

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN PORTUGAL

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The first law expressly governing PPPs was Decree-law 86/2003, which established the general regime of a PPP awarded by the State: the definition, concept, preparation, bid, adjudication, changes, audit and global monitoring. It was amended in 2006 by Decree-law 141/2006, with the goal to promote a better cooperation between the Ministry of Finance and the sectorial ministries and improve the mechanisms of controlling the use of public resources in PPPs. Additionally, it introduced the obligation for the inclusion of a public-sector comparator (PSC). Finally, it changed several dispositions regarding the risk allocation and the renegotiation process. The last amendment was in 2012 by Decree-law 111/2012 and was focused on centralizing the PPP process in the Ministry of Finance in order to increase the transparency and control over PPPs. During our analysis, we shall refer to all of the aforementioned laws and decrees (as last amended by Decree-Law 111/2012) as the “PPP Law”. Furthermore, Decree-Law No. 18 of 2008, which is the Public Contracts Code, sets forth the procurement process and the material regime for administrative contracts. From here on, our analysis will refer to the Public Contracts Code as “DL18”</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>PPP Law (DL 111/2012): http://www.utap.pt/Publicacoes_utap/0270202713.pdf Public Contracts Code (DL 18/2008): http://www.utap.pt/Publicacoes_utap/18-2008.pdf</p>
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	No
Please describe:	n/a
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	Approved on 18 May 2017 by the Council of Ministers, the revision of the DL 18/2008 was concluded with the publication on 31 August 2017 of the Decree-Law

	<p>111-B/2017. This revision occurred in line with the evolution of the European legal framework regarding this matter (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and the Council of 26 February 2014 and Directive 2014/55 /EU of the European Parliament and the Council, of April 16, 2014), and aimed for the simplification, de-bureaucracy and flexibilization of procedures for the formation of public contracts and the introduction of improvements with the correct interpretation and application of the law. As anticipated, the main changes concerned the following matters: preliminary consultation, prior consultation, urgent public tender, evaluation cost-benefit ratio, award criterion, award by batch, abnormally low price, value of guarantee, contract manager and alternative resolution of litigation.</p>
<p>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.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>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</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Article 2/5(b) of Decree Law 111/2012, excludes multi-municipal systems concessions for the supply of drinking water, wastewater disposal and management of solid urban waste. According to Article 1 (3) of Decree-Law 92/2013, multi-municipal systems concessions for supply of drinking water and wastewater disposal can only be awarded to entities exclusively owned by the State or resulting from the association of public entities holding the majority of shares and private ones.</p>
<p>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.</p>	<p>No</p>

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.)?	No
If yes, please specify and provide the relevant legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in Portugal and provide their website(s) (if available):	<p>The procuring entities may vary, depending on the nature of the public entity envisaging to contract via PPP. The PPP Law applies to PPP contracts entered by the (i) State (Government), (ii) all state public entities, (iii) autonomous funds and services, and (iv) public companies (together the “PPP Procuring Entities”) with private parties. However, the decision to initiate a PPP procurement process does not exclusively depend on the PPP Procuring Entities in these cases. The process is subject to previous authorization and monitoring of the Minister of Finance (MoF), together with the sectorial Minister. The Minister of Finance has an active role throughout the PPP project cycle, beginning with the decision to launch the PPP until its negotiation upon execution. From the Government side, the launching of a PPP is also conducted by UTAP - an administrative entity directly dependent on the Ministry of Finance, that works as a technical unit for the structuring, tendering and monitoring of PPP projects on behalf of the Ministry of</p>

	Finance. Upon the Minister's direction, UTAP is to appoint and lead a project team, from 5 to 7 members, with a majority of UTAP staff (3 out of five or four out of seven) and the remainder in representation of the line Ministry.
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name, and its website (if available):	Unidade Técnica de Acompanhamento de Projetos (UTAP) - The Technical Unit for the Monitoring of PPP Projects. It is an administrative entity, with administrative autonomy, directly dependent on the Ministry of Finance. http://www.utap.pt/
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	No
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.	Yes
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	No
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	Article 35 of the PPP Law stipulates the Mission and Functions of the PPP Unit (UTAP). Furthermore, Article 34 defines the nature of UTAP, Article 36 establishes the technical support that can provide, and Section II (Articles 37-39) sets out the coordination of the technical unit (UTAP).
PPP Preparation	

8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 14 (1), 14 (2) and 14 (3) of the PPP Law, the PPP project team submits to the Minister of Finance and to the relevant sectorial Minister, a reasoned report with a draft proposal. The report shall include the quantification of direct and indirect gross charges for the public sector, as well as the potential impact of risks to the public sector. When the entity envisaging the PPP is not the Government, (i.e., public company) the management body of such entity is to be heard before the filing of the proposal with the ministers. 30 days upon the delivery of such a report, it is for the Minister of Finance and the relevant sectorial Minister to decide on the terms and timing for the launching of the partnership.</p>
8.1. Does the Ministry of Finance or Central Budgetary Authority 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 decision to contract and the award of the PPP contract is a joint decision of the member of the Minister of Finance and of the member of the Government in charge with the specific matter of the project in the cases set forth in Articles 16 (1) (a) and 18 (1) other PPP Law.</p>
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>ESA 2010</p>
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Articles 26/2 and 33 (b) of PPP Law, UTAP is responsible for the elaboration of quarterly reports on budgeted and executed payments that PPPs represent for the public sector. These reports are submitted to the Minister of Finance for approval and published on UTAP's website. UTAP also elaborates annual reports as a summary of the year activity, with the same contents and objectives as the quarterly reports.</p>

8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	No
Accounting and reporting according to other international standard (e.g. European System of Accounts).	Yes
Please specify:	ESA 2010
Other.	n/a
Please specify:	n/a
9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	No
If yes, please specify the relevant authority	n/a
and provide the relevant legal/regulatory provisions (if any):	n/a
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 14 of the PPP Law the launch of a PPP must be approved by the Minister of Finance and to the relevant sector Minister. Also, the decision to contract and the award of the PPP contract are joint decisions of the member of the Minister of Finance and of the member of the Government in charge with the specific matter, according to Articles 16 (1) (a) and 18 (1) of the PPP Law.
10. Does the procuring authority use transaction advisors during the PPP project cycle?	Yes

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>No regulatory basis</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>No</p>
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</p>	<p>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 other government investment priorities in practice.</p>	<p>No</p>

If yes, please elaborate:	n/a
The procuring authority does not evaluate PPPs against existing government priorities.	Yes
Please elaborate and provide examples:	The regulatory framework on the launching of PPPs imposes a type of evaluation focused on the determination of the value for money that this model can bring in comparison to other solutions available to the public entities such as internalization of the activities or services sought, or procurement through “traditional contracts” (i.e. conception and building contracts in the case of infrastructural necessities) -for instance, see articles 6, 7, 13 and 18 of PPP Law. Nonetheless, each government entity or procuring authority gauges its needs according to the public interest and prioritizes its projects considering their immediate feasibility and budgetary impact. Specifically on the governmental level, and given the political nature of the decision, the choice of which public investments to proceed presupposes an articulation between the different Ministries not only for infrastructural PPPs but for other kinds of projects as well.
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?	n/a
If yes, please specify:	n/a
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)	Pursuant to Article 6 (1) (f) of the PPP Law, a cost-benefit analysis is conducted prior to the launch of the procurement process.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Majority of contributors indicated that this occurs
12.2. Affordability assessment, including the	Yes

identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	
Relevant legal/regulatory provision (if any)	Pursuant to Article 6 (1) (b) of the PPP Law, prior to the launch of the procurement process, a study of the likely budgetary impact in terms of revenue and expenditure, its affordability and the respective sensitivity analysis either in search terms, or macroeconomic developments is conducted.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Majority of contributors indicated that this occurs in practice
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 6 (1) (l) of the PPP Law, prior to the launch of the procurement process the itemized and detailed identification of risks assumed for each partner is conducted.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Majority of contributors indicated that this occurs in practice
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Article 6/1 (a) of the PPP Law, prior to the launch of the procurement process, an analysis of the partnership model to and the public sector benefits is done, including comparing the public sector benefits of using alternative procurement processes.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Majority of contributors indicated that this occurs in practice
12.5. Financial viability or bankability assessment	Yes

Relevant legal/regulatory provision (if any)	<p>Pursuant to Article 6 (1) (h) of the PPP Law, prior to launching the procurement process, an analysis on the adequacy of the term of the partnership to specific circumstances and characteristics of each project, having a particular taken into account the repayment period of financing, and staggered payments by the public partner and the life of the respective infrastructure is conducted.</p> <p>Furthermore, according to Article 12 (a), (b) and (c) of the PPP Law, the project team must (i) justify the choice of the PPP model by demonstrating that there are no comparable alternatives regarding technical and operational efficiency and economical and financial rationality; (ii) elaborate the strategic economic study which supports the launch of the PPP, and (iii) set forth the budgetary availability of the partnership considering the gross payments it will generate. Also, pursuant to Article 13 if the project team concludes that an alternative model of procurement presents advantage to the public sector, it can recommend the Government the adoption of this model instead of the PPP. Finally, pursuant to Article 6 (6) of the PPP Law, and prior to launching the procurement process, the public sector can consult the private sector agents regarding their position towards the project under consideration, thus identifying the general market conditions and any private entity directly interested in the project.</p>
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Generally happens in practice
12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)	Yes
Relevant legal/regulatory provision (if any)	<p>Pursuant to Article 12/2 of the PPP Law, prior to launching the procurement process, the project team needs to prepare and conduct the following: a) To prepare the model justification to adopt, demonstrating the lack of comparable alternatives with increased technical and operational efficiency or greater economic and financial feasibility; b) prepare the strategic and economic-financial study to support the launch of the partnership. Furthermore, According to Article 6 (6) of the PPP Law, during the preparation of the PPP it must be considered whether or not to gauge the private sector's positioning regarding the type of project with the purpose to identify potential interested parties and the conditions offered by the market.</p>
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Generally happens in practice

12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	Pursuant to Articles 6/1 (e) and 12/3 of the PPP Law, prior to the launch of the procurement process the project team must demonstrate that all environmental and urban development authorizations were obtained; meaning that when EIA is applicable it must be performed previously to the launch of the PPP. Furthermore, the declaration of environmental impact (when required) must be obtained prior to the launch according to Article 6 (4) of the PPP Law.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Generally happens in practice
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 14 (4) of the PPP Law, if the launching of the PPP project is approved, the content of the joint dispatch, or its annexes, must contain: Analysis of the options that determined the configuration of the project; a description of the project and its method of financing; the demonstration of its public interest; the justification of the option for the public-private partnership model; demonstration of the behavior and impact of the costs and risks arising from the partnership in the light of the multiannual financial programming of the public administrative sector.
and specify which of the assessments are included in the request for	Analysis of the options that determined the configuration of the project; a description of the project and its method of financing; the demonstration of its public interest; the justification of the option for the public-private partnership model; demonstration of the behavior and impact of the costs and risks arising

proposals and/or tender documents:	from the partnership in the light of the multiannual financial programming of the public administrative sector.
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):	<p>Pursuant to Article 12 (2) (e) of the PPP Law, the team in charge of appraising and structuring the PPP project must elaborate a detailed draft PPP contract to be included amongst the tendering documents disclosed. Pursuant to Article 14 (4) (a) of the PPP Law, the Government must disclose the draft PPP contract when issuing the public procurement notice (the launching of the tendering) for the PPP project.</p> <p>Pursuant to Article 42 (1) of DL18, in the call for tenders, all of the essential conditions and terms to be included in the contract are made available.</p>
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Articles 130, 131 and 132 of DL 18, the tender documents are published in the Official Gazette and, under certain conditions, in the Official Journal of the European Union.
and please specify the website:	www.base.gov.pt/ ; https://dre.pt/ and www.utap.pt
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
16.1 In a case comparable to the case study	Yes

assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 6 (1)(e) of the PPP Law: The launching and award of the partnership contract presuppose: Obtaining the required authorizations, licenses and administrative opinions, such as those of an environmental and urban nature, on which the development of the project depends, in order to allow all risk of execution to be or can be appropriately transferred to the private partner
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 6 (1) (e) of the PPP Law: The launching and award of the partnership contract presuppose: Obtaining the required authorizations, licenses and administrative opinions, such as those of an environmental and urban nature, on which the development of the project depends, in order to allow all risk of execution to be or can be appropriately transferred to the private partner. Furthermore, according to Article 6 (4) of the PPP Law, as regards, in particular, the declaration of environmental impact, when required by applicable law, it must be obtained prior to the launching of the partnership.
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned	No

to the procuring authority (or other Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to Article 6 (1)(e) of the PPP Law: The launching and award of the partnership contract presuppose: Obtaining the required authorizations, licenses and administrative opinions, such as those of an environmental and urban nature, on which the development of the project depends, in order to allow all risk of execution to be or can be appropriately transferred to the private partner
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to have any specific qualifications.	Yes
Please elaborate and provide examples:	Pursuant to the Article 67 (3) of DL 18, the bid evaluation committee members of PPP contracts are appointed by the MoF together with the relevant sector Minister. The bid evaluation committee is comprised of 3 to 5 members and 2 substitutes, and the Coordinator for UTAP appoints one to two members and one of the substitutes among UTAP's consultants, and chooses the president of the committee between the, according to Article 17/2, 3, 4 and 5 of the PPP Law.
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 131 of DL 18, the notice shall be published in the Official Journal of the Portuguese Republic and in the Official Journal of the European Union. The notice is also published in UTAP's website
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	European Union - http://ted.europa.eu/TED/main/HomePage.do Portugal - https://dre.pt/web/guest/home/-/dre/list/normal?p_auth=BWju95yT&_diarioDoDia_WAR_drefrontofficeportlet_serie=II and www.utap.pt
20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a	Yes

minimum period of time to submit their bids?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 63 of DL 18/2008, there are minimum deadlines for the submission of tenders in the case of an open procedure. According to article 63/2 the period of time will be determined on a case-by-case basis considering several aspects. These deadlines vary based on the method in which the public notice is advertised. For instance, when the public tender notice is published in the Official Journal of the European Union, the minimum deadline is 47 days from the date of the dispatch of the notice. The number of days differ if pre-announcement or pre-information notice was published. Articles 135, 136, 171-174, 190, 191, 198 and 218 of DL 18 set out the rules for the other procedures.
and the time in calendar days:	47
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Pursuant to Article 16 of DL 18:</p> <p>In the case of contracts whose object covers services which are or are likely to be subject to market competition, contracting authorities shall adopt one of the following types of procedures:</p> <ul style="list-style-type: none"> a) Direct adjustment; b) Public tender; c) Competition limited by prior qualification; d) Negotiation procedure; e) Competitive dialogue. <p>For the purposes of the provisions of the preceding paragraph, the following shall be deemed to be subject to market competition, namely, typical services covered by the following contracts, regardless of their description or nature:</p> <ul style="list-style-type: none"> a) Public works contract; b) Concession of public works; c) Concession of public services; d) Rental or acquisition of movable property; e) Acquisition of services; f) Company. <p>Furthermore, Article 15 of the PPP Law states the procedure will follow the ones available under DL18. More specifically:</p> <ul style="list-style-type: none"> 1 - The choice of the procedure for the formation of the partnership contract must follow the regime established in the Public Contracts Code. 2 - In the procedure the financing component can be autonomous, with respect to the principles applicable to public procurement, in which case it should be indicated in the documentation of the procedure, namely the overall rate of capital cost to be considered, the level of own funds required and the maturity

	<p>and composition of third-party funds, as well as their debt service.</p> <p>3 - The elements referred to in the previous paragraph, when applicable, serve as reference for the purpose of evaluating the proposals.</p> <p>Furthermore, Article 15 of the PPP Law states the procedure will follow the ones available under DL18. More specifically:</p> <p>1 - The choice of the procedure for the formation of the partnership contract must follow the regime established in the Public Contracts Code.</p> <p>2 - In the procedure the financing component can be autonomous, with respect to the principles applicable to public procurement, in which case it should be indicated in the documentation of the procedure, namely the overall rate of capital cost to be considered, the level of own funds required and the maturity and composition of third-party funds, as well as their debt service.</p> <p>3 - The elements referred to in the previous paragraph, when applicable, serve as reference for the purpose of evaluating the proposals.</p> <p>e) Acquisition of services; f) Company.</p>
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Pursuant to Article 16 of DL 18:</p> <p>In the case of contracts whose object covers services which are or are likely to be subject to market competition, contracting authorities shall adopt one of the following types of procedures:</p> <p>a) Direct adjustment; b) Public tender; c) Competition limited by prior qualification; d) Negotiation procedure; e) Competitive dialogue. e) Acquisition of services; f) Company.</p> <p>For the purposes of the provisions of the preceding paragraph, the following shall be deemed to be subject to market competition, namely, typical services covered by the following contracts, regardless of their description or nature:</p> <p>a) Public works contract; b) Concession of public works; c) Concession of public services; d) Rental or acquisition of movable property;</p> <p>Furthermore, Article 15 of the PPP Law states the procedure will follow the ones available under DL18. More specifically:</p> <p>1 - The choice of the procedure for the formation of the partnership contract must follow the regime established in the Public Contracts Code.</p> <p>2 - In the procedure the financing component can be autonomous, with respect to the principles applicable to public procurement, in which case it should be indicated in the documentation of the procedure, namely the overall rate of capital cost to be considered, the level of own funds required and the maturity</p>

	<p>and composition of third-party funds, as well as their debt service.</p> <p>3 - The elements referred to in the previous paragraph, when applicable, serve as reference for the purpose of evaluating the proposals.</p> <p>Furthermore, Article 15 of the PPP Law states the procedure will follow the ones available under DL18. More specifically:</p> <p>1 - The choice of the procedure for the formation of the partnership contract must follow the regime established in the Public Contracts Code.</p> <p>2 - In the procedure the financing component can be autonomous, with respect to the principles applicable to public procurement, in which case it should be indicated in the documentation of the procedure, namely the overall rate of capital cost to be considered, the level of own funds required and the maturity and composition of third-party funds, as well as their debt service.</p> <p>3 - The elements referred to in the previous paragraph, when applicable, serve as reference for the purpose of evaluating the proposals.</p> <p>e) Acquisition of services;</p> <p>f) Company.</p>
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	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Pursuant to Article 16 of DL 18:</p> <p>In the case of contracts whose object covers services which are or are likely to be subject to market competition, contracting authorities shall adopt one of the following types of procedures:</p> <p>a) Direct adjustment;</p> <p>b) Public tender;</p> <p>c) Competition limited by prior qualification;</p> <p>d) Negotiation procedure;</p> <p>e) Competitive dialogue.</p> <p>For the purposes of the provisions of the preceding paragraph, the following shall be deemed to be subject to market competition, namely, typical services covered by the following contracts, regardless of their description or nature:</p> <p>a) Public works contract;</p> <p>b) Concession of public works;</p> <p>c) Concession of public services;</p> <p>d) Rental or acquisition of movable property;</p> <p>e) Acquisition of services;</p> <p>f) Company.</p> <p>Furthermore, Article 15 of the PPP Law states the procedure will follow the ones</p>

	<p>available under DL18. More specifically:</p> <ol style="list-style-type: none"> 1 - The choice of the procedure for the formation of the partnership contract must follow the regime established in the Public Contracts Code. 2 - In the procedure the financing component can be autonomous, with respect to the principles applicable to public procurement, in which case it should be indicated in the documentation of the procedure, namely the overall rate of capital cost to be considered, the level of own funds required and the maturity and composition of third-party funds, as well as their debt service. 3 - The elements referred to in the previous paragraph, when applicable, serve as reference for the purpose of evaluating the proposals. <p>Furthermore, Article 15 of the PPP Law states the procedure will follow the ones available under DL18. More specifically:</p> <ol style="list-style-type: none"> 1 - The choice of the procedure for the formation of the partnership contract must follow the regime established in the Public Contracts Code. 2 - In the procedure the financing component can be autonomous, with respect to the principles applicable to public procurement, in which case it should be indicated in the documentation of the procedure, namely the overall rate of capital cost to be considered, the level of own funds required and the maturity and composition of third-party funds, as well as their debt service. 3 - The elements referred to in the previous paragraph, when applicable, serve as reference for the purpose of evaluating the proposals. <p>e) Acquisition of services; f) Company.</p>
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.6. Direct negotiation with only one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	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	Yes

information to all the bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 40 and 41 of DL18 the tender documents contain the details on the procedures of the procurement process.
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 164 (1) (h) and (4) of DL18, when using a restricted procedure with pre-qualification, the minimum standards that the applicants must meet should be included.
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	DL18 does not provide margin for the procuring entities to freely apply the selection criteria established. These criteria must be objective and clear (article 179.º and 182.º of CCP)
If no, please elaborate:	n/a
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 50 (1) of DL 18, the clarifications necessary for a proper understanding and interpretation of parts of the procedure can/should be requested by interested parties, in writing, in the first third time period before the deadline for the submission of tenders.
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 50 (4) of DL18, clarifications and corrections to the questions shall be available on the Internet portal dedicated to public procurement or the electronic platform used by the contracting authority and all bidders should be immediately notified.

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:	Such procedure has been very well applied in Portugal and every bidder knows what the law establishes thereon and, particularly, the limit term until which such clarifications shall be rendered. In case they are not rendered on time the period of proposal submissions shall be delayed (Article 50 and 64. of DL 18).
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
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?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	n/a
If yes, please specify:	n/a
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):	No regulatory basis
If no, please elaborate:	n/a

26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 70 (1) of DL18, proposals should be reviewed based on the attributes/criteria that are set out in the award criterion (the most economically advantageous tender for the contracting authority or the lowest price).
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not award a PPP contract if only one proposal is submitted.	Yes
Please provide the relevant legal/regulatory provisions (if any):	According to Article 18 (5) of the PPP Law, when only one applicant submits a proposal for a PPP project the tender procedure must be terminated. However, this legal provision also states that the procedure may continue if the members of the Government responsible for the sector and the finance area jointly decide it and present grounds for this decision.
The regulatory framework does not include any provisions.	No

28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 78 (1) of DL 18, the award notice should be submitted for publishing on the Official Journal of the European within 30 days of the decision. Furthermore, Pursuant to article 465 of DL 18, the award notice is also published in the public contracts web site.
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	www.base.gov and http://ted.europa.eu/
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 77 (1) of DL 18, all competitors are notified of the award decision simultaneously
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 77 (3) of DL 18, the award notification includes the final report, which contains details on the grounds of the decision.
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 104 (1) (a) of DL 18 there is a standstill period of 10 days between the notification of the award and the signing of the contract.
and the time in calendar days:	10
30.1. Is the standstill period set out in the notice of intention to award?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 46 (2) (a) of Directive 2014/23/EU, a contract may not be concluded following the decision to award a contract falling within the scope of Directive 2014/24/EU or Directive 2014/23/EU before the expiry of a period of at

	<p>least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.</p>
<p>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?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Pursuant to Article 99 of DL 18, the procuring authority may propose adjustments to the PPP contract, which must respect strict limitations and not include any matter that could change the winner's proposal and consequently harm the competition held. In other words, it shall not comprise any aspects that could change the outcome of the assessment or breaching terms and conditions of decision criteria.</p>
<p>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</p>	<p>Yes</p>
<p>If yes, please specify:</p>	<p>The majority of our contributors indicated that this occurs in practice</p>
<p>If no, please elaborate:</p>	<p>n/a</p>
<p>32. Does the procuring authority publish the PPP contract?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Pursuant to Article 33 (g) of the PPP Law, contracts and its annexes are published/made available on UTAP's website. However, UTAP does not publish annexes which contain industrial or commercial secrets of the private partner, in compliance with Law 26/2016, of august 22nd.</p>
<p>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</p>	<p>Yes</p>
<p>Publication of the full PPP contract without including all its annexes and appendixes</p>	<p>No</p>
<p>Publication of a summary of the PPP contract</p>	<p>No</p>

without publishing the full PPP contract	
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	No
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	No
32.2. If yes, is it published online?	Yes
If yes, please specify the website:	http://www.utap.pt/
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 33 (h) of PPP Law, subsequent amendments to contracts and their annexes are published unless they include legally protected contents.
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Each contract management authority implements its own measures of contract management since there isn't a set of rules or system in force for that purpose. Furthermore, pursuant to Article 19 (1) and 19 (2) of the PPP Law, when the complexity, the value or interest of the public partnership warrant it, members of the Government responsible for financing and project concerned may determine the establishment of a team to follow the initial phase of the contract concerned by jointly fixing the scope the task assigned to the respective team. The monitoring team should be formed in accordance with Article 10 of the PPP Law.
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	Yes

Relevant legal/regulatory provisions (if any):	<p>Each contract management authority implements its own measures of contract management since there isn't a set of rules or system in force for that purpose. Also, pursuant to Article 19 (1) and 19 (2) of the PPP Law, when the complexity, the value or interest of the public partnership warrant it, members of the Government responsible for financing and project concerned may determine the establishment of a team to follow the initial phase of the contract concerned by jointly fixing the scope the task assigned to the respective team. The monitoring team should be formed in accordance with Article 10 of the PPP Law.</p>
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	<p>Yes</p>
Relevant legal/regulatory provisions (if any):	<p>Each contract management authority implements its own measures of contract management since there isn't a set of rules or system in force for that purpose. Furthermore, according to Article 12 (5) of the PPP Law, the project team should actively involve the development of the project, entities that come to assume responsibility for monitoring and control implementation of the partnership agreement to be concluded ensure that they are able to carry out an effective monitoring and enforcement of the contract</p>
Elaboration of a PPP implementation manual or an equivalent document	<p>No</p>
Relevant legal/regulatory provisions (if any):	<p>n/a</p>
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	<p>No</p>
Relevant legal/regulatory provisions (if any):	<p>n/a</p>
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	<p>No</p>
Relevant legal/regulatory provisions (if any):	<p>n/a</p>
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please	<p>No</p>

select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	Yes
Please elaborate and provide examples:	<p>Although there are no specific legal requirements regarding the qualification of its members, the composition of the contract management team is publicized in the Oficial Gazette ("Diário da República" - https://dre.pt) under Article 33 (d) of PPP Law.</p>
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>Portuguese law regulates some aspects of the monitoring of construction works, namely Articles 355 to 369 of DL 18 .</p> <p>Specifically, article 355 of DL18 states that "the work assignment regime is included in the contract, without prejudice to the provisions laid down in this Section." Furthermore, Article 361 of DL18 states "1 - The work plan is intended, with respect to the time limit for the execution of the work, the sequence and time limits for the implementation of each species of planned work and to specify the means by which the contractor intends to implement them, as well as the definition of of the corresponding payment plan. 2 - In case the contractor has the obligation to contracting authority to draw up the program or draft the work plan shall comprise the benefits of under the responsibility of the contractor. 3. The work plan contained in the contract may be adjusted by the contractor to the final consignment submitted by the developer in accordance with the provisions of Article 357. 4 - The adjustments referred to in the previous cannot lead to a</p>

	change in the contract price or to alteration of the period of execution of the work, nor to the partial deadlines defined in the work plan in the contract, in addition to what is strictly necessary for the adaptation of the work plan to the end of consignment. 5 - The adjusted work plan needs to be approved by the developer within five days of the notification of the contract by the contractor, whose silence is tantamount to acceptance. 6 - The procedure for adjusting the work plan must be completed before the date of completion of the consignment or the first partial consignment. 7 - The developer cannot accept part of the work plan”
42.1. If yes, is the PPP contract construction performance information made available to the public?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	No
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Each contract management authority implements its own measures of contract management since there isn't a set of rules or system in force for that purpose. Furthermore, pursuant to article 35 of the PPP Law, these contracts are to be financially and economically monitored by the Technical Unit (“UTAP”) and the Minister of Finance (“MoF”) or the sectorial Minister. In addition, the contracting entity is to monitor the contract, as well as the Court of Auditors is to assess the legality of the award, before the contract enters into force. Besides the Technical Unit UTAP, there is also a Technical Unit of Budgetary Support (“UTAO”), created by a Parliament Resolution no. 53/2006, 23 June, that is a specialized unit performing the evaluation and monitoring of PPPs agreements entered by any public entity, including the costs resulting from its conclusion, the negotiation procedures, any contractual changes and its accomplishment.
43.1. If yes, which of the following tools does it include (check all that apply)? Performance is assessed against	Yes

evaluation criteria set in the tender documents and the PPP contract	
Relevant legal/regulatory provisions (if any)	No regulatory basis
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	Pursuant to Article 329 of DL 18, the public partner may impose penalties on the private partner in case of default. Typically these penalties are deducted from the payments due to the private partner.
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 Article 414 b) of DL 18 the concessionaire is obliged to provide any information and, if required in writing, to elaborate specific reports regarding aspects related to the execution of 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)	Pursuant to Article 35 (2) (n) of the PPP Law, one of UTAP's function is to collect, process and centralize the economic and financial information and pooling of risks relating to partnership contracts to be signed or already concluded.
The PPP contract performance information must be available to the public	Yes
Relevant legal/regulatory provisions (if any)	Pursuant to Articles 35 and 36 of the PPP Law, UTAP provides such information on its website regarding the fiscal execution performance of every PPP contract
43.2. Is PPP contract performance information made publicly available online?	Yes
If yes, please specify the website:	http://www.utap.pt/
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Articles 316 to 323 of DL18 contain rules on the assignment/subcontracting of the PPP contracts as well as on the changes in the ownership structure of the private partner if a company. Typically, PPP contracts also contain restrictions both on the assignment/subcontracting of the PPP as well as on the transfer of the shares in the company to which the PPP has been awarded and which typically vary during the construction period (where transfers are usually prohibited unless authorised by the public partner), a limited period usually of no more than five years after construction (where transfers are authorised between the shareholderes and third parties provided that the original shareholders continue to have control unless otherwise authorised by the public partner) and for the remainder of the PPP (where transfers are authorised provided that original or otherwise authorised shareholders retain direct or indirect control of the company unless authorised by the public partner).
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).	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	Yes
If yes, please provide the relevant legal/regulatory/standard	Article 318/ 2 (b) and 3 (b); Article 319/2, of DL 18: The assignment of the position of the private partner in the contract or subcontract of certain activities may be allowed in the contract under authorization of the public partner as set forth in Article 318/1 of DL 18. When the award of the contract is preceded by a

contractual provisions (if any):	qualification phase the authorization depends on the verification of the minimal standards demanded to the assignor.
In other cases, flexibility to change the ownership structure and/or assign the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 20 of the PPP Law contains specific rules governing the issue of unilateral modifications of the PPP contract by the public partner capable of triggering the financial rebalance of the contract, imposing, inter alia, a prior opinion of UTAP and a prior authorisation of the member of Government in charge of Finance and of the member in charge of the relevant sector whenever causing an increase of public spending higher than 1 million Euros (in annual terms) or 10 million Euros (in accumulated terms) or a reduction of spending to the private partner.</p> <p>Regarding renegotiation of the contract, pursuant to Article 21 of the PPP Law:</p> <p>1 -A negotiating committee should be established to for the overseeing the contract renegotiation process.</p> <p>2 - For the purposes of the preceding paragraph, the service or entity representing the public partner must submit to the Government member responsible for design a proposal, duly reasoned, indicating, in particular, the basis for the beginning the negotiation process and the objectives that are to be achieved.</p> <p>3 - If the Government member responsible for the project in question decides to initiate the negotiation process, it must notify the Government member responsible for financing the project for the establishment of the negotiating committee, indicating, two or three members and one or two alternates to join that committee, depending on the complexity process,.</p> <p>Lastly, Articles 302 (c) and 311 to 315 of the DL 18 set out the mandatory substantive regime for modifications of contracts.</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	The negotiation committee submits the report on the negotiation process with a draft proposal to the members of the Government responsible for the finance

contractual provisions (if any):	area and the sector of the project for approval under Article 23/1 and 3 of PPP Law.
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 313 of the DL 18, the modification of the contract can not lead to a substantial change of its main obligations and shall not be used to prevent, restrict or distort competition guaranteed by the provisions of this Code on contract formation. Articles 370 to 382 are also applicable for public works.
A change in the risk allocation of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 282 of DL 18, 1 - Restoration of the financial balance of PPP contracts is available in exceptional circumstances established (and normally detailed) in the contract or in certain cases specified by law. 2 - Restoration will need to take into account the allocation of risk between the parties, and the relevance of the fact or action giving rise to restoration as an underlying assumption governing the intention of the private party to enter into the contract. 3 - Resetting of the financial balance made under this article is, for the event that gave rise to it, unique, complete and final for the whole of the contract period (subject to partial restoration, if possible and reasonable in face of the actual circumstances).5 - Restoration may be made with reference to financial ratios and must be carried out under a principle of leaving the private party in a no better or worse position nor cover risks that are unrelated to the event at stake. 6 - Restoration may be made via direct compensation payments, extensions to the duration of the contract, changes to applicable tariffs or a combination of all or some of these.
A change in the financial and/or economic balance of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 282 of DL 18: 1 - Financial rebalance of PPP contracts is available in exceptional circumstances established (and normally detailed) in the contract or in certain cases specified by law. 2 – The rebalance must take into account the allocation of risk between the parties and the relevance of the fact or action giving rise to it as an underlying assumption governing the intention of the private party to enter into the contract. 3 - Rebalance is, for the event that gave rise to it, unique, complete and final for the whole of the contract period. 4 – The rebalance may be made with reference to financial ratios and must be carried out under a principle of leaving the private party in a no better or worse position than before the event, nor cover risks that are unrelated to the event at stake. 5 - Rebalance may be made via direct compensation payments, extensions to the duration of the contract, changes to applicable tariffs or a combination of all or some of these
A change in the duration of the contract.	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 282 (3) of DL 18 the financial rebalance of the contract may be set by changing the duration of the contract.
A change in the agreed price or tariff.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	According to Article 300 of DL 18, price revision can only happen if the contract stipulates it and establishes its terms, namely the calculation method and periodicity. The review of prices is also one possible measure of financial rebalance according to Article 282/3 of DL 18.
46.3. Can the procuring authority unilaterally modify a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	The procuring authority may unilaterally modify a PPP contract if the public interest so demands it or in case the circumstances which founded the decision to procure the contract are abnormally and unexpectedly altered - Articles 302 (c), 311 (1) (b) and (2), and 312 of DL 18.
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 7 (1) (d) of the PPP Law, risk sharing between the public and private partners should be clearly identified and should comply with several rules, including: the risk of financial unsustainability of the partnership not attributable to default or unilateral modification of the contract, or of force majeure events must be transferred to the private partner as much as possible.
Material Adverse government action .	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 314 (1) (a) of DL 18, the private partner has the right to financial rebalance of the contract according to the criteria set out in DL 18 whenever the reason for the modification of the contract is: a) abnormal and unpredictable circumstances attributed to a decision of the public partner, adopted outside the powers of conformation of the contract, which reflects specifically on the contract.
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Refinancing.	No

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Articles 316 to 323 of DL18 contain rules on the assignment/subcontracting of public contracts, as well as on the changes in the ownership structure of the private partner, which are applicable to PPP contracts. Typically, PPP contracts also contain restrictions both on the assignment/subcontracting of the PPP as well as on the transfer of the shares in the company to which the PPP has been awarded and which vary (i) during the construction period, where transfers are usually prohibited unless authorised by the public partner; (ii) a limited period, usually of no more than five years after construction, where transfers are authorized between the shareholders and third parties provided that the original shareholders continue to have control, unless otherwise authorised by the public partner; and (iii) for the remainder of the PPP, where transfers are authorized provided that original or otherwise authorized shareholders retain direct or indirect control of the company unless authorized by the public partner.
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):	This matter is generally addressed in articles 307 to 309 and 342 of DI 18, in article 27 of the PPP Law, in the Administrative Procedure Code (Decree-Law 4/2015, of January 7th), in the Procedure Code of the Administrative Courts (Law 15/2002, of February 22nd) and in the Administrative and Fiscal Court Statute (Law 13/2002, of February 19th).
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	Yes
If yes, please specify:	The competent body within the public authority, or its hierarchical superior.
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes

Mediation	No
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	Article 307/2 of DL 18; Article 184/1 (a) of the Administrative Procedure Code; Article 51/1 of the Procedure Code in Administrative Courts). Furthermore, Portugal is also a member of the New York Convention and of ICSID.
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):	Article 47 of Law 63/2011 dated 14th December and the Procedure Code in Administrative Courts.
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Portugal is a member of the New York Convention
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Portugal is a member of ICSID
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of	Yes

termination for failure to meet service obligations?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 322 (1) of DL18, and provided that there are contractual provisions to that effect, in case of a serious default the financing entities, with the authorization of the public contracting party, are allowed to step in to remedy any situation so as to ensure the execution of the contract. The step in may be achieved by means of transferring the control of the private SPV or the PPP contract to the financing entities or to a third party indicated by the latter. Direct arrangements are usually put in place between the public contracting entity and the financing entities also providing for these step-in and step-out rights.
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	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.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to Article 322 (1) of DL18, and provided that there are contractual provisions to that effect, in case of a serious default the financing entities, with the authorization of the public contracting party, are allowed to step in to remedy any situation so as to ensure the execution of the contract. The step in may be achieved by means of transferring the control of the private SPV or the PPP contract to the financing entities or to a third party indicated by the latter. Direct arrangements are usually put in place between the public contracting entity and the financing entities also providing for these step-in and step-out rights.
Other.	No
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly	Yes

establish the grounds for termination of a PPP contract?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>A. Termination by the public party: Article 333 of DL 18: Default imputable to the private party;-Failure to comply with orders, directives, instructions of the public partner;-Repeated opposition to the exercise of supervision powers by the public partner;-Assignment of contractual position or subcontracting in breach of the relevant legislation; If the amount of the penalties applied to the private partner exceeds 20% of the contract price;-Failure to comply with judicial arbitration decisions related to the contract;-Failure to restore the amount of the performance guarantee;-If the private partner presents itself to bankruptcy /insolvency proceedings, or if such bankruptcy /insolvency is declared by the court. Article 334 of DL 18- Termination on grounds of public interest Article 335 of DL 18- Abnormal and unpredictable alteration of the circumstances upon which the parties decided to enter into the agreement. Article 423 of DL 18 - Deviation from the object of the concession; Total or partial cessation or suspension by the concessionaire of the execution or operation of public works or the management of public services, without any measure being taken to remove its cause- Refusal or impossibility of the concessionaire to take the concession back as a consequence of the seizure; Repetition of the situations that brought about the seizure after the concession has been taken back; Serious deficiency in the organization and development of the concession activities by the concessionaire, in such a manner that it could compromise its continuity or regularity in accordance with the conditions set out in the law or in the contract; Obstruction to the seizure; Seizure of the concession for the maximum duration permitted by the law or by the contract.</p> <p>B. Termination by the private party Article 332 of DL 18(note that termination by the private party requires a prior court or arbitration decision, except for termination for delay in monetary obligations)- Abnormal and unpredictable alteration of circumstances; Default attributable to the public party; Delay in the compliance with monetary obligations, in excess of 6 months or where the outstanding amount exceeds 25% of the contract price; legal exercise of legal powers/rights by the public partner regarding definition of the contractual frame, in such terms that the maintenance of the contract should be contrary to bona fide principles; Failure to comply with judicial arbitration decisions related to the contract</p>
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory/standard	<p>Articles 333, 334, and 335 of DL 18 set out the consequences for the termination of the contract. These are: a) in the case of termination due to public interest, fair</p>

contractual provisions (if any):	compensation to which the private partner is owed which comprises actual damages and lost profits, deducted from the benefit of the anticipated gains b) in case of termination due to abnormal change or unpredictable circumstance, the private partner is entitled to fair compensation, c) when termination is due to a decision by the public partner outside the powers of conformation of the contract the private partner is also entitled to fair compensation.
Unsolicited Proposals	
34. Are unsolicited proposals in Portugal: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	Yes
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	n/a
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	n/a
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
36. Which of the following options best describe how the procuring authority	n/a

<p>ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	n/a
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p>	n/a
<p>Please elaborate and provide examples:</p>	n/a
<p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	n/a
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</p>	n/a
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a

and the time in calendar days:	n/a
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	n/a
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	n/a
39.3 Bid Bonus.	n/a
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	n/a
39.5 Other.	n/a
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a