

## PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN SOUTH AFRICA

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>	<p>PPP in South Africa is regarded as a specialized form of procurement, the starting point is the regulatory framework governing public sector procurement in the national and provincial spheres of government. Public procurement is regulated under: Section 217 of the Constitution of South Africa; Section 51(1)(a)(iii) of the Public Finance Management Act 1 of 1999 (“PFMA”); The Preferential Procurement Policy Framework Act 5 of 2000, and the Preferential Procurement Regulations adopted in 2017 (hereinafter the “PPPFA” and the “PPR” respectively), the Broad-based Black Economic Empowerment Act, 2003 and the Promotion of Administrative Justice Act 3 of 2000.</p> <p>In addition to the above regulatory framework, the following legislation regulates the feasibility, procurement and implementation of PPPs: Treasury Regulation 16 to the PFMA (adopted in 2005 and amended in 2007 and 2013), hereinafter the “Treasury Regulation”; the PPP Manual issued as various National Treasury Practice Notes by the PPP Unit in the National Treasury, including the Standardized PPP Provisions issued as National Treasury PPP Practice Note 1 of 2004, hereinafter the “standardized provisions”. Our study will be focused on those specialized PPP texts.</p>
<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>	<p><a href="http://mfma.treasury.gov.za/Legislation/Pages/default.aspx">http://mfma.treasury.gov.za/Legislation/Pages/default.aspx</a></p>
<b>2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally</b>	Yes

<p><b>followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</b></p>	
<p><b>Please describe:</b></p>	<p>The revised Preferential Procurement Regulations 2017 (“PPPFA Regulations 2017”) issued in terms of the PPPFA, came into effect on 1 April 2017. The PPPFA Regulations 2017 have repealed the PPPFA Regulations 2011 in their entirety</p>
<p><b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b></p>	<p>Yes</p>
<p><b>Please describe:</b></p>	<p>Public Procurement Management Bill, and a new broad-based black economic empowerment module.</p>
<p><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 following sectors?: Transportation.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	<p>n/a</p>
<p><b>3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in</b></p>	<p>No</p>

<b>any of the following sectors?: Water and Irrigation</b>	
<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</b>	No

<p><b>defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other</b></p>	
<p><b>If yes, specify and provide the relevant legal/regulatory provisions:</b></p>	<p>n/a</p>
<p><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></p>	<p>Yes</p>
<p><b>If yes, please specify and provide the relevant legal/regulatory provision (if any):</b></p>	<p>Pursuant to Section 12(P) (2A) of the Income Tax Act 1962(2A): Notwithstanding subsection (2), there must be exempt from normal tax any amount received by or accrued to or in favor of any person from the Government in the national, provincial or local sphere, where-</p> <p>(a) that amount is granted for the performance by that person of its obligations pursuant to a Public Private Partnership; and</p> <p>(b) to the extent that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or to buildings owned by any sphere of government or over which any sphere of government holds a servitude.</p> <p>Section 12N provides: Deductions in respect of improvements not owned by taxpayer. -(1) If a taxpayer- (a) holds a right of use or occupation of land or a building; (b) effects an improvement on the land or to the building in terms of- (i) a Public Private Partnership; [...] the taxpayer must, for the purposes of any deduction contemplated in section 11D, 12B, 12C, 12D, 12F, 12I, 12S, 13, 13bis, 13ter, 13quat, 13quin, 13sex or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.</p>
<p><b>5. Please identify the PPP procuring authorities in</b></p>	<p>All national and provincial government departments, all constitutional institutions listed in Schedule 1 to the PFMA, all national and provincial public entities listed in schedules 3A, 3B, 3C and 3D to the PFMA and any subsidiary of any such entity. In addition, municipalities are</p>

<b>South Africa and provide their website(s) (if available):</b>	also procuring authorities. <a href="https://www.gtac.gov.za/">https://www.gtac.gov.za/</a> and <a href="http://www.treasury.gov.za/">http://www.treasury.gov.za/</a>
<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>	Yes
<b>If yes, please indicate its name, and its website (if available):</b>	The National Treasury's PPP Unit: <a href="http://www.ppp.gov.za/Pages/About.aspx">http://www.ppp.gov.za/Pages/About.aspx</a>
<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	Yes
<b>6.2 PPP capacity building for other public authorities.</b>	Yes
<b>6.3 PPP promotion among the public and/or private sectors in national and international forums.</b>	Yes
<b>6.4 Technical support in implementing PPP projects.</b>	Yes
<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	No

<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>	No
<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>Missions of the PPP Unit are as follows:</p> <ul style="list-style-type: none"> <li>- To enable National Treasury and provincial treasuries to effectively regulate PPPs</li> <li>- To evolve as a dynamic and sustainable center of excellence for PPPs</li> <li>- To drive PPP deal flow by identifying project opportunities that yield value for all stakeholders</li> <li>- To provide technical assistance to public institutions through project feasibility, procurement and management; and</li> <li>- To promote an enabling environment for PPPs by: <ul style="list-style-type: none"> <li>o facilitating certainty in the regulatory framework</li> <li>o developing best practice guidelines</li> <li>o providing training</li> <li>o disseminating reliable information; and</li> <li>o driving black economic empowerment in PPPs.</li> </ul> </li> </ul>
<b>PPP Preparation</b>	
<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</b>	Pursuant to section 16.4.2 of the Treasury Regulations of March 2005, an institution may not proceed with the procurement phase of a PPP without written treasury approval for the feasibility study on aspects relating to the affordability, value for money and appropriate

<b>provisions (if any):</b>	<p>technical, operational and financial risk transfer. The relevant treasury is defined in the Treasury Regulations as the National Treasury or the authority to which its powers have been delegated by the Minister of Finance in terms of the PFMA.</p> <p>Moreover, according to section 16.6.1, prior to the issuing of procurement documentation to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including at least the main terms of the proposed agreement, the aspects of affordability, value for money and risk transfer.</p>
<b>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to section 16.6.5 of the Treasury Regulations: After the evaluation of the bids but prior to entering into negotiations with any of the bidders, the institution must submit a report for approval by the relevant treasury, demonstrating the means by which affordability, quantification of value for money, appropriate technical, operational and financial risk transfer was established.</p> <p>Section 16.7.1 of the Treasury Regulations furthermore indicates: after the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution enters into a PPP agreement, he or she must obtain approval from the relevant treasury.</p>
<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	<p>Yes</p>
<b>If yes, please provide the relevant</b>	<p>Part 7 of the Treasury regulations is related to Accounting and reporting requirements. Section 18.2 indicates: Annual financial statements must consist of – (a) a statement of liabilities and financially related assets.</p>

<b>legal/regulatory provisions (if any):</b>	The Accounting Standards Board (ASB) has issued a guideline titled “Guideline on accounting for public-private partnerships” (Issued in November 2008). The Guideline outlines the ASB’s view on accounting PPP related liabilities in paragraph 8 (Other accounting considerations) in particular and refers to GRAP 19 and other GRAP where applicable.
<b>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Part 7 of the Treasury regulations is related to Accounting and reporting requirements. Section 18.2 indicates: Annual financial statements must consist of – (a) a statement of liabilities and financially related assets. The accounting guidelines - GRAP 19 Provisions, contingent liabilities and contingent assets - provide for accounting liabilities.
<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>	Yes
<b>Accounting and reporting according to other international standard (e.g. European System of Accounts).</b>	No
<b>Please specify:</b>	n/a
<b>Other.</b>	No
<b>Please specify:</b>	n/a
<b>9. Besides the procuring authority and the Ministry of Finance or Central Budgetary</b>	No



<b>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>	
<b>If yes, please specify the relevant authority</b>	n/a
<b>and provide the relevant legal/regulatory provisions (if any):</b>	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
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	Yes
<b>If yes, please provide the relevant</b>	Treasury Regulation 16.3.1 requires an institution to appoint a transaction advisor if the relevant treasury so requests. In a large majority of cases the National Treasury requests the use of a transaction advisor.

<b>legal/regulatory provisions (if any):</b>	
<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 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>No</p>
<b>If yes, please specify and provide the relevant legal/regulatory</b>	<p>n/a</p>

<b>provisions (if any):</b>	
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	PPP manual (module 4) requires the procuring authority to check whether the project is in accordance with the institution's policy and priorities in the need analysis: to be in an institution's best interests, a project needs to align with the institution's policy and priorities.
<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>	No
<b>If yes, please elaborate:</b>	n/a
<b>The procuring authority does not evaluate PPPs against existing government priorities.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>11.1. Based on your experience, is it always the case</b>	No

<p><b>that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?</b></p>	
<p><b>If yes, please specify:</b></p>	<p>n/a</p>
<p><b>If no, please elaborate:</b></p>	<p>The accounting office of a national or provincial department is empowered to determine the infrastructure needs thereof and if that accounting officer wishes to assess whether infrastructure should be procured as a PPP, the accounting officer may undertake the processes set forth in National Treasury section 16 without reference to any other priorities.</p>
<p><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></p>	<p>Yes</p>
<p><b>Relevant legal/regulatory provision (if any)</b></p>	<p>The PPP Manual (Module 4: Feasibility Study) prescribes various stages in the feasibility study of a PPP. One of the stages, after the value assessment is completed, is to conduct an economic valuation in order to understand if the project will be economically viable and to give a clear economic rationale for the project.</p> <p>Furthermore, a due diligence on the impact of the black economic empowerment and socio economic targets on the options identified in the options analysis is performed as part of the due diligence report (Module 3). Module 2 of the PPP Manual (page 14) indicates: PPP projects must be seen, and tangibly experienced, as directly beneficial to the people in whose neighborhoods they operate. Every PPP must therefore be designed, and proactively seek, to produce a positive local socio-economic impact in any way that is appropriate to the project and its location. This must be done taking cognizance of relevant Integrated Development Plans. The targets that may be set in this element need not be limited only to Black People or Black Enterprises, but in targeting local communities must directly benefit the poor and the marginalised, and must affect local socio-economic upliftment.</p>

<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	PPP manual (module 4 p.40) requires to (i) Give a clear economic rationale for the project. (ii) Identify and quantify the economic consequences of all financial flows and other impacts of the project. (iii) Detail the calculation or shadow prices/opportunity costs for all inputs and outputs (iv) Identify an appropriate 'no-project' scenario and Identify the economic benefits the opportunity costs of a 'no-project' scenario. (v) Provide a breakdown of the economic costs and benefits of the project into its financial costs and benefits, and various externalities. (vi) Do a detailed stakeholder analysis, including the project entity, private sector entity, government, and others.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	A socio-economic assessment is done accordingly to Module 4 of the PPP Manual.
<b>12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Section 16.4.1.(c) of the Treasury Regulation indicates that among other aspects the feasibility study to be approved by the Treasury must assess whether the agreement will “ (...) ii) be affordable for the institution”
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Module 4 (Part 6) of the PPP Manual requires to Demonstrate affordability and indicates 2 steps as follows: Determine the institutional budget available for the project and compare the risk-adjusted PPP reference model with the available institutional budget.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Affordability is determined by comparing the risk-adjusted PPP reference model with the institution's budget. If the project is not affordable, the institution may modify the output specifications or may have to abandon the project. Both government allocations and potential of other revenue sources may be considered.

<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	According to section 16.4.1 of the Treasury regulation, to determine whether a proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority must undertake a feasibility study that (c) assesses whether the agreement will - (iii) transfer appropriate technical, operational and financial risk to the private party.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Module 4 of the PPP manual (p.23) prescribes to construct the risk-adjusted PSC model in 8 steps : Step 1: Identify the risks ; Step 2: Identify the impacts of each risk Step; 3: Estimate the likelihood of the risks occurring; Step 4: Estimate the cost of each risk; Step 5: Identify strategies for mitigating the risks; Step 6: Allocate risk Step; 7: Construct the risk matrix; Step 8: Construct the risk-adjusted PSC model; Step 9: Preliminary analysis to test affordability.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	A risk matrix is developed with preliminary risk allocations.
<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>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Treasury Regulation 16.4.1.(c) indicates that among other aspects the feasibility study to be approved by the Treasury must assess whether the agreement will (...) i) provide value for money. The PPP Manual (Module 4: Feasibility Study) provides a very detailed regulation of the value assessment (Stage 4) whose goal is to determine whether a PPP is the best procurement choice for the project.
<b>Is there a specific methodology for the assessment?</b>	Yes

<b>If yes, please elaborate</b>	Module 4 of the PPP Manual identifies steps to follow for the solution options analysis: Step 1: List all the solution options the institution has considered; Step 2: Evaluate each solution option including among others (i) Financial impacts (ii) Funding and affordability (iii) Risk (iv) Market capability and appetite (v) Qualitative factors (vi) Early considerations of suitability for a PPP; Step 3: Choose the best solution option.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	A comparative is made applying the PPP Manual.
<b>12.5. Financial viability or bankability assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	A Financial viability or bankability assessment is not required as a standalone study. However, the PPP Manual (Module 4: Feasibility Study) includes in both the value assessment and the economic valuation assessments (Stages 4 and 5) express references to financial options (e.g. the economic valuation must “identify and quantify the economic consequences of all financial flows and other impacts of the project”) in a way that a financial viability or bankability assessment is covered.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	PPP Manual, Module 4, Part 7: Initial value-for-money test gives indications about how to assess financial viability. Stage 5 consists of an “economic valuation”, which is required to, among others, identify and quantify the economic consequences of all financial flows and other impacts of certain projects.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	The stages of the feasibility study and the standards which are measured in the feasibility study are aimed at assessing, amongst other things, the bankability and financial viability of the proposed PPP
<b>12.6. Market sounding and/or assessment (showing evidence of investors’ interest in the market for the project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	According to the PPP Manual (Module 4), the solution options analysis should include a Market capability and appetite assessment (page 12).

<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	<p>Module 4 (p12) of the PPP Manual requires to assess each solution option using the following considerations: Is there the capability within the private sector to deliver the required services? ; Will the service delivery be sufficiently reliable? ; Is it possible that such delivery would provide value for money? ; What are the BEE enterprises in the sectors and are BEE charters being implemented? ; Are there local suppliers for this service? ; What market competition is there for this type of project? ; Do the output specifications restrict which suppliers can be used?</p> <p>It may be appropriate to use a form of market testing, possibly an Expression of Interest.</p>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Market appetite is evaluated as provided for in the PPP Manual.
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>An environmental impact assessment is required to be performed in terms of the National Environmental Management Act, 1998 (NEMA), which places an obligation on an institution (as defined in Treasury Regulation 16, a department, a constitutional institution, a public entity listed, or required to be listed in Schedules 3A, 3B, 3C and 3D to the PFMA, or any subsidiary of any such public entity) to 'consider, investigate and assess prior to their implementation [of an activity] and report to the organ of state charged by law with authorising, permitting, or otherwise allowing the implementation of an activity'. NEMA requires an environmental authorization to be obtained for the purpose of commencing certain listed activities identified by the Minister responsible for environmental matters by notice in the Government Gazette.</p> <p>Module 4 furthermore provides: It can generally be assumed that the institution performs its mandated functions within the regulations. Regulatory due diligence is only required for the PPP procurement choice. However, if the project being explored is a greenfields project and the institution has never done this kind of project before, then a regulatory due diligence will be necessary for both conventional procurement and a PPP. Investigate any regulatory matters that may impact on the private party's ability to deliver as expected. These may include: environmental and heritage legislation.</p>
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	The National Environmental Management Act, 1998 indicates in its section 2: The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment. In particular, (4) (a) Sustainable development requires the consideration of all relevant factors including the following: [...] (i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot



	<p>be altogether avoided, are minimised and remedied;</p> <p>(ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;</p> <p>(iii) that the disturbance of landscapes and sites that constitute the nation’s cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;</p> <p>(iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;</p> <p>(v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;</p> <p>(vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;</p> <p>(vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and</p> <p>(viii) that negative impacts on the environment and on people’s environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.</p> <p>(b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option. [...]</p> <p>Moreover, the risk matrix (Module 4 of the PPP Manual) includes environmental risk described as: “The possibility of liability for losses caused by environmental damage arising (i) from construction or operating activities (see operating risk) during the Project Term, or (ii) from pre-transfer activities whether undertaken by the Institution or a third party and not attributable to the activities of the Private Party or the Subcontractors.” This risk is mitigated as follows: “Thorough due diligence by the bidders of the Project Site conditions. Independent surveys of the Project. Site commissioned by the Institution at its cost. Institution indemnity for latent pre-transfer environmental contamination, limited by a cap (subject to value for money (“VFM”)), for a specified period. Remediation works to remedy identified pre-transfer environmental contamination as a specific project deliverable. Independent monitoring of remediation works.”</p>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	An environmental assessment of the project is in practice prepared.
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	The PPP Manual requires key stakeholders, including organized labour and the public, to be identified at Stage 1 (Needs Analysis) of the feasibility study and for the feasibility study to include a consultation plan detailing how and when consultation will take place during the project preparation period and how the views and contributions of key stakeholders will be

	<p>incorporated into the project.</p> <p>Module 2 (page 14) indicates: PPP projects must be seen, and tangibly experienced, as directly beneficial to the people in whose neighborhoods they operate. Every PPP must therefore be designed, and proactively seek, to produce a positive local socio-economic impact in any way that is appropriate to the project and its location. This must be done taking cognisance of relevant Integrated Development Plans. The targets that may be set in this element need not be limited only to Black People or Black Enterprises, but in targeting local communities must directly benefit the poor and the marginalised, and must affect local socio-economic upliftment.</p>
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	<p>Module 2 of the PPP Manual (page 14) indicates: PPP projects must be seen, and tangibly experienced, as directly beneficial to the people in whose neighbourhoods they operate. Every PPP must therefore be designed, and proactively seek, to produce a positive local socio-economic impact in any way that is appropriate to the project and its location. This must be done taking cognisance of relevant Integrated Development Plans. The targets that may be set in this element need not be limited only to Black People or Black Enterprises, but in targeting local communities must directly benefit the poor and the marginalised, and must affect local socio-economic upliftment.</p>
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Potentially impacted communities will be consulted.
<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</b>	n/a

<b>provisions (if any):</b>	
<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>	According to section 16.5.1 of the Treasury Regulation: "Prior to the issuing of procurement documentation for a PPP to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including a draft PPP agreement". Module 5 of the PPP Manual confirms (page 32-33): "The RFP must include a draft PPP agreement that allows for highly structured bidder input. It must be developed in accordance with Standardised PPP Provisions."
<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</b>	n/a

<b>provisions (if any):</b>	
<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>	Yes
<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>	The following website provides for Standardized PPP provisions: <a href="http://www.ppp.gov.za/Pages/Governance.aspx?RootFolder=%2fLegal%20Aspects%2fStandardised%20PPP%20Provisions&amp;FolderCTID=&amp;View={33F91A9E-68FB-40CC-B511-45D91A7CC95B}">http://www.ppp.gov.za/Pages/Governance.aspx?RootFolder=%2fLegal%20Aspects%2fStandardised%20PPP%20Provisions&amp;FolderCTID=&amp;View={33F91A9E-68FB-40CC-B511-45D91A7CC95B}</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>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring</b>	No

<b>authority (or other Government entity)</b>	
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Clause 3.5 of the standardised provisions: "In PPPs for the performance of an institutional function, any Consents relating to the appropriate zoning or re-zoning of, and any appropriate land-use Consents required to permit the conduct of the Project Deliverables at, the Project Site should be the responsibility of the Institution, which must obtain these Consents well before the signing of the PPP Agreement (at the feasibility study phase). The same principle applies to any macro-level environmental assessment or report required pursuant to NEMA in relation to any such PPP. <sup>81</sup> The obtaining of these Consents should not be treated as a condition for the enforceability (or continued enforceability) of the PPP Agreement."
<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>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Clause 14 of the standard provisions provides: "The Private Party is responsible for obtaining all environmental consents required for, and must assume all environmental risks (including for pre-existing environmental contamination) associated with, a PPP where the Private Party will not perform any institutional function on behalf of the Institution but will use state property made available by the Institution solely for its own commercial purposes."
<b>16.3. Obtaining the required operational 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>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Clause 3.6 of the standardised provisions: "The obtaining of any Consents relating to the design, construction, engineering, technical and installation specifications put forward by the Private Party (such as, any building Consent and any record of decision regarding any EIA required for the Works) should be the responsibility of the Private Party and should not be treated as suspensive conditions. This is because the Private Party bears the design and construction risks in the Project and, therefore, it should also assume the responsibility for identifying and obtaining all design and construction-related Consents, otherwise these risks will be transferred back to the Institution. 82 Accordingly, the Private Party should be required to allocate adequate time in its Works programme for the obtaining of all such Consents. Delays in the obtaining of such Consents should not delay the coming into effect of the PPP Agreement, but may instead be dealt with through alternative mechanisms (such as Relief Events) to the extent that such delays are not attributable to any fault on the part of the Private Party or its Subcontractors".
<b>16.4. Obtaining the required land: Procuring authority (or other Government entity)</b>	Yes
<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>	No
<b>Relevant legal/regulatory provision (if any)</b>	As indicated in sections 11.2.2 and 11.2.3 of the PPP standardized provisions: if the Project will involve the Institution accessing and using the site then the Institution should seek legal advice prior to commencing the procurement process to ensure that the Institution's rights of access and use are properly protected after the Institution Asset is made available to the Private Party. Plus, in a particular Project the Institution may already own the land and improvements. In this case, it can transfer an interest in the land and improvements to the

	Private Party (for instance by way of a lease), while at the same time securing for itself an interest in the land (by way of a sub-lease) which allows it access to and use of the land and improvements for the Project Term of the PPP Agreement.
<b>16.5. Obtaining the required right of way: Procuring authority (or other Government entity)</b>	Yes
<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>	No
<b>Relevant legal/regulatory provision (if any)</b>	According to section 11.2.2 of the PPP standardized provisions, if the Project will involve the Institution accessing and using the site then the Institution should seek legal advice prior to commencing the procurement process to ensure that the Institution's rights of access and use are properly protected after the Institution Asset is made available to the Private Party.
<b>PPP Procurement</b>	
<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 are required to meet detailed qualifications.</b>	No
<b>If yes, please provide the</b>	n/a

<b>relevant legal/regulatory provisions (if any):</b>	
<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Treasury Regulation 16A.6.2 (b) states that the supply chain management system must provide for “the establishment, composition and functioning of bid specification, evaluation and adjudication committees”.</p> <p>In terms of the PPP Manual (Module 5: PPP Procurement) it is recommended that the following evaluation teams be established: technical evaluation teams (TETs) with specialist focuses e.g. technical, financial, etc.; an evaluation co-ordination committee (ECC) whose role it is to co-ordinate the TETs during their evaluation and to compile the total project evaluation notes and reports into a single recommendation on process and outcome to pass through to the PEC; and the Project Evaluation Committee (PEC) whose role it is to (a) accept bids as complete and compliant, (b) receive and evaluate the report and recommendations of the ECC (c) score bids, (d) decide on a BAFO process, and (e) select a preferred and a reserve bidder.</p>
<b>The bid evaluation committee members are not required to have any specific qualifications.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>19. Does the procuring authority issue a public procurement notice of the PPP project?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant</b>	<p>Treasury Regulation 16A.6.3 establishes that the accounting authority must ensure that “(...) c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine”.</p> <p>PPP manual module 5 prescribes to advertise and distribute the RFQ: The method of RFQ distribution must follow the institution’s procurement plan. This typically involves</p>



<b>legal/regulatory provisions (if any):</b>	advertising the project in relevant publications, in the Government Gazette, on the institution's website, and by making press statements about the project, calling on interested parties to collect copies of the RFQ from the institution and/or downloading these from its website. It may include an open briefing session for potential bidders to introduce the project and to stimulate private sector interest. Any such public briefings should be careful not to present any information that is not contained in the RFQ document.
<b>19.1. If yes, is the public procurement notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.etenders.gov.za/">http://www.etenders.gov.za/</a> <a href="http://www.ppp.gov.za">http://www.ppp.gov.za</a>
<b>20. Are foreign companies prohibited from participating in the bidding process?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to section 16A.6.3(c) of the Treasury Regulation, the accounting officer or accounting authority must ensure that (...) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine.</p> <p>The PPP Manual (Module 5, page 10) provides as follows: There is a direct correlation between the time allowed for preparing bids and the quality of the bids. ... Accordingly, give bidders enough time to meet all the bid requirements. Ascertain what bidders view to be adequate time for preparing a bid during or after pre-qualification.</p>
<b>and the time in calendar days:</b>	21

<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>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Treasury Regulation 16.5.3: The procurement procedure – (a) must be in accordance with a system that is fair, equitable, transparent, competitive, and cost effective”.
<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	No
<b>Default</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Module 5 of the PPP Manual (page 19), National Treasury considers it to be best practice for an institution to limit the number of private parties eligible to participate in the PPP procurement by carrying out a pre-qualification exercise.
<b>22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<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</b>	No

<b>candidate: Available</b>	
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>PPP Manual: Module 5 (page 23) provides that the RFQ document should contain information on the procurement process, including the “stages and timelines”. In the case of large, complex or innovative PPP projects, the procuring authority may decide to allow pre-qualified bidders to participate in the preparation of the final RFP. The procuring authority’s procurement plan must have been communicated to the pre-qualified bidders, must clearly identify the two stages, and set out the intention of and rules for each (page 26).</p> <p>It furthermore provides that the general information to bidders must include information on the procurement framework and timelines. The RFP must outline how the procurement will be carried out in terms of processes and the timing of the processes. The RFP must also spell out the governing legislation and regulations on the procurement, with a statement about the project’s compliance with these requirements to date. The procurement processes must</p>

	be comprehensively described, including any parallel processes, such as securing approvals and consents (page 28).
<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>	Module 5 PPP manual p. 24 requires that the Request for Qualification indicates evaluation criteria and methodology.
<b>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	Prequalification criteria provided to the bidders are in practice applied by the procuring authority.
<b>If no, please elaborate:</b>	n/a
<b>23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes
<b>If yes, please provide the relevant</b>	PPP Manual: Module 5, page 43 provides as follows: "As part of the bid process, it is advisable to hold bidder clarification meetings during their preparation of proposals. These will allow bidders to get clarity on issues in the RFP, and the institution to gauge bidder

<b>legal/regulatory provisions (if any):</b>	<p>participation and commitment. These meetings should be scheduled well in advance, should allow for one-on-one meetings with bidders, and there must be a formal process for recording all such meetings and confirming points made during the meetings.”</p> <p>Furthermore, “The bidders may request further clarification after they have reviewed the RfBAFO and roadmap. They may submit questions to the institution in a one-on-one meeting or in writing. Meetings may also be held jointly between the institution and both bidders, for all functional areas such as legal, financial and technical. The institution must reserve the right to refuse to answer any question that would compromise the competitive nature of the process. A bidder may request that a question be asked in confidence, but the institution reserves the right to distribute the questions and answers to the other bidder if they are common to both bidders. Minutes must be kept of all meetings, both joint and one-on-one” (page 55).</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>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>PPP Manual Module 5, page 50 : A bidder may request that a question be asked in confidence, but the institution reserves the right to distribute the questions and answers to the other bidder if they are common to both bidders. Minutes must be kept of all meetings, both joint and one-on-one.</p> <p>National Treasury PPP Practice Note No. 06 Of 2004 (page 44): Formal correspondence between bidders and the institution must always be in writing. Questions from bidders should indicate how confidential the response needs to be. Confidential answers only go to the relevant bidder; others go to all bidders together with the question.</p>
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	<p>Yes</p>
<b>If yes, please specify:</b>	<p>Disclosure is in practice done to all bidders accordingly to the regulatory framework.</p>
<b>If no, please elaborate:</b>	<p>n/a</p>
<b>24. Besides questions and clarifications, can the</b>	<p>Yes</p>

<p><b>procuring authority conduct pre-bidding conference?</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>PPP Manual: Module 5, page 43 provides as follows: As part of the bid process, it is advisable to hold bidder clarification meetings during their preparation of proposals. These will allow bidders to get clarity on issues in the RFP, and the institution to gauge bidder participation and commitment. These meetings should be scheduled well in advance, should allow for one-on-one meetings with bidders, and there must be a formal process for recording all such meetings and confirming points made during the meetings.</p> <p>Furthermore, The bidders may request further clarification after they have reviewed the RfBAFO and roadmap. They may submit questions to the institution in a one-on-one meeting or in writing. Meetings may also be held jointly between the institution and both bidders, for all functional areas such as legal, financial and technical. The institution must reserve the right to refuse to answer any question that would compromise the competitive nature of the process. A bidder may request that a question be asked in confidence, but the institution reserves the right to distribute the questions and answers to the other bidder if they are common to both bidders. Minutes must be kept of all meetings, both joint and one-on-one (page 55).</p>
<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></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>PPP Manual Module 5, page 50 : A bidder may request that a question be asked in confidence, but the institution reserves the right to distribute the questions and answers to the other bidder if they are common to both bidders. Minutes must be kept of all meetings, both joint and one-on-one.</p> <p>National Treasury PPP Practice Note No. 06 Of 2004 (page 44): Formal correspondence between bidders and the institution must always be in writing. Questions from bidders should indicate how confidential the response needs to be. Confidential answers only go to the relevant bidder; others go to all bidders together with the question.</p>
<p><b>24.2. Based on your experience, is it always the case that this disclosure of information is</b></p>	<p>Yes</p>

<b>done in practice?</b>	
<b>If yes, please specify:</b>	Disclosure is in practice done to all bidders accordingly to the regulatory framework.
<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>	According to PPP Manual: Module 5, page 35, the RFP must require bidders to submit financial models that allow the institution to thoroughly interrogate the proposal in detail.
<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>	PPP Manual states at pg. 25: Evaluation criteria must be based on the information requested from the bidders and must be included in the RFQ to focus private party responses and eliminate unnecessary information and at p. 53 that the evaluation criteria and processes are established before bidders submit proposals
<b>Evaluation criteria is not set in the tender documents</b>	No
<b>27. In the case where only one</b>	Yes

<p><b>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></p>	
<p><b>Please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Module 5 of PPP Manual (pages 19-20) requires, where only two or even only one bidder pre-qualifies, to ascertain the likely reasons for the limited interest, and revisit the RFQ documentation and the feasibility study to see what assumptions could be revised to increase market interest. Any changes in the feasibility study must be evaluated for changes in affordability, value for money and risk transfer.</p> <ul style="list-style-type: none"> <li>- Secure a revised TA : if any changes to assumptions in the feasibility study are made.</li> <li>- Carry out a second pre-qualification exercise if the project assumptions have been changed and if a revised TA has been secured.</li> <li>- If the feasibility study is not revised: carry out the pre-qualification exercise again, with a wider circulation to attract a suitable number of bidders, or ; continue with the limited number of pre-qualified bidders, but with a revised procurement plan that uses the PSC prepared in the feasibility study as an active ‘competitor’ for the bids.</li> </ul>
<p><b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b></p>	<p>No</p>
<p><b>Please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>



<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>	No
<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>	Treasury Regulation 16A6.3(d) provides that awards are published in the Government Tender Bulletin and other media by means of which the bids were advertised.
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	<a href="http://www.etenders.gov.za/">www.etenders.gov.za/</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>	PPP Manual: Module 5, page 25 provides that, upon choosing the pre-qualified bidders, communicate with both unsuccessful and pre-qualified bidders as soon as possible, and publicly announce the prequalified bidders. It is important to communicate an appropriate level of detail on the decision to unqualified bidders, complying with administrative law requirements.

If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a

<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>National Treasury PPP Practice Note 04 of 2004 states that the final terms of the contract may not deviate materially from the original terms of reference or terms of the draft contract, taking into account the transaction advisor's proposed changes which will have been submitted by the transaction advisor as part of the bid. Stage 4 of Module 5 of the PPP Manual refers to negotiations, lays out basic principles of successful negotiations and provides steps: Step 1: Preparatory work; Step 2: Initial contact; Step 3: Engagement; Step 4: Ongoing management; Step 5: Achieving resolution; Step 6: Final bargaining; Step 7: Formal settlement.</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>Restriction to negotiations are applied in practice, otherwise the process would be deemed unlawful.</p>
<b>If no, please elaborate:</b>	<p>n/a</p>
<b>32. Does the procuring authority publish the PPP contract?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>32.1. If yes, which of the following options best</b>	<p>n/a</p>

describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	n/a
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent	n/a

<b>amendment made to the PPP contract?</b>	
<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>	<p>In terms of Regulation 16.7.1 of the Treasury Regulations: The accounting officer or accounting authority of the institution that is party to a PPP agreement is responsible for ensuring that the PPP agreement is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in Treasury:</p> <ul style="list-style-type: none"> <li>(a) measuring the outputs of the PPP agreement;</li> <li>(b) monitoring the implementation of the PPP agreement and performances under the PPP agreement;</li> <li>(c) liaising with the private party;</li> <li>(d) resolving disputes and differences with the private party;</li> <li>(e) generally overseeing the day-to-day management of the PPP agreement; and</li> <li>(f) reporting on the PPP agreement in the institution's annual report.</li> </ul> <p>Module 6 of the PPP Manual provides details.</p>
<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>	Yes

<b>Relevant legal/regulatory provisions (if any):</b>	<p>PPP Manual (module 6 p7) states that the project officer’s main responsibilities in relation to managing the PPP are to appoint a PPP agreement management team with the necessary technical skills to administer institutional obligations and protect institutional rights in the PPP agreement.</p> <p>Pages 8-10 provide details on the PPP agreement management team.</p>
<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	<p>Yes</p>
<b>Relevant legal/regulatory provisions (if any):</b>	<p>PPP Manual (module 6 p8) indicates: This team will have evolved since its role as a project team in the inception, feasibility and procurement phases, taking on different technical skills and experience as needed throughout the PPP project cycle.</p>
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	<p>Yes</p>
<b>Relevant legal/regulatory provisions (if any):</b>	<p>PPP manual module 6 p.7-8 sates that the project officer’s main responsibilities in relation to managing the PPP agreement are to: develop and maintain the PPP agreement management manual and related PPP agreement administration systems. Stage 5 of Module 5 moreover provides for preparation of the PPP agreement management plan: The plan is one of the pillars of effective PPP agreement management, and the project officer will need to ensure that adequate time and resources are devoted to its preparation.</p> <p>The preferred bidder should be closely involved in the development of the PPP agreement management plan during the negotiation stage, and this involvement should be used to develop good working relations between the two parties.</p> <p>The main purpose of the PPP agreement management plan is to:</p> <ul style="list-style-type: none"> <li>• demonstrate to the relevant treasury the institution’s capacity to effectively enforce the PPP agreement</li> <li>• provide a strategic management tool to guide the contract management activities that the institution and the private party will undertake during each stage of the project</li> <li>• clarify the key roles and responsibilities of the institution during each stage of the project, and identify the resources that the institution will require to undertake these responsibilities</li> <li>• provide information on the contract management approach and contract management arrangements, which can be used to assess the performance of the institution in discharging its obligations and responsibilities as set out in the agreement and government legislation such as the PFMA</li> <li>• provide a vehicle for addressing issues that cannot be dealt with adequately in the PPP agreement (such as attitudes and behaviour).</li> </ul>
<b>Establishment of personnel training programs (i.e.</b>	<p>Yes</p>

<b>initial training and continued training throughout the course of the project)</b>	
<b>Relevant legal/regulatory provisions (if any):</b>	PPP Manual (Module 6 page 34): The project officer and the PPP agreement management team should organise specialised training or placements with commercial organisations for institution staff to enhance commercial awareness in the procuring institution and organise training and development programmes for the PPP Agreement management team to ensure that their skills are in tune with the evolving requirements of PPP Agreement management throughout the life of the project
<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>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	PPP manual module 6 page 22: While the risk management plan will explain the mechanisms and procedures that the institution will use to manage, monitor and mitigate risk, the project officer should ensure that these mechanisms are put in place after the signing of the PPP agreement. Two highly effective risk mitigation instruments are: <ul style="list-style-type: none"> <li>• the risk register</li> <li>• the summary risk profile.</li> </ul>
<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 membership of the PPP contract management team is specified and/or its members are required to</b>	Yes

<b>meet detailed qualifications.</b>	
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>PPP manual module 6 page 7: In addition, [the project officer] will be responsible for hiring a team with the range of technical know-how to properly manage the interests of the institution as set out in the PPP agreement. Page 8 furthermore provides: Typical expertise that needs to be represented or available is:</p> <ul style="list-style-type: none"> <li>• knowledge of the subject matter</li> <li>• design and construction</li> <li>• business and product assurance</li> <li>• facilities and services management</li> <li>• IT (especially, but not only for IT projects)</li> <li>• statutory safety and regulatory responsibilities</li> <li>• law</li> <li>• finance</li> <li>• Black Economic Empowerment (BEE) monitoring.</li> </ul>
<b>The PPP contract management team members are required to meet sufficient qualification without specific details.</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The PPP contract management team members are not required to meet any specific qualifications.</b>	<p>No</p>
<b>Please elaborate and provide examples:</b>	<p>n/a</p>
<b>42. Does the procuring or contract management authority establish a system for tracking</b>	<p>Yes</p>



<p><b>progress and completion of construction works under a PPP contract?</b></p>	
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Module 6 of the National Treasury PPP Manual provides for the establishment of performance monitoring systems. The performance management plan will describe the mechanisms that the institution will use to monitor private party performance. The project officer should ensure that these mechanisms are implemented after the signing of the PPP agreement. In particular, performance monitoring systems should be established to enable the PPP agreement management team to, among others, regularly check progress to ensure that project milestones are met (page 26).</p>
<p><b>42.1. If yes, is the PPP contract construction performance information made available to the public?</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b></p>	<p>n/a</p>
<p><b>If yes, please specify the website:</b></p>	<p>n/a</p>
<p><b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant</b></p>	<p>Pursuant to section 16.7.1 of the Treasury Regulations, the accounting officer or accounting authority is responsible for ensuring that a PPP agreement is properly enforced, and must</p>

<b>legal/regulatory provisions (if any):</b>	maintain mechanisms and procedures as approved in Treasury Approval III for - (a) measuring the outputs of the PPP agreement; (b) monitoring and regulating the implementation of, and performance in terms of, the PPP agreement; (c) liaising with the private party; (d) resolving disputes and differences with the private party; (e) generally overseeing the day-to-day management of the PPP agreement; and (f) reporting on the PPP agreement in the institution’s annual report.
<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>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	<p>Pursuant to section 16.7.1 of the Treasury Regulations, the accounting officer or accounting authority is responsible for ensuring that a PPP agreement is properly enforced, and must maintain mechanisms and procedures as approved in Treasury Approval III for - (a) measuring the outputs of the PPP agreement; (b) monitoring and regulating the implementation of, and performance in terms of, the PPP agreement.</p> <p>PPP Manual, Module 6 page 27 requires performance to be assessed against the contract’s specification : Effective monitoring should provide the basis for reviewing actual private party performance against the output specifications and other obligations contained in the PPP agreement. Like monitoring, reviews can be carried out by the institution and/or independent third parties. In carrying out such reviews, the project officer should consider the use of a generic quality assurance system, such as the South African Excellence Foundation Public Service Excellence Model,2 0 or industry specific systems, to evaluate the effectiveness of the private party’s quality management system.</p> <p>The standardized provisions do the same (clause 33 Performance monitoring).</p>
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	<p>Module 5 p 32 5. provides for the Payment mechanism and penalty regime : The RFP must not be issued without a payment mechanism, which includes at least the following in a unitary payment arrangement: • a mechanism for penalising partial or complete failure of the availability and performance of the service, by means of penalty deductions • no limit to deductions for non-availability.</p>

	<p>Clause 33.11.2 of the standardized provision indicates: One approach [to set out clearly the consequences of any failure by the Private Party to perform to the minimum standards of the required output specifications] is for the Private Party to incur a specified number of Penalty Deductions for each failure, with the level of deductions incurred varying according to the seriousness of the failure.</p>
<p><b>The private partner must provide the procuring or contract management authority with periodic operational and financial data</b></p>	<p>Yes</p>
<p><b>Relevant legal/regulatory provisions (if any)</b></p>	<p>PPP Manual module 6 p.26 indicates that the performance management plan should be based on the performance management model and include details of: the reporting obligations that will be imposed on the private party in relation to self-monitoring.</p>
<p><b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract</b></p>	<p>Yes</p>
<p><b>Relevant legal/regulatory provisions (if any)</b></p>	<p>The project officer should ensure that these mechanisms are implemented after the signing of the PPP agreement. In particular, performance monitoring systems should be established to enable the PPP agreement management team to: regularly check progress to ensure that project milestones are met, including site visits where necessary ; hold regular progress meetings with the private party and consider performance reports ; conduct regular and random inspections of the supplied goods and services ; check that all performance conditions and clauses in the PPP agreement are acted upon ; develop effective mechanisms for obtaining feedback from end users and other key stakeholders ; review third party monitoring reports ; inspect deliverables to ensure inferior goods or services are not accepted ; maintain comprehensive documentation on performance monitoring. (PPP Manual module 6 p.26 )</p>
<p><b>The PPP contract performance information must be available to the public</b></p>	<p>No</p>
<p><b>Relevant legal/regulatory provisions (if any)</b></p>	<p>n/a</p>

<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 the income resulting from the operation of a PPP project?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>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?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	Pursuant to section 16.8.2 of the Treasury regulation, the relevant treasury will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide - (a) value for money; (b) affordability; and (c) substantial technical, operational and financial risk transfer to the private party. Section 83.3 is related to Changes in Shareholding and Control.

<p><b>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).</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>Section 83.3 of the Standardized PPP Provisions states that (b) Prior to the expiry of a period of [x] months commencing on the Service Commencement Date, the Private Party shall procure that there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the Equity and/or the Shareholder Loans, nor any dilution of the Equity, of [x] (or of any company of which [x] is a subsidiary) without the prior written approval of the Institution.</p>
<p><b>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>A “Substitute Private Party” is defined in the standard direct agreement that is included in the Standardised Provisions as a person approved by the Institution as (a) having the appropriate technical and financial ability to perform the rights and obligations of the Private Party under the PPP Agreement; (b) employing persons having the appropriate qualifications, experience and technical competence; and (c) having sufficient resources available to it (including committed financial resources and subcontracts) to perform the obligations of the Private Party under the PPP Agreement.</p>
<p><b>In other cases, flexibility to change the ownership structure and/or assign the contract.</b></p>	<p>Yes</p>
<p><b>If yes, please provide the</b></p>	<p>Section 83.3 of the Standardized PPP Provisions indicates that (b) Prior to the expiry of a period of [x] months commencing on the Service Commencement Date], the Private Party</p>

<b>relevant legal/regulatory /standard contractual provisions (if any):</b>	shall procure that there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the Equity and/or the Shareholder Loans, nor any dilution of the Equity, of [x] (or of any company of which [x] is a subsidiary) without the prior written approval of the Institution.
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	Pursuant to section 16.8.2 of the Treasury Regulations, the relevant treasury will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide - (a) value for money; (b) affordability; and (c) substantial technical, operational and financial risk transfer to the private party.
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	Pursuant to section 16.8.2 of the Treasury Regulations, the relevant treasury will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide - (a) value for money; (b) affordability; and (c) substantial technical, operational and financial risk transfer to the private party.
<b>46.2. If yes to question 46, which of the following circumstances are specifically regulated?</b>	Yes

<p><b>(check all that apply): A change in the scope and/or object of the contract.</b></p>	
<p><b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>Standardised PPP Provisions (Part K: 50) provide for four main categories of variation:</p> <ul style="list-style-type: none"> <li>• variations that involve no additional costs</li> <li>• small works variations</li> <li>• institutional variations</li> <li>• private party variations.</li> </ul> <p>Module 6 of the PPP Manual indicates: Institutional variations should be limited to changes to the services requirements, the specified constraints on inputs, and the limits or scope of the project insurances.</p> <p>Consequently, the scope could not be changed.</p>
<p><b>A change in the risk allocation of the contract.</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>According to section 16.8.2 of the Treasury regulation, the relevant treasury will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide - (c) substantial technical, operational and financial risk transfer to the private party.</p>
<p><b>A change in the financial and/or economic balance of the contract.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>n/a</p>
<p><b>A change in the duration of the contract.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>n/a</p>

<b>A change in the agreed price or tariff.</b>	No
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	n/a
<b>46.3. Can the procuring authority unilaterally modify a PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	n/a
<b>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</b>	Yes
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	Clause 48 of the Standardized PPP Provisions indicates how parties should act in case of force majeure: notice to the other party, effect on the payment, modification on the PPP agreement and end of a force majeure event.
<b>Material Adverse</b>	Yes



<b>government action .</b>	
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	Clause 49 of the Standardized Provisions is related to unforeseeable discriminatory government conduct. “Unforeseeable Conduct” is defined as occurring if, after the Signature Date, the Institution or any Responsible Authority takes any action (including the introduction, application, or change of any law, regulation, by-law or order having the force of law) or fails to carry out its obligations as prescribed by law.
<b>Change in the Law.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	According to Clause 49 of the Standardized Provisions, a change of Law is treated as an unforeseeable conduct, a standard clause indicates compensation and/or relief in case of negative effects and payment if effects are positive. A written notice is required.
<b>Refinancing.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	Clauses 76 to 81 of the Standardized PPP Provisions contain standard clauses regarding Refinancing with key principles, institution approval, exemptions and method of calculating, sharing and paying refinancing gains.
<b>Subcontracting and replacement of the subcontractors.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	The PPPFA Regulation 12 (1) indicates: A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state. Section 83.2 of the Standardized PPP Provisions regulate subcontractors and provides that institutions are discouraged from directly controlling the performance of subcontractors. In addition, institutions should be enabled to pre-approve the selection and appointment of all replacement subcontractors against objective and specified criteria. PPP manual module 2 page 13 relates to subcontracting relating to BBEE.
<b>48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or</b>	Yes

<b>contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?</b>	
<b>If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	Pursuant to section 16.8.1 of the Treasury regulations, the accounting officer or accounting authority is responsible for ensuring that a PPP agreement is properly enforced, and must establish mechanisms and procedures for - (c) resolving disputes and differences with the private party. PPP standardized provisions provide a standard clause for dispute resolution in general (86) and one for Fast-track Dispute Resolution (86.2).
<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>	No
<b>Mediation</b>	Yes
<b>Please provide the relevant legal/ regulatory/standard contractual provisions (if any)</b>	Clause 86.1.4 of the standardized provisions: the prescribed approach for disputes arising in connection with PPP Agreements is for these to be settled ultimately through the courts, except in the case of any specific categories of dispute requiring fast-track dispute resolution by expert adjudicators. Further, alternative forms of dispute resolution processes such as informal conciliation must first be attempted.
<b>48.2. If applicable, are arbitration awards</b>	Yes

<b>enforceable by the local courts?: Domestic Arbitration</b>	
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	<p>Domestic Arbitration is regulated by Arbitration Act 42 of 1965. Section 3 is related to the Binding effect of arbitration agreement and power of court in relation thereto: "(1) Unless the agreement otherwise provides, an arbitration agreement shall not be capable of being terminated except by consent of all the parties thereto.</p> <p>(2) The court may at any time on the application of any party to an arbitration agreement, on good cause shown-</p> <p>(a) set aside the arbitration agreement; or</p> <p>(b) order that any particular dispute referred to in the arbitration agreement shall not be referred to arbitration; or</p> <p>(c) order that the arbitration agreement shall cease to have effect with reference to any dispute referred."</p>
<b>International arbitration</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	<p>Section 2 (1) of Recognition and enforcement of foreign arbitral awards Act 40 of 1977 provides: Any foreign arbitral award may, subject to the provisions of sections 3 and 4, be made an order of court by any court.</p> <p>South Africa accessed the New-York Convention on 3 May 1976.</p>
<b>Investor-State arbitration</b>	<p>n/a</p>
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	<p>n/a</p>
<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>	<p>Yes</p>

<p><b>If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>No regulatory basis</p>
<p><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></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory /standard contractual provisions (if any):</b></p>	<p>Part O of the Standardized PPP provision contains standard clauses for step in by institution, by landers and by standard direct agreement. Clause 73 is applicable to step-in rights by the lenders and contains an introduction, provisions related to a direct agreement, a prescribed approach, accrual of Penalty Deductions, and refinancing.</p>
<p><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></p>	<p>No</p>

<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>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	<p>Clause 73 of the Standardized Provisions concerns step-in rights by institution, lenders and by a direct agreement, according to clause 73.2.1 A “Direct Agreement” as referred to in this Standardization is an agreement among the Institution, the Lenders (usually represented by an agent) and the Private Party, which creates a mechanism for the continuation of the Project following a threatened termination of the PPP Agreement and the Financing Agreements.</p> <p>Clause 74 provides a standard direct agreement.</p>
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	n/a
<b>Other.</b>	No
<b>Please Specify:</b>	n/a
<b>51. Does the regulatory framework (including standard contractual clauses) expressly</b>	Yes

<b>establish the grounds for termination of a PPP contract?</b>	
<b>If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	<p>A Project may be terminated prior to the Expiry Date for any one of the following reasons: Institution Default; Private Party Default; Force Majeure; or Corrupt Acts (Section 60 of the Standardized Provisions).</p>
<b>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?</b>	<p>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory /standard contractual provisions (if any):</b>	<p>According to the Standardized provisions (clause 61), When either Party has exercised its right to terminate the PPP Agreement, the PPP Agreement will be terminated in accordance with its provisions and the Parties will generally no longer have any rights or obligations under this PPP Agreement. The PPP Agreement may, however, provide for certain provisions to survive its termination (such as certain indemnities) and the Parties will still have rights and obligations in respect thereof post termination. Also all rights and obligations of the Parties that have accrued prior to the termination may be enforced post termination. There are also certain rights and obligations that arise only as a result of termination of the PPP Agreement and these must be clearly provided for and must also be expressed to survive termination of the PPP Agreement. These should include the Private Party's obligation to clear the Project Site, the procedure for transfer of the Project Assets to the Institution 415 and the Private Party's obligations to assist in the transitional arrangements in relation to a new Private Party if the Institution decides to appoint one.</p> <p>The standard clause provides rules for : (a) Termination (b) Continued Effect - No Waiver (c) Continued Performance (d) Transfers to Institution of Assets, Contracts, etc. on Termination Only (e) Transfers to Institution on Termination or Expiry (f) Transitional Arrangements (g) Continuing Obligations.</p>
<b>Unsolicited Proposals</b>	
<b>34. Are unsolicited proposals in South Africa: (choose only one): Explicitly</b>	<p>No</p>

<b>prohibited by the legal framework? (If prohibited, skip to section F)</b>	
<b>Explicitly allowed by the legal framework?</b>	Yes
<b>Not regulated by the legal framework, but do happen in practice?</b>	No
<b>Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)</b>	No
<b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</b>	National Treasury Practice Note No 11 of 2008/2009 is related to unsolicited Proposals.
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b>	<p>Paragraph 4.2.2 of the Practice Note 11 of 2008/2009 (Practice Note 11) provides that if the unsolicited proposal is a PPP, the accounting officer or accounting authority must comply with the requirements of Treasury Regulation 16 and the Practice notes relevant thereto, as read with paragraph 5.1 of this practice note (that regulates specialties for the bidding process for unsolicited proposals).</p> <p>Paragraph 2.1 of the Practice Note 11 of 2008/2009 : Institutions are not obliged to consider an unsolicited proposal but may consider such a proposal only if it meets the following requirements:</p> <p>(a) a comprehensive and relevant project feasibility study has established a clear business</p>

	<p>case; and</p> <p>(b) the product or service involves an innovative design; or</p> <p>(c) the product or service involves an innovative approach to project development and management; or</p> <p>(d) the product or service presents a new and cost-effective method of service delivery.”</p> <p>Furthermore, according to paragraph 3.1: The accounting officer or accounting authority must reject the unsolicited proposal if the proposal-</p> <p>(a) relates to known institutional requirements that can, within reasonable and practicable limits, be acquired by conventional competitive bidding methods;</p> <p>(b) relates to products or services which are generally available;</p> <p>(c) does not fall within the institution’s powers and functions;</p> <p>(d) does not comply substantially with paragraph 2.</p> <p>(e) has not been submitted by a duly authorized representative of the proponent; or</p> <p>(f) contravenes the provisions of any law.</p>
<p><b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Practice Note 11 of 2008/2009: Paragraph 2 (Criteria for Consideration of an Unsolicited Proposal) sets out the requirements for considering unsolicited proposals. Paragraph 4 (Evaluation of Compliant Unsolicited Proposals) provides for the evaluation process of such proposals and at 4.2.2.1, with respect to PPPs, the following: if the unsolicited proposal is a PPP, the accounting officer or accounting authority must comply with the requirements of Treasury Regulation 16 and the Practice notes relevant thereto, as read with paragraph 5.1 of this practice note. Treasury Regulation 16 provides that a feasibility analysis should be completed.</p>
<p><b>36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific</b></p>	<p>No</p>



<p><b>procedure to ensure the consistency of PPPs with other government investment priorities.</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b></p>	<p>Yes</p>
<p><b>Please elaborate and provide examples:</b></p>	<p>2.1 of Practice Note 11 provides the criteria for the consideration of an unsolicited proposal but does not indicate that the proposal needs be in terms of an existing government priority.</p>
<p><b>37. Does the procuring authority initiate a competitive PPP</b></p>	<p>Yes</p>

<b>procurement procedure when proceeding with the unsolicited proposal?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to the National Treasury Practice Note No 11 (5.), if the unsolicited proposal agreement is concluded, then the institution must prepare and issue bid documents.</p>
<b>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to section 16A.6.3(c) of the Treasury Regulation, the accounting officer or accounting authority must ensure that (...) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine.</p>
<b>and the time in calendar days:</b>	<p>21</p>
<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 apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.</b>	<p>Yes</p>
<b>39.2 Developer's fee</b>	<p>Yes</p>

<b>(reimbursing the original proponent for the project development cost).</b>	
<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>	<p>According to Policy of the South African national roads agency in respect of unsolicited proposals, May 1999: The two most advantageous Tenders will be selected by the Agency, from whom Best and Final Offers will be invited. Should the Scheme Developer 's Tender not be among these, he will, however, be afforded the opportunity to also submit a Best and Final Offer, which will be evaluated along with those of the Selected Tenderers.</p> <p>National Treasury Practice Note No 11 5.1.1 (e) moreover provides for reimbursing the proponent should the proponent not be awarded the contract for the provision of the product or service at the conclusion of the competitive bidding process. The quantum of reimbursement shall be those audited costs of the proponent from the point in time where the accounting officer or accounting authority was solicited by the proponent to the conclusion of the competitive process, in terms of the unsolicited proposal agreement.</p>