayment structure and its impact on the cash flows: reviewing adequacy of cash flows to meet debt repayment commitments (principal + interest) during the tenor of the debt using ratio analysis benchmarks like debt service coverage ratio (DSCR), loan life coverage ratio (LLCR), and other key financial ratios;</p> <p>i4. Determining the financial viability of the project from both, of the following viewpoints: the free cash flow to firm viewpoint and the free cash flow to equity viewpoint. The former looks at the discounted returns to all real investment flows for the project from all private finance, irrespective of whether these come from equity or from loans. The latter looks at the proponent's (investor's) equity contributions as the investment;</p> <p>i5. Computing for the project to be financially viable in the free cash flow to project approach, the resulting financial internal rate of return (FIRR) should at least be equal to the weighted average cost of capital (WACC) while the net present value (NPV) should at least be equal or greater than zero using the same WACC as the discount rate. For the free cash flow to equity approach, the resulting FIRR should exceed the cost of equity contribution of the proponent while the NPV should be greater than zero using cost of equity capital as discount rate; the resulting FIRRs using these two approaches should be provided as a range of values in the Project Terms and Appraisal. If a project's FIRR falls below the WACC, but the EIRR is at least the threshold set by the ICC, viability gap funding (VGF) may be considered (see item ii below);</p> <p>i6. Applying sensitivity analysis to the appraisal process by determining whether the project will remain feasible if changes in the assumptions or project structure used in the calculation/projections were to take place according to the degree in which they are likely to vary from the estimated or projected values; and</p> <p>i7. Assessing the business case for delivery of the project using alternate PPP structures and delivery model, and selecting the preferred PPP model.</p> <p>ii. Assessing the proposed level of financial support required from the government in the form of VGF and other forms of guarantees and revenue enhancements to make the project commercially attractive, and assessing the fiscal prudence of providing these forms of financial support;</p>
Is the assessment done in practice?	Yes
Details:	The financial viability or bankability assessment is done in practice, as required under Section 4.3 of PPPGB Policy Circular No. 01A-2016.
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 4.5 of PPPGB Policy Circular No. 01A-2016 indicates the objectives of the legal and institutional appraisal shall ascertain the ability of the private sector to implement the project as proposed and scheduled.

Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Section 4.4 of PPPGB Policy Circular No. 01A-2016: The financial model review and the VfM outcomes that the project will be able to achieve include the following assessments:</p> <p>i. Assessment of likely private sector interest for undertaking the project as a PPP. This will include an appreciation of key concerns and issues raised by the private sector and likely response of the government to such issues. The PPP Center along with the IA will undertake a formal market sounding process in association with the T A to determine interest levels of the private sector and address issues raised during the project development stage; and,</p> <p>ii. Assessing forecasts, including 'willingness to use' and 'willingness to pay' demand survey assessments for the PPP project to determine revenue options from user of the infrastructure facility and for provision of the services therein. Forecasts should be reviewed for short, medium and long term (5, 10, 15+ years) periods and should include assessing different growth scenarios.</p>
Is the assessment done in practice?	Yes
Details:	Repondents confirm that the assesment is done in practice
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	PPPGB Policy Circular No. 01A-2016 requires an environmental appraisal:
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	<p>Within the environmental Appraisal should be: Review and evaluate the environmental aspects of the Feasibility Study of the Project integrating the environmental considerations. This includes the evaluation of predicted significant adverse impacts of the proposed development projects to the environment (physical, biological and socioeconomic, land, air water and people) and the appropriateness of the proposed mitigating measures to address the perceived impacts.</p> <p>Review of the environmental risk assessment/analysis of the proposed project with its proposed mitigation measures to be specified in the EIA Study.</p> <p>Review of the environmental risk assessment/analysis of the proposed project with its proposed mitigation measures to be specified in the EIA Study.</p> <p>Review the integration of climate change adaptation (CCA) measures and disaster risk reduction (ORR) in the proposed project.</p> <p>Evaluation of the identified environmental monitoring and management plan (EMMoP) as specified in said Feasibility Study.</p>
Is the assessment done in practice?	Yes
Details:	Environmental impact assessment is done in practice, as required under Section 4.3 of PPPGB Policy Circular No. 01A-2016.

12.8. Consultation process with affected communities on potential impact of the PPP project	Yes
Relevant legal/regulatory provision (if any)	PPPGB Circular No. 10-2016 on public consultation and engagement for PPP projects: The Local Government Code (LGC) of 1991 declares the State policy of requiring national government agencies and offices to consult appropriate local government units and concerned community sectors before any project or program is implemented within the local government units' respective jurisdictions. It also mandates the national government agencies authorizing or involved in the planning and implementation of any project or program that will have impact on the maintenance of environmental or ecological balance to consult with the local government units and other sectors concerned.
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Section 5.1 of PPPGB Circular No. 10-2016 on public consultation and engagement for PPP projects: The Consultation Plan shall be developed by the IA at the beginning of the project development stage containing its consultation and engagement process with timelines. The preparation of the Consultation Plan shall include the following steps: (a) Define the objectives of the public consultation and engagement process; (b) identify the stakeholders that are likely to be affected by the PPP project (i.e. employees, unions, community groups); (c) Define the timing and duration of the consultation and engagement, taking into consideration the stage or phase of the PPP project; and (d) Select and prepare the appropriate communication platforms. Appendix A of this Policy Circular provides a sample timetable for public consultation and engagement process for PPP projects.
Is the assessment done in practice?	Yes
Details:	Consultation process and potential impact assessment is done in practice by the Implementing Agency, as required under Section 5 of PPPGB Policy Circular No. 10-2016.
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a

13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 4.1 (c) of the BOT Law IRR provides for the inclusion of the Draft Contract in the bid/tender documents. The Draft Contract shall reflect the contractual arrangements under which the project shall be undertaken, and the respective undertakings of the contracting parties, among others, and using the model contracts provided by NEDA/ PPP Center as reference.
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?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	Transaction documents and contract clauses are available on the following webpage: http://ppp.gov.ph/?page_id=30573
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes

To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Under the BOT Law, the government may provide any form of support or contribution to solicited projects. (Section 13.3, BOT Law IRR).</p> <p>Further, under the GPRAM issued on 2 August 2016, among the recommended risk mitigating strategies is for the government to obtain, on a best efforts basis, in advance of the bidder proposal submission stage the requisite project permits and approvals. The Government is also recommended to provide Private Partner with relevant documents to help them ascertain what approvals have already been obtained; and, for further approvals and permits, the Private Partner is required to seek the necessary approvals but Government may facilitate and secure assistance from relevant national and local agencies as appropriate.</p>
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Under the BOT Law, the government may provide any form of support or contribution to solicited projects. (Section 13.3, BOT Law IRR).</p> <p>Further, under the GPRAM issued on 2 August 2016, among the recommended risk mitigating strategies is for the government to obtain, on a best efforts basis, in advance of the bidder proposal submission stage the requisite project permits and approvals. The Government is also recommended to provide Private Partner with relevant documents to help them ascertain what approvals have already been obtained; and, for further approvals and permits, the Private Partner is required to seek the necessary approvals but Government may facilitate and secure assistance from relevant national and local agencies as appropriate.</p>
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Under the BOT Law, the government may provide any form of support or contribution to solicited projects. (Section 13.3, BOT Law IRR).

	<p>Further, under the GPRAM issued on 2 August 2016, among the recommended risk mitigating strategies is for the government to obtain, on a best efforts basis, in advance of the bidder proposal submission stage the requisite project permits and approvals. The Government is also recommended to provide Private Partner with relevant documents to help them ascertain what approvals have already been obtained; and, for further approvals and permits, the Private Partner is required to seek the necessary approvals but Government may facilitate and secure assistance from relevant national and local agencies as appropriate.</p>
16.4. Obtaining the required land: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Obtaining land is main the function of the government, unless the site is provided by the Private Partner. It is considered the government's contribution to the PPP: Section 13.3 of the BOT Law IRR states that the government may provide any form of support or contribution to solicited projects, which include cost sharing - the provision of access infrastructure, right-of-way, transfer of ownership over, or usufruct, or possession of land, building, or any other real or personal property for direct use in the project. (Section 13.3, BOT Law IRR)</p>
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	<p>Obtaining right of way mainly the function of the government, unless the alignment is provided by the Private Partner. Under R.A. 8974 "An Act to Facilitate the Acquisition of Right-of-way, Site or Location for National Government Infrastructure projects and for other purposes": The government shall provide adequate appropriations that will allow the concerned implementing agencies to acquire the required right-of-way, site or location for any national government infrastructure project.</p>
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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.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 3.1 of the BOT Law IRR:</p> <ul style="list-style-type: none"> a. At least a third ranking regular official of the Agency/LGU - Chairman b. A legal officer - Member-Secretary c. One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly designated by the Head of Agency/LGU concerned on a project-to-project basis - Member (provisional) d. One (1) technical officer knowledgeable with aspects or requirements of the project from a concerned regulatory body, when applicable, to be invited by the Agency/LGU concerned on a project-to-project basis. - Member (provisional and non-voting) e. An officer knowledgeable in finance - Member f. An officer knowledgeable in management/operation of the project - Member g. Two (2) representatives from the private sector: one from duly recognized Contractors associations; and the other from either the facility users, or duly recognized accounting associations. - Observers (non-voting) h. A representative from the Commission on Audit - Observer (non-voting) i. One (1) representative from the PPP Center for national projects, in accordance with Section 2.6 (a) - Observer (non-voting) j. One (1) representative from the local DILG office, for LGU projects - Observer (non-voting)
The bid evaluation committee members require sufficient qualification without specific details.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The bid evaluation committee members are not required to have any specific qualifications.	<p>No</p>
Please elaborate and provide examples:	<p>n/a</p>
19. Does the procuring authority issue a public procurement notice of the PPP project?	<p>Yes</p>

<p>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 5.2 of the BOT Law IRR: The Head of the Agency/LGU concerned shall, after obtaining approval for the project, forthwith cause to be published, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper of general circulation in the region, province, city or municipality in which the projects are to be implemented, a notice inviting all prospective infrastructure or development Project Proponents to pre-qualify and bid for the projects so approved. Said invitation should also be posted continuously in the website of the Agency/LGU concerned, if available, and the PPP Center during the period stated above. If the total project cost amounts to at least PhP 500 million, the invitation may also be published in at least one (1) international publication.</p> <p>Likewise, the Agency concerned shall issue official notification of the same to Project Proponents registered with them. The published Invitation to Pre-qualify and Bid shall contain information, among others, whether the Contractor to be employed to undertake the Construction works needs to be pre-identified for prequalification purposes or not.</p> <p>For changes in the information contained in the published invitation to pre-qualify and to bid, the agency/LGU may cause the invitation reflecting said changes to be published anew in accordance with this section.</p>
<p>19.1. If yes, is the public procurement notice published online?</p>	<p>Yes</p>
<p>If yes, please specify the website:</p>	<p>www.ppp.gov.ph and the concerned Agency/LGU's website, if available.</p>
<p>20. Are foreign companies prohibited from participating in the bidding process?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<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>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 5.3 of the BOT Law IRR: The Agency/LGU concerned shall allow prospective bidders at least fifteen (15) calendar days from the last date of publication of the Invitation to Pre-qualify and Bid to prepare their respective prequalification documents. In any event, the deadline for submission of pre-qualification statements shall be indicated in the published Invitation to Pre-qualify and Bid.</p> <p>Section 6.3 of the BOT Law IRR: Sec. 6.3. Pre-bid Conference. - For projects costing less than P300 million, a pre-bid conference shall also be conducted by the concerned Agency/LGU at least thirty (30) days before the deadline for the submission of bids to clarify any provisions, requirements and/or terms and</p>

	conditions of the bidding documents and/or any other matter that the prospective bidders may raise. For projects costing P300 million and above, the pre-bid conference shall be conducted ninety (90) to one hundred-twenty (120) days before the submission of bids.
and the time in calendar days:	90
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Pursuant to Section 2.5 of the BOT Law IRR, Projects may be implemented through public bidding or direct negotiation. Section 5.7 indicates: In the exigency of service, the Agency/LGU Head may opt to do a simultaneous qualification instead of a pre-qualification of proponents
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Rule 5 of the IRR refer to qualification of bidders. Section 5.1 provides the following: Any individual, partnership, corporation or firm, whether local or foreign, including consortia of local, foreign or local and foreign firms, subject to the limits herein set, may participate or apply for pre- or simultaneous qualification for projects covered under the provisions of the Act and these Revised IRR.
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>Pursuant to section 9.1 of the IRR, direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:</p> <p>a. If, after advertisement, only one prospective Project Proponent applies for pre-qualification and it meets the pre-qualification requirements, after which, it is required to submit a bid/ proposal which is subsequently found by the Agency/LGU to be complying;</p> <p>b. If, after advertisement, more than one prospective Project Proponent applied for prequalification but only one meets the pre-qualification requirements, after which it submits a bid proposal that is found by the Agency/LGU to be complying;</p> <p>c. If, after pre-qualification of more than one prospective Project Proponent, only one submits a bid which is found by the Agency/LGU to be complying;</p> <p>d. If, after pre-qualification, more than one prospective Project Proponent submit bids but only one is found by the Agency/LGU to be complying;</p> <p>For Joint Ventures, In the event of a failed competitive selection, the concerned Government Entity shall review the Terms of Reference (TOR)/bidding documents and conduct another competitive selection. In case of second failure of competitive selection, the concerned Government Entity may resort to negotiated JV (see Annex A, Section VIII.9 of the NEDA Revised Guidelines and Procedures for entering into Joint Venture (JV) Agreements between Government and Private Entities, May 2013).</p>
22.7 Other. Specify:	No
Available	n/a
Default	n/a
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Rules 5 to 8 of the IRR and section 4.1 provide : The Agency/LGU concerned shall prepare the bid/tender documents, which shall include the following: f. requirements and timelines/milestones of concerned Agencies in granting of franchise, if applicable. Moreover, under Section 4.2 of the BOT Law IRR, the instructions to bidders, which establish the rules of the bidding shall be clear, comprehensive and fair to all bidders.
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

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 5.4 of the BOT Law prescribes the Pre-qualification requirements of potential bidders. Legal requirements, Experience or Track record, and Financial capability parameters are set out in the BOT Law IRR. Moreover, the prequalification requirements are clearly indicated in the instructions to potential bidders published during pre-qualification.</p> <p>Also, any resolutions passed by duly constituted BOT Prequalification Bids and Awards Committee (PBAC) on the prequalification/shortlisting criteria. Section 3.2 of the BOT Law IRR states that the PBAC created shall be responsible for all aspects of the pre -bidding and bidding process in the case of solicited proposals, and for the comparative bidding process (otherwise known as the “Swiss Challenge”), in the case of Unsolicited Proposals, including, among others, the preparation of the bidding/tender documents, publication of the invitation to pre -qualify and bid, pre - qualification of prospective bidders, conduct of pre -bid conferences and issuance of supplemental notices, interpretation of the rules regarding the bidding, the conduct of bidding, evaluation of bids, resolution of disputes between bidders, and recommendation for the acceptance of the bid and/or for the award of the project.</p>
<p>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>The specified criteria are spelled out in Section 5.4 of the BOT Law IRR.</p>
<p>If no, please elaborate:</p>	<p>n/a</p>
<p>23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Pursuant to Section 6.2 of the BOT IRR, If a bidder is in doubt as to the meaning of any data or requirements or any part of the bidding documents, written request may be submitted to the Agency/LGU concerned for an interpretation of the same, allowing sufficient time for the concerned Agency/LGU to reply before the submission of his/her bid. Any substantive interpretation given by the concerned Agency/LGU shall be issued in the form of a Supplemental Notice, and furnished to all prospective bidders. The Agency/LGU concerned may also issue Supplemental Notices to all prospective bidders at any time for purposes of clarifying any provisions of the bidding documents provided that the same is issued within a reasonable period to allow all bidders to consider the same in the preparation of their bids.</p>
<p>23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and</p>	<p>Yes</p>

clarifications to all potential bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Section 6.2 of the IRR, If a bidder is in doubt as to the meaning of any data or requirements or any part of the bidding documents, written request may be submitted to the Agency/LGU concerned for an interpretation of the same, allowing sufficient time for the concerned Agency/LGU to reply before the submission of his/her bid. Any substantive interpretation given by the concerned Agency/LGU shall be issued in the form of a Supplemental Notice, and furnished to all prospective bidders. The Agency/LGU concerned may also issue Supplemental Notices to all prospective bidders at any time for purposes of clarifying any provisions of the bidding documents provided that the same is issued within a reasonable period to allow all bidders to consider the same in the preparation of their bids. Receipt of all Supplemental Notices shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in the bid.
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	The procuring entity's responses to the bidders' queries/request for clarifications are published/issued in the form of Supplemental Bid Bulletins.
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):	Section 6.3 of the BOT Law IRR: Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the bidding documents unless such is made as a written amendment thereto by the concerned Agency/LGU. Any amendments shall be issued by the Agency/LGU concerned to all bidders within a reasonable time to allow them to consider the same in the preparation of their bids and shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in his bid. A summary of the pre-bid conference proceedings shall also be issued to all prospective bidders by the Agency/LGU concerned.
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):	Section 6.3 of the BOT Law IRR: Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the bidding documents unless such is made as a written amendment thereto by the concerned Agency/LGU. Any amendments shall be issued by the Agency/LGU concerned to all bidders within a reasonable time to allow them to consider the same in the preparation of their bids and shall be duly acknowledged by each bidder

	prior to the submission of his bid and shall be so indicated in his bid. A summary of the pre-bid conference proceedings shall also be issued to all prospective bidders by the Agency/LGU concerned.
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:	All changes to the bidding documents subsequent to the pre-bid conference shall be disseminated to bidders through a bid bulletin.
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):	Section 7.1(c) of the BOT Law IRR: The "Financial Proposal" shall contain the following, as the case may be: i. Proposed Project Cost, operation and maintenance cost, and all other related costs; ii. Project financing scheme, which may include the amount of equity to be infused, debt to be obtained for the project, and sources of financing; and iii. Financial bid corresponding to the parameters set by the Agency/LGU in accordance with Section 4.2 (h).
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):	Section 8.1 of the BOT Law IRR : The first envelope evaluation shall involve the assessment of the technical, operational, environmental and financing viability of the proposal as contained in the bidders' first envelopes vis-à-vis the prescribed requirements and criteria/minimum standards and basic parameters prescribed in the bidding documents.
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):	<p>Section 9.1 of the BOT Law IRR provides for direct negotiation in case of sole proposals. Moreover, section 9.3 indicates: in the instances where negotiated projects are allowed, the ICC shall determine the Reasonable Rate of Return prior to the negotiation in the case of solicited proposals as referred to under Section 9.1 of these Revised IRR. The scope of negotiation, in the case of solicited proposals referred to under Section 9.1 of these Revised IRR, shall be limited to the financial proposal of the proponent and compliance with the ICC-determined Reasonable Rate of Return. Direct negotiation should not result in a higher subsidy, or higher user fee, or lower amount of government revenue, or longer concession period.</p>
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	<p>No</p>
Please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The procuring authority does not award a PPP contract if only one proposal is submitted.	<p>No</p>
Please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The regulatory framework does not include any provisions.	<p>No</p>
28. Does the procuring authority publish the award notice?	<p>Yes</p>
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Section 11.4 of the BOT Law IRR: The PBAC shall post the notice of award and/or bidding results in the PHILGEPS, websites of PPP Center and of the Agency/LGU, if any, within seven (7) calendar days from the issuance of Notice of Award.</p>
28.1. If yes, is the public procurement award notice published online?	<p>Yes</p>
If yes, please specify the website:	<p>ppp.gov.ph/ and implementing agency's website</p>
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 11.2 of the BOT Law IRR: : All unsuccessful bidders shall be informed in writing of the decision of the Agency/LGU to award the project to the winning Project Proponent. Such decision shall be made available to the public when requested.</p>
If no, please elaborate:	<p>n/a</p>

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):	No regulatory basis
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 12.1 of the BOT Law IRR: The authorized signatory(ies) of the winning bidder and the Head of Agency/LGU shall execute and sign the contract for the project as approved in accordance with Section 2.8, within five (5) calendar days from receipt by the winning bidder of the notice from the Agency/LGU that all conditions stated in the Notice of Award have been complied with.</p> <p>Section 2.8 of the BOT Law IRR: Changes to the terms and conditions of the draft contract after bid submission and prior to contract execution shall not be allowed except for changes to contract terms affected or decided by the winning bidder's bid.</p>
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	Negotiations on major provisions are not allowed, and in <i>Agan, Jr. v. PIATCO</i> (G.R. No. 155001, May 5, 2003), the Supreme Court voided a contract because

	the signed contract was significantly different from the approved contract that was bid out.
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	n/a
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	n/a
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP	Yes

contract (e.g. attributing responsibilities or establishing specific management tools)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 12 of the BOT Law : Coordination and Monitoring of Projects. - The Coordinating Council of the Philippine Assistance Program (CCPAP) shall be responsible for the coordination and monitoring of projects implemented under this Act.</p> <p>Section 14.3 of the BOT Law IRR : Each concerned Agency/LGU may create a PPP Unit headed by a senior official of the Agency/ LGU and shall designate a senior official as PPP Project Development officer (PDO), who shall be responsible for planning, overseeing, and monitoring projects of Agencies/LGUs authorized under the Act and these Revised IRR. Details are provided by the Policy.</p> <p>PPPGB Policy Circular No. 07-2015: PPP Monitoring Framework and Protocols provides details.</p>
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	<p>Yes</p>
Relevant legal/regulatory provisions (if any):	<p>In the National government agency PPP manual volume 3 (contract management), a contract management committee is advised (10.3.1 Creating a Contract Management Committee).</p> <p>PPPGB Policy Circular no. 07-2015 on PPP Monitoring Framework and Protocols: Under Section IV (PPP Contract and Institutional Arrangements): Implementing Agency (IA) shall:</p> <p>a.2. Together with the project proponent, create a Project Steering Group (PSG) which shall be composed of high-level representatives from the IA, the project proponent, and other relevant government authorities. The PSG shall be the forum for regular communication between the high-level representatives of the parties for the purpose facilitating the implementation of the PPP contract; and perform any other task as envisaged under the CA.</p> <p>a.3. Together with the project proponent, create a Technical Working Group (TWG) composed of technical representatives from the IA, the project proponent, and other relevant government authorities to assist the PSG in performing its functions.</p> <p>a.4. Prepare and implement a contract management plan for each PPP project, and provide periodic reports to the PPP Center, as required under Executive Order No. 136, and the Revised BOT Law IRR.</p> <p>Also, the PPP contracts themselves usually have built in provision on contract management (i.e. provisions for the creation of project management office; role/obligations of both parties during contract implementation and management, among others).</p>

Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	No
Relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document	Yes
Relevant legal/regulatory provisions (if any):	PPPGB Policy Circular No. 07-2015: PPP Monitoring Framework and Protocols requires to prepare and implement a contract management plan to each PPP project (section 4.2).
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	No
Relevant legal/regulatory provisions (if any):	n/a
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	No
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to section 4.2 of the PPPGB Policy Circular No. 07-2015: PPP Monitoring Framework and Protocols, the implementation Unit shall have projects managers. Furthermore, is created a Project Steering Group (PSG)

	<p>which shall be composed of high-level representatives from the IA, the project proponent, and other relevant government authorities.</p> <p>Finally, together with the project proponent, create a Technical Working Group (TWG) composed of technical representatives from the IA, the project proponent, and other relevant government authorities to assist the PSG in performing its functions. The project proponent, together with the IA, creates a TWG composed of technical representatives from the IA, the project proponent, and other relevant government authorities to assist the PSG in performing its functions.</p>
The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>PPPGB Policy Circular No. 07-2015: PPP Monitoring Framework and Protocols indicates the implementing agency shall, throughout the construction phase, Inform and invite PMO to PSG/TWG meetings, Provide the PPPC a copy of all relevant reports and correspondences, Conduct inspections together with project proponent and PMO, Identify and address potential issues and bottlenecks, Submit reports to PPPC (PMD) in such form and within such period as may be required by PPPC.</p> <p>The PPP Center’s missions are as follows: PMO to attend PSG and TWG meetings and inspections, PMO to prepare Monthly Project Monitoring Report¹⁵ within five (5) working days after the close of each month, PMD to provide updates to the ED through submission of bi-monthly reports and/or setting of project updates meeting, PMD to assist in addressing potential issues and bottlenecks, PMD to elevate unresolved issues to the EDC Subcommittee on PPP Projects Execution.</p> <p>Under Annex A provides the PPP Center Project Monitoring Officer (PMO) will prepare a Project Milestone Report outlining the various activities involved in the implementation of the PPP project and use it as control chart to monitor progress on an ongoing basis. The first Project Milestone Report shall be prepared by the PMO within 15 working days from the receipt of the relevant documentation from the Project Development Officer (PDO) and the implementing agency. The said Project Milestone Report shall be sent to the implementation unit of the implementing agency for their information and reference.</p>
42.1. If yes, is the PPP contract construction performance information made available to the public?	Yes

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 2.3 of the Revised IRR of the BOT Law requires the posting of Priority Projects in the PPP Center website. In this connection, said list is regularly updated to show the status of each project, including data regarding construction performance.</p>
<p>42.2. If yes, is the PPP contract construction performance information made publicly available online?</p>	<p>Yes</p>
<p>If yes, please specify the website:</p>	<p>http://ppp.gov.ph/?page_id=26075</p>
<p>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 14.1 of the BOT Law IRR: The PPP Center shall be responsible for the coordination and monitoring of projects implemented under Contractual Arrangements or schemes authorized under these Revised IRR. Project monitoring will be undertaken to ensure that the project complies with these Revised IRR, including the proponent's required environmental clearances from the DENR.</p> <p>Section 14.3 of the BOT Law IRR: Each concerned Agency/LGU may create a PPP Unit headed by a senior official of the Agency/ LGU and shall designate a senior official as PPP Project Development officer (PDO), who shall be responsible for planning, overseeing, and monitoring projects of Agencies/LGUs authorized under the Act and these Revised IRR.</p> <p>PPPGB Policy Circular No. 07-2015 on Monitoring Framework and Protocols provides details.</p>
<p>43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract</p>	<p>Yes</p>
<p>Relevant legal/regulatory provisions (if any)</p>	<p>Section 12.10 of the BOT Law IRR: The Agency/LGU may inspect and check, from time to time, the project to determine whether the project is constructed, operated and maintained in accordance with the approved plans, specifications, standards and costs under the contract.</p> <p>Pursuant to PPPGB Policy Circular No. 07-2015: PPP Monitoring Framework and Protocols, PPP Project monitoring by the PPP Center will cover the following aspects: Adherence to the timelines and other obligations specified in the concession contract; Assessment of performance against MPSS.</p>

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)	No regulatory basis
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	According to section 6.2 of the PPPGB Policy Circular No. 07-2015 on Monitoring Framework and Protocols, the project proponent submit necessary reports to the IA in such form and within such period as may be required in the contract.
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	Section 12.10 of the BOT Law IRR: The Agency/LGU may inspect and check, from time to time, the project to determine whether the project is constructed, operated and maintained in accordance with the approved plans, specifications, standards and costs under the contract.
The PPP contract performance information must be available to the public	Yes
Relevant legal/regulatory provisions (if any)	Section 2.3 of the Revised IRR of the BOT Law requires the posting of Priority Projects in the PPP Center website. In this connection, said list is regularly updated to show the status of each project, including data regarding construction performance.
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)	Yes

<p>expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?</p>	
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Section 11.6 of the BOT Law IRR: Subject to the approval of the Agency/LGU, any member of the consortium, or a shareholder of the SPC created (who was a member of such consortium), or its pre-qualified Contractors may withdraw as such prior to award of the project or any time during the contract term, provided that, the remaining members or shareholders are still legally, technically, and financially capable of successfully carrying out the implementation/operation of the project.</p> <p>Section 12.20 of the BOT Law IRR: Subject to the approval of the Approving Body upon due diligence and recommendation by the Head of Agency/LGU, a project proponent may divest or accede its ownership and/or rights to a project provided that, the divestiture or accession shall be after the holding or lock-in period which shall be determined by the Agency/LGU and indicated in the contract, and provided that, the new project proponent has equal or better qualifications as with the previous project proponent.</p> <p>A divestment/accession made in violation of this section shall be a ground for disqualification of the proponent or cancellation of the contract, as the case may be, and forfeiture of the proponent's bid or performance security.</p> <p>The Agency/LGU shall inform in writing the PPP Center the change in ownership for monitoring purposes.</p>
<p>45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Section 12.20 of the BOT Law IRR: Subject to the approval of the Approving Body upon due diligence and recommendation by the Head of Agency/LGU, a project proponent may divest or accede its ownership and/or rights to a project provided that, the divestiture or accession shall be after the holding or lock-in period which shall be determined by the Agency/LGU and indicated in the contract, and provided that, the new project proponent has equal or better qualifications as with the previous project proponent.</p>
<p>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical</p>	<p>Yes</p>

qualifications as the original operator.	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section 11.6 of the BOT Law IRR provides that a member may withdraw prior to award of the project or any time during the contract term, provided that, the remaining members or shareholders are still legally, technically, and financially capable of successfully carrying out the implementation/operation of the project.</p>
In other cases, flexibility to change the ownership structure and/or assign the contract.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section 12.20 of the BOT Law IRR: Subject to the approval of the Approving Body upon due diligence and recommendation by the Head of Agency/LGU, a project proponent may divest or accede its ownership and/or rights to a project provided that, the divestiture or accession shall be after the holding or lock-in period which shall be determined by the Agency/LGU and indicated in the contract, and provided that, the new project proponent has equal or better qualifications as with the previous project proponent.</p>
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section 12.11 of the BOT Law IRR: A contract variation may be allowed by the Head of the Agency/LGU, Provided, that:</p> <ul style="list-style-type: none"> a. There is no impact on the basic parameters, terms and conditions as approved by the Approving Body; or b. There is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU's revenue or profit share derived from the project, except as may be allowed under a parametric formula in the contract itself; or c. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or d. There is no additional Government Undertaking, or increase in the financial exposure of the Government under the project. <p>Upon due diligence and recommendation of the Head or Agency/LGU, contract variations not covered by above shall undergo approval by the Approving Body in terms of the impacts on government undertakings/exposure, performance standards and service charges. Failure to secure clearance/approval of the Head of Agency/LGU or Approving Body as provided in this section shall render the contract variation void.</p> <p>The Agency/LGU shall report to the Approving Body and the PPP Center on any contract variations including those approved by the Head of Agency/LGU.</p>

46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section 12.11 of the BOT Law IRR: Upon due diligence and recommendation of the Head or Agency/LGU, contract variations not covered by above shall undergo approval by the Approving Body in terms of the impacts on government undertakings/exposure, performance standards and service charges. Failure to secure clearance/approval of the Head of Agency/LGU or Approving Body as provided in this section shall render the contract variation void.</p> <p>The Agency/LGU shall report to the Approving Body and the PPP Center on any contract variations including those approved by the Head of Agency/LGU.</p>
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Section 12.11(c) of the IRR : there can be a variation if : There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract.
A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Section 12.11(d) of the IRR : There can be a variation if there is no additional Government Undertaking, or increase in the financial exposure of the Government under the project.
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):	Section 12.11(c) of the IRR : there can be a variation if : There is no [...] extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract.
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant	Pursuant to Section 12.18 of the IRR: The tolls, fees, rentals and charges may be subject to adjustment during the life of the contract, based on the pre-

legal/regulatory/standard contractual provisions (if any):	<p>determined formula prescribed in the “Instructions to Bidders” and the approved contract. For this purpose, prior to bidding, the concerned Agency/LGU shall secure either the advice of the Regulator or the approval of the Approving body or both, as the case maybe, for such formula. The monitoring of the consistency of the proposed adjustments of tolls, fees, rentals and charges with the prescribed rate of return, if any, shall be undertaken by the appropriate regulatory body or Implementing Agency/LGU. Price indices shall be based on the official issuances by the National Statistics office (NSO), BSP, Department of Labor and Employment (DOLE) and other sources authorized by the Agency/LGU concerned prior to bidding.</p> <p>PPPGB Circular 07-2015 on Monitoring Framework and Protocols requires the project proponent to Wherever applicable, submit the necessary documents to regulatory authorities for tariff changes.</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>Force majeure risks are apprehended by the Generic preferred risk allocation matrix (section 9). Moreover, PPPGB Circular 06-2015 on Termination Payment for PPP Projects details consequences of termination due to force majeure.</p>
Material Adverse government action .	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section IV of the Policy Circular No. 06-2015 on Termination Payment for PPP Projects identifies material adverse government action as a cause for termination.</p>
Change in the Law.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Change in the law risks are apprehended by the Generic preferred risk allocation matrix (section 8.2).</p>
Refinancing.	<p>Yes</p>

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Annex 8 of the National Government Agency PPP Manual standard contractual provision provides for Refinancing gains.
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Section 11.6 of the BOT Law IRR states that subject to the approval of the Agency/LGU, a y member of the consortium, or a shareholder of the SPC created (who was a member of such consortium), or its pre -qualified Contractors may withdraw as such prior to award of the project or any time during the contract term, provided that, the remaining members or shareholders are still legally, technically, and financially capable of successfully carrying out the implementation/operation of the project. The Agency/LGU shall have the discretion to allow substitution of members or shareholders after pre -qualification; provided that, the substitute has equal or better qualifications than the withdrawing member or shareholder; provided further, that the Agency/LGU shall undertake necessary procedure to determine the qualification of the substitute.
48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Executive Order No. 78 Mandating the Inclusion of Provisions on the Use of Alternative Dispute Resolution Mechanisms in all Contracts Involving PPP Projects, BOT Projects, JV Agreements Between the Government and Private Entities and those entered into the Local Government Units, Section 1 : All contracts involving PPP projects (...) shall include provisions on the use of ADR mechanisms at the option and upon agreement of the parties to said contracts.</p> <p>The IRR of EO78 provide for conflict avoidance and mitigation (early warning, negotiation, early neutral evaluation, dispute resolution board); alternative dispute resolution (conciliation/mediation, commercial arbitration), other ADR mechanisms (mini-trial, mediation-arbitration).</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	No
Domestic arbitration	Yes
International arbitration	Yes

Investor-State Dispute Settlement (ISDS)	Yes
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	<p>Section 12.22 of the BOT Law IRR- The venue for the resolution of disputes, arbitration or litigation shall be as mutually agreed upon by the parties to the contract. In default thereof, the venue shall be in the Philippines.</p> <p>Section 1 of Executive Order No. 78 provides: "Use of ADR mechanisms. All contracts involving Public-Private Partnership (PPP) projects and/or those entered into under RA No. 6957 entitled, "The Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended by RA No. 7718, otherwise known as the "Build-Operate and Transfer (BOT) Law," as well as Joint Venture Agreements (JVAs) between government and private entities issued by the National Economic and Development Authority (NEDA) pursuant to Executive Order (EO) No. 423 (s. 2005), shall include provisions on the use of ADR mechanisms, at the option and upon agreement of the parties to said contracts."</p> <p>All parties who enter into similar contracts with Local Government Units (LGUs) are encouraged to stipulate on the use of ADR mechanisms, in accordance with their own JV rules, guidelines or procedures.</p> <p>When parties to the abovementioned contracts agree to submit the case for ADR, the use of either domestic or international ADR mechanisms shall be highly encouraged, giving the parties complete freedom to choose which venue and forum shall govern their dispute, as well as the rules or procedures to be followed in resolving the same.</p> <p>The IRR of EO78 provide for conflict avoidance and mitigation (early warning, negotiation, early neutral evaluation, dispute resolution board); alternative dispute resolution (conciliation/mediation, commercial arbitration), other ADR mechanisms (mini-trial, mediation-arbitration).</p>
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	<p>Section 40 of RA 9285: "Confirmation of Award. - The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 876. A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court."</p> <p>Section 23 of RA 876: "Confirmation of Award. - At any time within one month after the award is made, any party to the controversy which was arbitrated may apply to the court having jurisdiction, as provided in section twenty-eight, for an order confirming the award; and thereupon the court must grant such order unless the award is vacated, modified or corrected, as prescribed herein. Notice of such motion must be served upon the adverse party or his attorney as prescribed by law for the service of such notice upon an attorney in action in the same court."</p>
International arbitration	Yes

<p>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</p>	<p>Section 42 to 45 of RA 9285:</p> <p>SECTION 42. Application of the New York Convention. - The New York Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention.</p> <p>The recognition and enforcement of such arbitral awards shall be filed with the Regional Trial Court in accordance with the rules of procedure to be promulgated by the Supreme Court. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.</p> <p>The applicant shall establish that the country in which foreign arbitration award was made is a party to the New York Convention.</p> <p>If the application for rejection or suspension of enforcement of an award has been made, the Regional Trial Court may, if considers it proper, vacate its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the party to provide appropriate security.</p> <p>SECTION 43. Recognition and Enforcement of Foreign Arbitral Awards Not Covered by the New York Convention. - The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The Court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a convention award.</p> <p>SECTION 44. Foreign Arbitral Award Not Foreign Judgment. - A foreign arbitral award when confirmed by a court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not as a judgment of a foreign court. A foreign arbitral award, when confirmed by the Regional Trial Court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.</p> <p>SECTION 45. Rejection of a Foreign Arbitral Award. - A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the procedural rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the Regional Trial Court.”</p>
<p>Investor-State arbitration</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</p>	<p>The ICSID convention entered into force in the Philippines on Dec 17, 1978</p>
<p>49. Does the regulatory framework (including standard contractual clauses)</p>	<p>No</p>

allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Section 12.21(b) of the Revised IRR: If the Project Proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed technical and performance standards or otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved contract, the Agency/LGU shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the Agency/LGU concerned may rescind the contract. In such an event, the Agency/LGU concerned may either: i. Take over the facility; or ii. Allow the Project Proponent's lenders/creditors/banks to exercise their rights and interests under the loan and collateral documents with respect to the project.
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.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Section 12.21(b) of the Revised IRR : the decision of allowing lenders or taking over the facility is made by the Agency/LGU concerned. In practice, Lender step-in rights are provided on a contract-by-contract basis
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No

If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	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 termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Under Section IV of the Policy Circular No. 06-2015 enumerate the following events that may lead to termination, to wit:</p> <ul style="list-style-type: none"> i. Failure of the Concessionaire or the IA to satisfy the conditions precedent under the contract; ii. Occurrence of a force majeure event, the effects of which is prolonged or not remediable; iii. Abandonment of works by the Concessionaire; iv. Violation of any laws, rules and regulations of the republic of the Philippines; v. When the concessionaire assigns, transfers or otherwise disposes of any of the rights under the PPP Contract without the consent of the IA; vi. Insolvency; vii. Poor performance of the concessionaire or persistent breach of its obligations under the PPP contract; viii. Material adverse government action (MAGA) event where the parties are unable to agree to a MAGA compensation; ix. Default of the government as defined in the contract; and x. When banks or lenders call the concessionaire in default <p>Section 12.21 of the Revised IRR: The contract may be terminated/rescinded in the following events:</p> <ul style="list-style-type: none"> a. If the Agency/LGU concerned fails to comply with any major obligation prescribed in the approved contract, and such failure is not remediable or if remediable shall remain unremedied for an unreasonable length of time, the Project Proponent may, with prior notice to the concerned Agency/LGU, specifying the turn-over date, terminate the contract. In such an event, the Project Proponent shall be reasonably compensated by the Government for equivalent or proportionate contract cost, as defined in the contract subject to (c) below.

b. If the Project Proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed technical and performance standards or otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved contract, the Agency/LGU shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the Agency/LGU concerned may rescind the contract. In such an event, the Agency/LGU concerned may either:

i. Take over the facility; or
ii. Allow the Project Proponent's lenders/creditors/banks to exercise their rights and interests under the loan and collateral documents with respect to the project. In any case, the Agency/LGU concerned shall likewise forfeit the performance security of the defaulting Project Proponent.

c. In the event that the project/contract is: (a) revoked, cancelled, or terminated by (i) the Agency/LGU in accordance with the contract through no fault of the Project Proponent or (ii) by mutual agreement, or (b) revoked or canceled by a court by final judgment through no fault of the Project Proponent, the Agency/LGU shall compensate the said Project Proponent for its actual expenses incurred in the project plus a Reasonable Rate of Return thereon not exceeding that stated in the contract, as of the date of contract termination, provided that the interest of the Government in these instances shall be duly insured with the GSIS or any other insurance entity duly accredited by the office of the Insurance Commissioner, provided further that the cost of the insurance coverage shall be included in the terms and conditions of the approved contract.

Section IV of the Policy Circular No. 06-2015: The following events may lead to termination:

- i. Failure of the Concessionaire or the IA to satisfy the conditions precedent under the contract;
- ii. Occurrence of a force majeure event, the effects of which is prolonged or not remediable;
- iii. Abandonment of works by the Concessionaire;
- iv. Violation of any laws, rules and regulations of the republic of the Philippines;
- v. When the concessionaire assigns, transfers or otherwise disposes of any of the rights under the PPP Contract without the consent of the IA;
- vi. Insolvency;
- vii. Poor performance of the concessionaire of persistent breach of its obligations under the PPP contract;
- viii. Material adverse government action (MAGA) event where the parties are unable to agree to a MAGA compensation;
- ix. Default of the government as defined in the contract; and
- x. When banks or lenders call the concessionaire in default.

51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Section 12.21 (c) of the Revised IRR: In the event that the project/contract is: (a) revoked, cancelled, or terminated by (i) the Agency/LGU in accordance with the contract through no fault of the Project Proponent or (ii) by mutual agreement, or (b) revoked or canceled by a court by final judgment through no fault of the Project Proponent, the Agency/LGU shall compensate the said Project Proponent for its actual expenses incurred in the project plus a Reasonable Rate of Return thereon not exceeding that stated in the contract, as of the date of contract termination, provided that the interest of the Government in these instances shall be duly insured with the GSIS or any other insurance entity duly accredited by the office of the Insurance Commissioner, provided further that the cost of the insurance coverage shall be included in the terms and conditions of the approved contract.</p> <p>Circular 06-2015 provides details of payment calculation for termination.</p>
Unsolicited Proposals	
34. Are unsolicited proposals in Philippines: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	<p>No</p>
Explicitly allowed by the legal framework?	<p>Yes</p>
Not regulated by the legal framework, but do happen in practice?	<p>No</p>
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	<p>No</p>
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	<p>Section 10.1 of the BOT Law IRR: Any Agency/LGU may accept Unsolicited Proposals on a negotiated basis provided that all the following conditions are met (...)</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>Section 10.7 of the IRR indicates: The Agency/LGU is tasked with the evaluation of the proposal. The Agency/LGU shall: 1) appraise the merits of the project; 2) qualify the proponent based on the provisions of Rule 5 hereof;</p>

	<p>3) assess the appropriateness of the contractual arrangement and reasonableness of the risk allocation; 4) recommend a reasonable Rate of Return (ROR); and, 5) inform the ICC and the PPP Center of its receipt of an Unsolicited Proposal. The Agency/LGU shall evaluate the proposal, qualify the proponent, and advise whether it accepts or rejects the proposal within one hundred and twenty (120) calendar days upon receipt of the complete proposal. The Agency/LGU shall indicate in its letter of acceptance the confirmation of the proponent as “original proponent”. In case of acceptance, the Agency/LGU shall endorse the unsolicited proposal and submit all pertinent documentation to the ICC/Approving Body. At this point, the Agency/LGU will no longer entertain other similar proposals unless the parties are unable to agree during the period for negotiations specified in Section 10.8 below, or the original proponent is unable to comply with the parameters set by the Approving Body, or until the solicitation of comparative proposals has been completed.</p>
<p>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Pursuant to section 10.1 of the IRR, any Agency/LGU may accept Unsolicited Proposals on a negotiated basis provided that all the following conditions are met:</p> <ul style="list-style-type: none"> a. the project involves a new concept or technology as determined by the Agency/LGU and/or is not part of the List of Priority Projects; b. no Direct Government Guarantee, subsidy or equity is required; and c. the Agency/LGU concerned has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days. Provided, further, that in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty (30) working days. The provision is further clarified in Rule 10 of the BOT Law IRR.
<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>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>No regulatory basis</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>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 10.11 of the BOT Law IRR (Invitation for Comparative Proposals): Within seven (7) calendar days upon issuance of the certification of a successful negotiation referred to in Section 10.8, the Agency/LGU PBAC shall publish the invitation for comparative proposals after receipt of the notification from the Original Proponent that the latter accepts all the terms and conditions.</p>
<p>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Section 10.11 of the BOT Law IRR: The invitation for comparative proposals shall likewise explicitly specify a time of sixty (60) working days reckoned from the date of issuance of the tender/bidding documents upon which proposals shall be received.</p>
<p>and the time in calendar days:</p>	<p>60</p>
<p>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.</p>	<p>No</p>
<p>39.2 Developer's fee (reimbursing the original</p>	<p>No</p>

proponent for the project development cost).	
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):	Pursuant to Section 10.17 of the IRR, the original proponent shall again be given the right to match the comparative proponent's bid.