

## PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN SOMALIA

SURVEY QUESTION	ANALYSIS
<b>PPP Regulatory Framework</b>	
<b>2. Does the regulatory framework in your country allow procuring PPPs?</b>	Yes
<b>If yes, please specify the relevant regulatory framework and the year of adoption:</b>	The Public Procurement and Concessions Law (2014) has been enacted by the Parliament in Somalia. Later on, the 2015 version was considered in the parliament and alterations were made to this document before the final version was signed on August 9, 2016. The new version was signed in 2016 and became technically law. Although our contributors indicated that the institutions required to be formed by the law have not been created yet, which led the MoF to delay effectiveness, we will use the Public Procurement, Concessions and Disposal Act of November 23, 2015 for purposes of this coding (Hereinafter the "Procurement Law").
<b>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</b>	Not available publicly as of yet.
<b>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?</b>	No
<b>Please describe:</b>	n/a
<b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b>	Yes
<b>Please describe:</b>	With the adoption of Somali's Public Procurement, Disposal and Concession Act in 2015, which the former President endorsed in 2016, also, detailed regulation and guidelines have been developed which is yet to be adopted Also, the Interim National Procurement Board (INPB) and the Financial Governance Committee have recommended that action be taken to adjust the recently passed procurement law to ensure that it forms an appropriate legal and regulatory framework for implementing PPPs.
<b>3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the</b>	No

<b>following sectors?: Transportation.</b>	
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>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</b>	No
<b>If yes, specify and provide the relevant legal/regulatory provisions:</b>	n/a
<b>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</b>	No
<b>If yes, please specify and provide the relevant</b>	n/a

<b>legal/regulatory provision (if any):</b>	
<b>5. Please identify the PPP procuring authorities in Somalia and provide their website(s) (if available):</b>	<p>According to Article 54 of the Procurement Law about the Procuring Entities:</p> <ol style="list-style-type: none"> <li>1. Any public entity that is provided with an administrative structure and a budget and is given responsibility for planning and use of public funds is declared a Procuring Entity.</li> <li>2. A Procuring Entity shall conduct procurement and disposal in accordance with the provisions of this Act and subject to such other conditions as may be laid down in the regulations and administrative instructions issued by the Minister.</li> <li>3. The head of the Procuring Entity shall be the Accounting Officer in accordance with this Act and shall be held responsible and accountable for compliance by the Procuring Entity within this Act...</li> <li>4. The technical departments of the Procuring Entity shall be responsible for preparing schedules of requirements, including cost estimates, specifications, and terms of reference; participating in bid and proposal evaluations, and supervision of contracts; and certifying receipt of goods and completion of contract works and consulting services. The procedure for inspection and acceptance of receipt of goods will be defined in the Regulations.</li> <li>5. The Procuring Entities shall be listed and published regularly in the Authority's bulletin and website.</li> </ol> <p>Finally, we note that Somalia has an Interim National Procurement Board which was established in March 2015 as a temporary body until permanent PPA is appointed. The information about the Interim PPA can be found at <a href="http://mof.gov.so">mof.gov.so</a> while website will be developed for the permanent PPA.</p>
<b>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</b>	<p>Yes</p>
<b>If yes, please indicate its name, and its website (if available):</b>	<p>According to Article 61 of the Procurement Law: 1. Every Procuring Entity shall establish a Procurement Unit under this Act. Additionally, According to Article 121, there is a Concession Technical Unit that was established under the Ministry of Finance</p>
<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	<p>Yes</p>
<b>6.2 PPP capacity building for other public authorities.</b>	<p>Yes</p>
<b>6.3 PPP promotion among the public and/or private sectors in national and international forums.</b>	<p>Yes</p>
<b>6.4 Technical support in implementing PPP projects.</b>	<p>Yes</p>

<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	Yes
<b>6.6 Revision of fiscal risks born by the Government.</b>	No
<b>6.7 Consultation with affected communities on potential impact of PPP projects.</b>	Yes
<b>6.8 Approval of PPP projects.</b>	Yes
<b>6.9 Undertaking the procurement of PPPs.</b>	No
<b>6.10 Oversight of PPP implementation.</b>	Yes
<b>6.11 Other</b>	No
<b>6.11 please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions:</b>	<p>According to Article 122 of the Procurement Law, titled: Functions of the Concession Technical Unit:</p> <p>1. The general functions of the Unit are:</p> <ul style="list-style-type: none"> <li>a) Policy guidance and capacity building– defining concession polices under the guidelines of the Inter`ministerial Concession Committee (IMCC) and processes and building the capacity of agencies to those processes;</li> <li>b) Concession promotion both within and beyond government – encouraging sector agencies to consider using concessions or promoting the opportunities;</li> <li>c) Technical support in implementing concession projects including providing hand holding support to responsible implementation teams in ministries or agencies or being directly responsible for some aspects of concession implementation; and</li> <li>d) Reviewing and overseeing the management of concession projects for efficiency and affordability and approving concession projects or advising on the approval process.</li> </ul> <p>2. The specific functions of the Unit are to:</p> <ul style="list-style-type: none"> <li>a) Serve as the secretariat and technical arm of IMCC;</li> <li>b) Provide technical, financial and legal expertise to IMCC and any Procurement and Concession Unit established under this Act;</li> <li>c) Serve as a resource center on matters relating to concessions;</li> <li>d) Conduct civic education to promote the awareness and understanding of the concessions process among stakeholders;</li> <li>e) Make recommendations on the approval or rejection of projects prior to submission to IMCC for approval;</li> <li>f) Assist IMCC in formulating guidelines and standard documentation required under this Act;</li> <li>g) Liaise with and assist the Concession Entities in their roles in the various stages of a project cycle;</li> <li>h) Ensure, in collaboration with the Public Procurement Authority, that the tendering process relating to a project conforms to the procurement provisions of this Act;</li> <li>i) Carry out such other functions as may be conferred on it by IMCC and this Act.</li> </ul>

PPP Preparation	
<b>8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Public Procurement Concessions Manual chapter 5.2.5 provides that: a) Minister for Economic Affairs shall Issue a written approval as the Certificate of Concession (CC) for the procurement of the project as a concession or ...
<b>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Public Procurement Concessions Manual chapter 5.2.6 provides that: If the Ministry issues the CC as per section 5.2.5 (a), shall ensure that the same CC is copied to the IMCC which is responsible for overseeing concessions implementation ranging from concession bid preparations to the final signing of the contract by the winning concessionaire.
<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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).</b>	n/a
<b>Accounting and reporting according to other international standard (e.g.</b>	n/a

European System of Accounts).	
Please specify:	n/a
Other.	n/a
Please specify:	n/a
<b>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.)?</b>	No
If yes, please specify the relevant authority	n/a
and provide the relevant legal/regulatory provisions (if any):	n/a
<b>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?</b>	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 113 of the Procurement Law, and according to Chapter 2.5.1 2 of the: Public Procurement Concessions Manual: A Concession Entity and or the Inter - Ministerial Concession Committee (IMCC) may where it is in the national interest, engage private sector entities or experts to advise on any of the processes of concessions other than approvals and such experts shall work with the Procurement Unit for the purposes of the specific concession. 2.5.2 Such experts shall be referred to as transaction advisors and /or specialist advisors and may include the lawyers, financial analysts, financiers, economists, sociologists, and sector specialists to support the CE or the IMCC.
<b>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</b>	No

<p><b>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.</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	n/a
<p><b>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.</b></p>	Yes
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>According to Article 125 of the Procurement Law, titled: Inclusion in Economic Development Plan:  1. The Ministerial responsible for Finance shall develop an annual concessions plan for sectors of the economy in which concession may be promoted for approval of the Council of Ministers...</p>
<p><b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</b></p>	No
<p><b>If yes, please elaborate:</b></p>	n/a
<p><b>The procuring authority does not evaluate PPPs against existing government priorities.</b></p>	No
<p><b>Please elaborate and provide examples:</b></p>	n/a
<p><b>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?</b></p>	No

<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	In practice, prioritization is not done in accordance with the provisions of the regulatory framework because, as we understood from our contributors, there are very few PPP projects undertaken in Somalia, and the ministries did not proceed to a formal prioritization of such projects with other public investment projects
<b>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)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a



<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>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)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.5. Financial viability or bankability assessment</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.7. Environmental impact assessment</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a

<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>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)?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b>	n/a
<b>13.1. Are the assessments published online?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>specify the website</b>	n/a
<b>please specify which of the assessments are published online:</b>	n/a
<b>14. Does the procuring authority include a draft PPP contract in the request for proposals?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Public Procurement Concessions Manual chapter 8.2.1 Table 6 gives a summary of crucial information that should be contained in the concession bidding document including draft contract. Additionally, Article 143 of the Procurement Law provides that 1. The concession bid documents shall, at a minimum include the following: ... (d) General and specific conditions of contract / agreement.
<b>If no, please elaborate</b>	n/a
<b>14.1. Are the tender documents published online?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and please specify the website:</b>	n/a
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	No
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	n/a
<b>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)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No

To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	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
<b>PPP Procurement</b>	
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	No

are required to meet detailed qualifications.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 62 of the Procurement Law providing about the Evaluation Committee, we read: ... 2. The members of the Evaluation Committee Procurement Unit shall be persons with the required expertise and may be external to the Procuring Entity.
The bid evaluation committee members are not required to have any specific qualifications.	No
Please elaborate and provide examples:	n/a
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	According to Chapter 8.3.5 of the Concession Manual: In the event that the CBD is approved by the IMCC, the Concession Entity shall publish a General Notice of Investment Opportunity (GNIO), Expression of Interest (EOI), Invitation to Bid (IFB) or all of them in successive order as the context may require in accordance with the bidding document and the provisions of this Concession Manual.  Additionally, Article 144 of the Procurement Law: 1. Upon approval of the concession bid documents, the Procurement Unit shall publish a required , General Notice of Investment Opportunity, Expression of Interest, Request For Proposals or all of them in successive order as the context may require in accordance with the provisions of this Act.
19.1. If yes, is the public procurement notice published online?	No
If yes, please specify the website:	n/a
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	Yes

<b>grant the potential bidders a minimum period of time to submit their bids?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Article 135 of the Procurement Law, about International Competitive Bidding, (2) bidders shall be allowed not less than six (6) weeks to prepare and submit bids.
<b>and the time in calendar days:</b>	42
<b>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</b>	No
<b>Default</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	According to the Concession Manual: 9.1.1 The Concessions bidding proceedings shall as a default method follow open competitive bidding method (refer to chapter 10 of this CM).
<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>According to Article 138 of the Procurement Law regarding Restricted Competitive Bidding</p> <p>1. Subject to the approval of the IMCC, Restricted Competitive Bidding shall be employed where the Concessions Entity has pre-qualified bidders in accordance with the provisions of this Part of this Act.</p> <p>Additionally, according to the Concession Manual, Concession Entity may use limited or restricted competitive bidding in lieu of open competitive bidding when it has a list of prequalified bidders. with the approval of IMCC</p>
<b>22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.4. Competitive dialogue: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.5. Direct negotiation with more than one candidate: Available</b>	No
<b>Default</b>	No

<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.6. Direct negotiation with only one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.7 Other. Specify:</b>	No
<b>Available</b>	n/a
<b>Default</b>	n/a
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate:</b>	n/a
<b>22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Under Article 17 of the Procurement Law titled Qualification of Bidders, 3. Any requirement established pursuant to this Article shall be set forth in the prequalification documents, if any, and in the bidding documents and shall apply equally to all bidders without discrimination. Only those criteria stated in such documents shall be applied.
<b>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate:</b>	According to our contributors in Somalia, the prequalification criteria specified in the tender documents are not respected in practice yet explaining that there has not been PPP projects they were aware of to provide a positive answer
<b>23. Can interested parties/potential bidders submit questions to clarify the public procurement</b>	Yes

<b>notice and/or the request for proposals?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Article! 20 of the Procurement Law titled: Clarification and Modification of Bidding and Prequalification Documents</p> <p>1. A Procuring Entity shall at the earliest possible respond to any request raised by bidders/applicants for clarification of the bidding documents, or the prequalification documents, provided that such request is submitted to the Procuring Entity within the time specified in the bidding or prequalification documents.</p>
<b>23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	In practice, the procuring authority in Somalia discloses all the questions and clarifications to all the bidders
<b>If no, please elaborate:</b>	n/a
<b>24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>According to chapter 10.4.6.1 of the Concession Manual, A pre - application meeting may be held to clarify and respond to questions that the bidders could have regarding the project and the information provided in the EOI. The purpose of this meeting is to provide a forum for any general inquiries about the EOI process. If some clarifications sought may lead to a change in any clause of the EOI, the change shall be incorporated in the EOI and such changes shall be communicated in writing to the entire participants. Depending on the nature of the clarifications, the CE may decide to extend the date for EOI submission ...</p>
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis



<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	In practice, the content and results of the pre-bid conference is disclosed to all bidders in Somalia
<b>If no, please elaborate:</b>	n/a
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>If no, please elaborate:</b>	n/a
<b>26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Article 80 of the Procurment Law, 10. The Procuring Entity shall prepare an evaluation report detailing the examination and evaluation of bids and identifying the recommendation for award of contract in accordance with the evaluation criteria specified in the bidding document.
<b>Evaluation criteria is not set in the tender documents</b>	No
<b>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.</b>	No
<b>Please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	No

<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The procuring authority does not award a PPP contract if only one proposal is submitted.</b>	No
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The regulatory framework does not include any provisions.</b>	Yes
<b>28. Does the procuring authority publish the award notice?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Article 144: Notification of General Notice of Investment Opportunity, Expression of Interest or Request for Proposals</p> <p>1. Upon approval of the concession bid documents , the Procurement Unit Shall publish a required, a General Notice of Investment Opportunity, Expression of Interest, Request For Proposals or all of them in Successive order as the context may require in accordance with the provisions of this Act.</p> <p>Additionally, according to 10.4.3 of the Concession Manual: The CE shall publish the intention to award the concession project, describing clearly the characteristics of the project (brief overview of the project and scope of services) and the minimum technical, financial and operational qualifications and requirements for participation.</p>
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	n/a
<b>29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Chapter 10.6.29.1 of the Concession Manual: The CE shall inform the bidders, who have submitted bids, of the technical points assigned to each of them; and shall notify those whose proposals did not meet the minimum qualifying mark that their price proposals will be returned unopened after the contract is signed. The CE shall simultaneously notify the consultants that have secured the minimum qualifying mark of the date, time, and place set for opening the price proposals.</p>
<b>If no, please elaborate:</b>	n/a
<b>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?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Chapter 10.6.29.1 of the Concession Manual: The CE shall inform the bidders, who have submitted bids, of the technical points assigned to each of them; and shall notify those whose proposals did not meet the minimum qualifying mark that their price proposals will be returned unopened after the contract is signed. The CE shall simultaneously notify the consultants that have secured the minimum qualifying mark of the date, time, and place set for opening the price proposals.</p>
<b>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?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to Article 83 of the Procurement Law, 4. The contract shall not be signed until at least 14 calendar days have elapsed, following the giving of that notice to allow any aggrieved bidder to file a complaint or appeal.</p>
<b>and the time in calendar days:</b>	<p>14</p>
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>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?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 82 of the Procurement Law, titled: Prohibition of negotiations with suppliers or contractors, provides:  1. Pursuant to the exception in this Article, no negotiations shall take place between the Procuring Entity and a supplier or contractor with respect to a bid submitted by such supplier or contractor...  Furthermore, according to Chapter 10.9.3 of the Concessions Manual: Negotiations will be based only on issues that the concessionaire may require further discussions on; or issues that the concession entity may need to make some further clarifications on.</p>
<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	<p>Yes</p>
<b>If yes, please specify:</b>	<p>The restrictions of negotiations with the selected bidder between the award and the signature of the contract are respected in practice in Somalia.</p>
<b>If no, please elaborate:</b>	<p>n/a</p>

<b>32. Does the procuring authority publish the PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>32.1. If yes, which of the following options best describes this publication (choose only one)?:</b> <b>Publication of the full PPP contract including all its annexes and appendixes</b>	n/a
<b>Publication of the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract without publishing the full PPP contract</b>	n/a
<b>Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>32.2. If yes, is it published online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>PPP Contract Management</b>	
<b>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)?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Article 159 of the Procurement Law about Post Contract Management: 1. The Negotiation Team shall conclude post`contract management arrangements during the negotiations and this shall at least include: (a) Mechanisms for monitoring performance of the terms and conditions of the agreements (b) Reports to be submitted on periodic basis and the methods for authentication of the reports (c) Asset maintenance and improvement requirements if any (d) Arrangement for handling public complaints
<b>41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	n/a
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	n/a
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The</b>	n/a

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.	n/a
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.	n/a
Please elaborate and provide examples:	n/a
<b>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?</b>	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
<b>42.1. If yes, is the PPP contract construction performance information made available to the public?</b>	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
<b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b>	n/a
If yes, please specify the website:	n/a
<b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract</b>	No

<b>implementation after construction?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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</b>	n/a
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	n/a
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The private partner must provide the procuring or contract management authority with periodic operational and financial data</b>	n/a
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract</b>	n/a
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The PPP contract performance information must be available to the public</b>	n/a
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>43.2. Is PPP contract performance information made publicly available online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>44. Are foreign companies prohibited from repatriating</b>	No

the income resulting from the operation of a PPP project?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	n/a
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.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
In other cases, flexibility to change the ownership structure and/or assign the contract.	n/a
If yes, please provide the relevant legal/regulatory/standard	n/a



<b>contractual provisions (if any):</b>	
<b>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>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.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the risk allocation of the contract.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the financial and/or economic balance of the contract.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the duration of the contract.</b>	n/a

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.3. Can the procuring authority unilaterally modify a PPP contract?	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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

<b>Subcontracting and replacement of the subcontractors.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>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?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	According to Article 157 of the Procurement Law about: Issues to Be Considered At the Negotiations: 1. The negotiations team shall take the following into account, within the context of existing laws, in its negotiations with the prospective concessionaire: ...(f) Dispute resolution mechanisms.
<b>48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body</b>	No
<b>If yes, please specify:</b>	n/a
<b>Local courts</b>	Yes
<b>Domestic arbitration</b>	Yes
<b>International arbitration</b>	Yes
<b>Investor-State Dispute Settlement (ISDS)</b>	Yes
<b>Mediation</b>	Yes
<b>Please provide the relevant legal/ regulatory/standard contractual provisions (if any)</b>	Chapter 11.5.2 of the Concession Manual provides that: The mechanisms available to resolve disputes and conflicts are a major part of the assessment of contract risks by private investors in concessions projects. The typical dispute resolution mechanisms may include any of the following. a) Discussion between both parties; b) Fast Track resolution process; c) Dispute resolution board; d) Expert determination; e) Mediation or conciliation; or f) Arbitration (In case arbitration between the CE and the Concessionaire is required, shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of the Concession Agreement. )

	g) If the above a) - f) mechanisms of dispute resolutions fails, the aggrieved party could seek for judicial review in the High Court.
<b>48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration</b>	No
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	n/a
<b>International arbitration</b>	No
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	n/a
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b>	Somalia is part of the ICSID Convention
<b>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?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>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?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a

<b>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.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Other.</b>	n/a
<b>Please Specify:</b>	n/a
<b>51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>According to Article 157 of the Procurement Law about: Issues to Be Considered At the Negotiations:</p> <p>1. The negotiations team shall take the following into account, within the context of existing laws, in its negotiations with the prospective concessionaire: ... (q) termination provisions.</p> <p>Also, according to the Public Procurement Concessions Manual, in its chapter 11.7 titled: Termination of Concession Contracts: (11.7.1) The concession contract shall include detailed provisions dealing with its termination.</p>
<b>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish</b>	No

the consequences for the termination of the PPP contract?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
<b>Unsolicited Proposals</b>	
<b>34. Are unsolicited proposals in Somalia: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)</b>	No
Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	Yes
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	The majority of our contributors indicated that although unsolicited proposals are not regulated in Somalia, they do happen in practice
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	n/a
<b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b>	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
<b>36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities?</b>	n/a

<b>(Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.</b>	
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b>	n/a
<b>Please elaborate and provide examples:</b>	n/a
<b>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	n/a
<b>39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that</b>	No

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