

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN SPAIN

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	<p>Yes</p>
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>The main regulatory framework regarding PPP is the Law of Contracts of Public Sector (approved by Decree 3/2011, last version is from 2013, hereinafter LCSP, from “Ley de Contratos del Sector Público) and its Regulations (including Decree 1098/2001 and Decree 817/2009). The law LCSP defines different types of contracts: public works, concession of public works, management of public services, provision, services, collaboration between public and private parts, and mixed contracts. This analysis focus on two of them that can be considered PPPs: Public works concessions and collaboration contract between public and private sector (PPPs). Under a public works concession, the concessionaire has public-work-type responsibilities (i.e. construction), and maintenance, and also bears all the risk (Article 7 of the Law TRLCSP). Under contracts of collaboration between the public and private sector, a public entity gives to a private concessionaire the development of an integral operation, including construction or reparation (Article 11 of the Law TRLCSP). Related to this, is important to notice that in general terms, according to article 313 TRLCSP, the applicable regulations to PPPs (i) the general regulations of the TRLCSP provided for every type of contract (as PPP is a typical contract), and (ii) the special regulation corresponding to the typical contract (works, services, public works concessions etc.) whose object corresponds to the main part of the PPP's.</p> <p>Other relevant legislation includes the following:</p> <ul style="list-style-type: none"> - Law of Contracts of Public Sector in water, energy, transport and postal services sectors (Law 31/2007) - Law of Contracts of the Public Sector in defense and security sectors (Law 24/2011) - Other regulations in contracts of public sector (Decree 814/2015) - EU Directives 2014/23/CE, 2014/24/CE and 2014/25/CE <p>Furthermore, it must be taken into account that certain Autonomous Regions (e.g. Navarra or Madrid) have implemented their own public procurement rules that implement national legislation. Also, some entities of the public sector in Spain that are not Public Administrations stricto sensu (like public companies or public foundations), and they have approved their own contracting Instructions that are applicable in each contract that they execute.</p>
and provide a link to a government-supported website where the mentioned	<p>http://www.minhafp.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/Paginas/NormativaResultados.aspx?normativa=:Contrataci%C3%B3n</p>

regulatory framework is available or provide an electronic copy of it:	
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	<p>No</p>
Please describe:	<p>n/a</p>
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	<p>Yes</p>
Please describe:	<p>A new Public Sector Contracts Law has been approved by the Spanish Parliament (November 2017) and will be effective March 2018. It transposes the European Union Directives 2014/23/EU and 2014/24/EU into Spanish law and brings changes regarding PPPs – notably, it eliminates the figure of collaboration contract between public and private sector (PPPs). In any case, according to various decisions of national and regional, certain provisions of this Directive are already applicable in Spain. Among these provisions would be those concerning the rules on publicity, the procurement procedure, etc.</p>
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following	<p>No</p>

sectors?: Transportation.	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4 Besides national defense and other matters of	No

national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes
If yes, please specify and provide the relevant legal/regulatory	Royal Legislative Decree 2/2004, of March 5th, on Local Tax, states that some PPP projects (i.e. highways under shadow toll regime) are not subject to real state tax. In particular, Article 62.2.a) of RLD 2/2004 exempts certain buildings from said local tax, such as those buildings that are owned by the State, the autonomous regions or local entities and that are directly concerned with public safety, educational services, prison services and national defense; and those buildings located on lands occupied by railway lines, which are

provision (if any):	dedicated to stations, warehouses or any other service essential for the operation of such lines.
5. Please identify the PPP procuring authorities in Spain and provide their website(s) (if available):	<p>Article 3 of the TRLCSP defines public sector entity as any of the following: the General State Administration, the Spanish autonomous regions, local bodies, the Social Security management entities and common services, the autonomous bodies, public universities, business public entities, other public law entities and joint ventures of public entities. According to article 11 TRLCSP, a contract of collaboration between the public and private sector can be celebrated between any public administration or public corporate entity or similar body of the Autonomous Communities could be PPP procuring entities.</p> <p>Examples and links of public sector entities: Ministry of Finance (http://www.minhap.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/Registro%20publico%20de%20contratos.aspx); Community of Madrid (http://www.madrid.org/cs/Satellite?cid=1203334374123&language=es&pagename=PortalContratacion%2FPPage%2FPCON_portadillaDosColumnas).</p>
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	No
If yes, please indicate its name, and its website (if available):	n/a
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	n/a
6.2 PPP capacity building for other public authorities.	n/a
6.3 PPP promotion among the public and/or private sectors in national and international forums.	n/a

6.4 Technical support in implementing PPP projects.	n/a
6.5 Identification and selection of PPP projects from the pipeline.	n/a
6.6 Revision of fiscal risks born by the Government.	n/a
6.7 Consultation with affected communities on potential impact of PPP projects.	n/a
6.8 Approval of PPP projects.	n/a
6.9 Undertaking the procurement of PPPs.	n/a
6.10 Oversight of PPP implementation.	n/a
6.11 Other	n/a
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	n/a
PPP Preparation	
8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to article 317 of the LCSP: 6. In the scope of the State Public Sector, before authorizing a collaboration agreement between the public and private sectors, as well as a contract for the concession of public works whose estimated value is equal to or greater than twelve million euros, it will be compulsory and binding a report from the Ministry of Economy and Finance to decide on the budgetary implications and financial commitments that it entails, as well as its impact on the fulfillment of the objective of budgetary stability,

	<p>as established in the Consolidated Text of the General Law of Budgetary Stability, approved by Royal Legislative Decree 2/2007, of 28 December. To this end, the contracting authority must provide full information on the financial and budgetary aspects of the contract, including the funding mechanisms and guarantees expected to be used, throughout the term of the contract, as well as, the prior evaluation document referred to in article 134 of this Law. In these contracts, prior to the approval of the procurement file or modification thereof, it will also be necessary to obtain the report of the Ministry of Economy and Finance when, regardless of the amount of the contract, any financing is provided for form of State aid or contribution, or the granting of loans or advances</p>
<p>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory</p>	<p>European rules 549/2013 and ESA 2010 set rules for PPP accounting. Section 20 of ESA (Government Accounts) includes some definitions for PPPs.</p>

provisions (if any):	
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	European rules 549/2013 and ESA 2010 set rules for PPP accounting.
8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).	No
Accounting and reporting according to other international standard (e.g. European System of Accounts).	Yes
Please specify:	European System of Accounts
Other.	No
Please specify:	n/a
9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other	Yes

authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	
If yes, please specify the relevant authority	Council of Ministers, Court of Auditors
and provide the relevant legal/regulatory provisions (if any):	Article 317 of the LCSP states that the Council of Ministers (with regard to central government and state public sector entities) must approve a PPP project only in case it has an estimated value equal to or greater than 12.000.000 EUR or consists of a leasing or a lease with a purchase option and with a duration longer than 4 years. The Council of Ministers may claim at its sole discretion the knowledge and authorization of any other contract. Likewise, the contracting authority, through the corresponding (sectorial) Minister, may raise a non included contract for the consideration of the Council of Ministers. Also, according to article 109 of the LCSP, during the preparation of the tender file of any public contract, it must be included a certificate of existence of credit and the prior audit of the Court of Auditors or the General State Intervention.
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
10. Does the procuring authority use transaction advisors during the PPP project cycle?	Yes

<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>No regulatory basis</p>
<p>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	<p>No</p>
<p>If yes, please specify and provide the</p>	<p>n/a</p>

relevant legal/regulatory provisions (if any):	
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	<p>Yes</p>
If yes, please elaborate:	<p>The evaluation of the suitability of a PPP (or any public contract in general) is the usual practice of any procuring entity, as well as of the Court of Auditors or the General State Intervention. However, the multi-year perspective plans and medium term budgetary framework do take into account a PPP as differentiated from any other public contract; all the public needs are evaluated jointly with no distinctions based on the final type of contract (PPP or any other) that will be finally concluded. Sectoral legislation in some areas (roads, railways, ports, airports, etc.) provides for the approval of sectoral plans by the Council of Ministers. These plans are subject, where appropriate, to planning of a higher territorial, economic or intermodal nature (for example, the Infrastructure, Transportations and Housing Plan for the 2016-2024 period, also known as PITVI). E.g., the State's strategic road plan must contain according to art. 7 of Law 37/2015, of September 29th, of Roads, its objectives, criteria for coordination with other road networks (regional, local), as well as other communication and transportation systems, considering the complementarity and substitution between transport modalities, for a better allocation of resources, the general</p>

	<p>criteria of programming, conservation and operation of the system, including those related to the prioritization of investments, the an impact assessment and cost / benefit analysis, the forecasting and identification of the agents responsible for the implementation of the actions contemplated and the means available for it, the investment criteria, the economic impact assessment or the financing alternatives, among many other things. The mentioned plan is, in principle, binding for the actions envisaged in the State Highway Network.</p>
<p>The procuring authority does not evaluate PPPs against existing government priorities.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?</p>	<p>No</p>
<p>If yes, please specify:</p>	<p>n/a</p>
<p>If no, please elaborate:</p>	<p>According to our contributors, some very specific infrastructures have been oversized (and in some cases reality has shown that they were directly unnecessary, particularly in the airports sector). There have been coordination problems in some particular cases between the General State Administration and certain regional administrations. Some investments made under the general state budget have been redundant with others made under PPP schemes (e.g. launching of a radial tollways program around Madrid and improvement of parallel first generation freeways).</p>
<p>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</p>	<p>Yes</p>

analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	
Relevant legal/regulatory provision (if any)	Article 128 of the LCSP requiring a feasibility reports during the preparation of public works concessions contracts and article 134.1 of the LCSP requiring and evaluation justifying the convenience of using the PPP type contract instead of other methodologies.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors that answered this question consider that this assessment is done in practice
12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)	Yes
Relevant legal/regulatory provision (if any)	Article 317.6 of the TRLCSP states that before authorizing the (PPP) contract, in case the value of the project is higher than 12 million EUR, the Ministry of Finance will develop a report where it gives opinion over the budget impact and financial commitments, and its impact over the compliance of budget stability of the government.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors that answered this question consider that this assessment is done in practice
12.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision (if any)	Article 134 of LCSP states the following: "Previous evaluation. (...) before the start of a file for a contract between a private and public parties, the procuring authority will develop a report that contains (...) an analysis of different contracting alternatives that justify in terms

	<p>of obtaining the biggest value per price, global cost, efficacy or allocation of risks, (...) (including) the economic and financial motivations (...)" . Also, article 128.2 of the LCSP states that regarding public works concessions:</p> <p>2. The feasibility study shall contain at least the following data, analyzes, reports or studies:</p> <p>f) Operational and technological risks in the construction and exploitation of the work.</p>
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors that answered this question consider that this assessment is done in practice
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	Yes
Relevant legal/regulatory provision (if any)	<p>Article 134 of TRLCSP states the following: "Previous evaluation. (...) before the start of a file for a contract between a private and public parties, the procuring authority will develop a report that contains (...) an analysis of different contracting alternatives that justify in terms of obtaining the biggest value per price, global cost, efficacy or allocation of risks, (...) (including) the economic and financial motivations (...)" . Article 128.2 of the LCSP regarding public works concessions specifies as well that:</p> <p>2. The feasibility study shall contain at least the following data, analyzes, reports or studies:</p> <p>e) Justification of the chosen solution, indicating, among the alternatives considered in the case of road or linear infrastructure, the characteristics of its layout.</p>
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors that answered this question consider that this assessment is done in practice
12.5. Financial viability or bankability assessment	Yes

Relevant legal/regulatory provision (if any)	Article 134 of TRLCSP states the following: “Previous evaluation. (...) before the start of a file for a contract between a private and public parties, the procuring authority will develop a report that contains (...) an analysis of different contracting alternatives that justify in terms of obtaining the biggest value per price, global cost, efficacy or allocation of risks, (...) (including) the economic and financial motivations (...)”. Article 128.2 of the LCSP regarding public works concessions specifies as well that: 2. The feasibility study shall contain at least the following data, analyzes, reports or studies: g) Cost of the investment to be made, as well as the financing system proposed for the construction of the work with the justification, also, of the provenance of the work.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors that answered this question consider that this assessment is done in practice
12.6. Market sounding and/or assessment (showing evidence of investors’ interest in the market for the project)	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
12.7. Environmental impact assessment	Yes
Relevant legal/regulatory provision (if any)	Article 128.2 regarding public works concessions requires 2. The feasibility study shall contain at least the following data, analyses, reports or studies: d) Environmental impact study when it is mandatory according to current legislation. In all other cases, an environmental analysis of the alternatives and the corresponding corrective and protective measures required. More in general this will be required for the type of projects included in the case study assumption by the Law 21/2013 of Environmental Assessment.

Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Law 21/2013 of Environmental Assessment provides for the procedures and stages to conduct the environmental assessment
Is the assessment done in practice?	Yes
Details:	Contributors that answered this question consider that this assessment is done in practice
12.8. Consultation process with affected communities on potential impact of the PPP project	Yes
Relevant legal/regulatory provision (if any)	According to article 128.3 3. The procuring authority will submit the feasibility study to public information for a period of one month, renewable for the same term due to the complexity of the same and will transfer it for reporting to the organs of the General Administration of the State, Communities Autonomous and Local Authorities affected when the work is not included in the corresponding urban planning, which must be issued within one month.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Contributors that answered this question consider that this assessment is done in practice
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	Yes
If yes, please provide the relevant	No regulatory basis

legal/regulatory provisions (if any):	
and specify which of the assessments are included in the request for proposals and/or tender documents:	The is no mandatory provisions for specific studies or reports, but in practice, according to our contributors, all the assessments included in the viability studio are disclosed as a relevant part of the tender documents
13.1. Are the assessments published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 128 of the LCSP requires to submit the feasibility study to a public information period and article 7 of the Law 19/2013 on Transparency requires public entities to actively publish online all the documents sujet to public information periods.
specify the website	https://contrataciondelestado.es/wps/portal/plataforma (or procuring authority contractors' profile)
please specify which of the assessments are published online:	According to our contributors, all the assessments are included as part of the tender documents and then published online making them available to the public.
14. Does the procuring authority include a draft PPP contract in the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	There is not any literal regulatory provision mandating the contracting authority to include the PPP contract in the request for proposals. Notwithstanding, the main conditions of the PPP contract are set forth in the tender documents (pliegos de cláusulas administrativas particulares y de prescripciones técnicas) and article 26 of the LCSP expressly forbids to introduce in the contract any stipulations that are not already included in the tender documents with the corresponding details provided by the winning bidder. As a consequence, the PPP contract to be executed is a very brief document which includes only the terms and conditions arising from the awarding of the contract (i.e. tariffs amounts, construction and exploitation terms) plus a general reference to the tender documents.
If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes

If yes, please provide the relevant legal/regulatory provisions (if any):	In general, tender documents are required to be online based on article 34 of the European Concessions Directive
and please specify the website:	https://contrataciondelestado.es/wps/portal/plataforma (or procuring authority contractors' profile)
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
Private partner with facilitation	No

role assigned to the procuring authority (or other Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	Yes
Private partner with facilitation role assigned to the procuring authority (or other	No

Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Article 245 of the Law TRLCSP states that the concessionaire has right to “obtain from the administration the execution of the procedures for forceful expropriation, right of way, (...) necessary (to execute the project) (...)”
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	Yes
To be established in the contract	No

Relevant legal/regulatory provision (if any)	Article 245 of the Law TRLCSP states that the concessionaire has right to “obtain from the administration the execution of the procedures for forceful expropriation, right of way, (...) necessary (to execute the project) (...)”
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 320 of TRLCSP establishes some characteristics of the members of the contracting committees (“mesas de contratacion”). Specifically, it says: “for open and restricted (tendering) procedures (...) 2. the committee will be comprised of a President, Other members (“vocales”), and a Secretary, 3. the members will be designated by the contracting entity. The secretary will be designated from among public officials or other type of employee dependent of the contracting entity, and among the other members there has to be: a public officer whose (regular) role is to advise legally to the contracting authority, and an “interventor” (...) and one person whose role is related to economic-budgetary control”
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee	No

members are not required to have any specific qualifications.	
Please elaborate and provide examples:	n/a
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Article 141 of the LCSP (Previous announcement) states that the procuring authority can publish a previous information announcement with information regarding construction, supply and services agreements that are planned to be awarded in the following twelve months. The announcements will be published in the "Official Journal of the European Union" or in the procuring authority's profile. Moreover, According to Article 142 of the Law LCSP all tendering processes will be published in government's media articles 141 and mandating, in particular, that the notice of the procurement should be published within the Official Bulletin of the State and Official Journal of the European Union as well as in the procuring authority profile ("perfil del contratante"). That information is also compiled in the contracting platforms pursuant Article 334 of the LCSP
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	https://contrataciondelestado.es/wps/portal/plataforma
20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
21. In a case comparable to the case study assumptions, does the procuring authority grant	Yes

the potential bidders a minimum period of time to submit their bids?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Law TRLCSP defines limits for open tendering and restrictive procedure (the default methods for concession of public works) and not for competitive dialogue (the default tendering method for collaboration between public and private parts).</p> <p>Article 159 states minimum periods for open tendering. The minimum for projects with harmonized regulation (to European rules) is 52 days. The minimum for non-harmonized projects is 26 days.</p> <p>Article 164 states minimum periods for restricted tendering. The minimum for projects with harmonized regulation (to European rules) is 37 days. The minimum for non-harmonized projects is 10 days. Additionally, the Directive 23/2014 of the European Union does define limits for general tendering procedures. Article 39 states the following:</p> <p>“Time limits for receipt of applications and tenders for the concession</p> <ol style="list-style-type: none"> 1. When fixing the time limits for the receipt of applications or of tenders contracting authorities or contracting entities shall take account in particular of the complexity of the concession and the time required for drawing up tenders or applications without prejudice to the minimum time limits set out in this Article. 2. Where applications or tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the concession award documents, the time limits for the receipt of applications for the concession or for the receipt of tenders, shall be fixed so that all economic operators concerned may be aware of all the information needed to produce applications or tenders and, in any event, shall be longer than the minimum time limits set out in paragraphs 3 and 4. 3. The minimum time limit for the receipt of applications whether or not including tenders for the concession shall be 30 days from the date on which the concession notice was sent. 4. Where the procedure takes place in successive stages the minimum time limit for the receipt of initial tenders shall be 22 days from the date on which the invitation to tender is sent.” <p>However, the Spanish regulatory framework has not yet adopted this time limits and requires a longer minimum period (thus not contracting in this point the European Regulations).</p>
and the time in calendar days:	52
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available	Yes
Default	No

Relevant legal/regulatory provision (if any)	Book III, Title I, Chapter 1, Section 2 of the Law TRLCSP contains detail for Open tendering procedure. Article 138 establishes the “ordinary” methods of procurement are both open tendering and restricted tendering. This applies to “concession of public works” and not to “collaboration between public and private parts”, for which other procurement method is defined as default.
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Book III, Title I, Chapter 1, Section 2 of the Law TRLCSP contains detail for Open tendering procedure. Article 138 establishes the “ordinary” methods of procurement are both open tendering and restricted tendering. This applies to “concession of public works” and not to “collaboration between public and private parts”, for which other procurement method is defined as default.
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.4. Competitive dialogue: Available	Yes
Default	Yes
Relevant legal/regulatory provision (if any)	Book III, Title I, Chapter 1, Section 5 of the Law TRLCSP contains detail for Competitive Dialogue procedure. Article 180 defines this as the default method for “collaboration between public and private parts”. Specifically, the article indicates the following: “the contracts of collaboration between private and public parts (defined in Article 11) will be tendered through this method (competitive dialogue) (...) (however) the negotiated method can also be followed (...)”
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.6. Direct negotiation with	No

only one candidate: Available	
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	No
Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 139 of the Law TRLCSP states the following: "Principles of equity and transparency. The contracting entities will give the bidders and candidates equal treatment and non-discriminatory and they will act with transparency" Articles 158, 166 and 181.3 of LCSP details the contents of the procurement notice and tender documents for each the specific procedures where the conditions of the selection process must be indicated.
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	For Restricted Tendering, Article 163 of the LCSP states the following: "(...) the objective and non-discriminatory criteria and rules to select the candidates (...) will be notified in the announcement of the tendering process"

22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>All contributors answering this question confirm that the criteria are respected in practice.</p>
If no, please elaborate:	<p>n/a</p>
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>In general, Article 166 of the LCSP indicates that, for the case of restricted tendering procedure, the contracting authority has to provide information required to potential bidders before the reception of offers. Also, Article 181 of the Law TRLCSP establishes, for the case of competitive dialogue tendering, the procedure for which interested parties request additional information. Moreover, according to article 131.2 of the LCSP: The contracting authority may include in the tender documents, depending on the nature and complexity of the contract, a period within which the tenderers may request the clarifications they deem relevant. The responses shall be binding and shall be made public in terms that ensure equality and concurrence in the bidding process.</p>
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory	<p>According to article 131.2 of the LCSP: The contracting authority may include in the tender documents, depending on the nature and complexity of the contract, a period within which the tenderers may request the clarifications they deem relevant. The responses shall be</p>

provisions (if any):	binding and shall be made public in terms that ensure equality and concurrence in the bidding process.
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	Most contributors that answered the question confirm that the disclosure of information is done in practice
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
24.2. Based on your experience, is it always the	No

case that this disclosure of information is done in practice?	
If yes, please specify:	n/a
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 131, numeral 1, of the Law TRLCSP establishes that the proposals must contain a “economic-financial plan for the concession that includes tariff system, investment and costs, expenditures, financial obligations (...)”
If no, please elaborate:	n/a
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 150 of the Law TRLCSP defines criteria for valuation of offers (i.e. award criteria), also states that those criteria has to be detailed in the tendering documents and they will be used for the awarding.
Evaluation criteria is not set in the tender documents	No
27. In the case where only one	No

<p>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.</p>	
<p>Please specify and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</p>	Yes
<p>Please provide the relevant legal/regulatory provisions (if any):</p>	According to Article 151.3 second paragraph of the TRLCSP an invitation to tender cannot be declared void when there is an offer or proposal that is admissible in accordance with the criteria included in the tender.
<p>The procuring authority does not award a PPP contract if only one proposal is submitted.</p>	No
<p>Please provide the relevant legal/regulatory</p>	n/a

provisions (if any):	
The regulatory framework does not include any provisions.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Article 151 of Law TRLCSP states that: "4. The award will have to be motivated, it will be notified to the candidates or bidders, and simultaneously, it will be published in the contracting (authority) profile"
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	https://contrataciondelestado.es/wps/portal/plataforma
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 151 of Law TRLCSP states that: "4. The award will have to be motivated, it will be notified to the candidates or bidders, and simultaneously, it will be published in the contracting (authority) profile"
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	Yes

the selection of the winning bid?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 151 of Law TRLCSP states that: "4. The award will have to be motivated, it will be notified to the candidates or bidders, and simultaneously, it will be published in the contracting (authority) profile"
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	For cases of projects that are harmonized with European Union regulation, and other types of projects detailed in Annex 2 of the Law TRLCSP, article 156 (together with Article 40) establishes that if a special legal resource is presented, the formalization of the contract (after the award) has to be done after a 15 working days period.
and the time in calendar days:	21
30.1. Is the standstill period set out in the notice of intention to award?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 151.4 of the TRLCSP indicates that the notification must contain all information necessary to allow the bidders to request a special resource against the award decision.
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to	Yes

prevent an unfair disadvantage to the other bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 156 of Law TRLCSP states that contracts to be formalized should include the exact conditions of the tendering process.
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	All respondents confirmed that the restriction is respected in practice.
If no, please elaborate:	n/a
32. Does the procuring authority publish the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 8 of Law of transparency and access to public information (Law 19/2013) all contracts are subject to active publication by the pertinent public entities in charge.
32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes	No
Publication of the full PPP contract without including all its	No

annexes and appendices	
Publication of a summary of the PPP contract without publishing the full PPP contract	Yes
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendices	No
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendices	No
32.2. If yes, is it published online?	Yes
If yes, please specify the website:	https://contrataciondelestado.es/wps/portal/plataforma
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Among the information to published regarding public contract should include any modification of them according to the referred article 8 of the Law 19/2013
PPP Contract Management	
41. Has the procuring or contract management authority established a	Yes

system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Several articles in the LCSP regulates execution of the contract and assign to the procuring authorities a set of obligations and prerogatives regarding the implementation of the contract in general (article, 210 and 211) and in particular for Public Works Concessions (article 240 and following). Moreover, in particular, article 52 of the TRLCSP establishes a person responsible for the contract in to supervise its execution and taking decisions and manage aspects necessary to assure that compliance of the project.</p>
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	<p>Yes</p>
Relevant legal/regulatory provisions (if any):	<p>Article 52 of the TRLCSP establishes a person responsible for the contract in to supervise its execution and taking decisions and manage aspects necessary to assure that compliance of the project.</p>
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	<p>No</p>
Relevant legal/regulatory provisions (if any):	<p>n/a</p>
Elaboration of a PPP implementation manual or an equivalent document	<p>No</p>
Relevant legal/regulatory	<p>n/a</p>

provisions (if any):	
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	No
Relevant legal/regulatory provisions (if any):	n/a
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	No
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet	No

detailed qualifications.	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	Yes
Please elaborate and provide examples:	Article 52 does not require any type of specific qualification for the contract responsible.
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 244 of the TRLCSP states that, once the construction works are finished and before the exploitation phase begins, the contracting authority must draw up an act of verification of the public works and of their (economic and technical) correspondence to the approved projects.

42.1. If yes, is the PPP contract construction performance information made available to the public?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
42.2. If yes, is the PPP contract construction performance information made publicly available online?	<p>n/a</p>
If yes, please specify the website:	<p>n/a</p>
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Articles 249 of the TRLCSP regulates the prerogatives of the procuring authority during the implementation of a PPP including the possibility of requesting for any information at any time and make inspections related to the construction works.</p>
43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the	<p>Yes</p>

tender documents and the PPP contract	
Relevant legal/regulatory provisions (if any)	According to article 247.5: 5. The Administration may include in the bidding documents mechanisms to measure the quality of the service offered by the concessionaire, and to grant economic advantages or penalties to the latter in function thereof.
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	According to article 247.5: 5. The Administration may include in the bidding documents mechanisms to measure the quality of the service offered by the concessionaire, and to grant economic advantages or penalties to the latter in function thereof.
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	No regulatory basis

The PPP contract performance information must be available to the public	No
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 226 of the TRLCSP regulates assignment and/or transfer of the Public Works Concessions contract requiring the prior approval of the contracting authority and the fulfillment of other three requisites (the formalization of the transfer by public deed; the existence on the firm receiving the transfer of the required capacity and solvency; the execution of, at least, 20% of the contract's value or, in case of service concessions, of one fifth of its length).</p>
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 226 of the TRLCSP regulates assignment and/or transfer of the Public Works Concessions contract requiring the prior approval of the contracting authority and the fulfillment of other three requisites (the formalization of the transfer by public deed; the existence on the firm receiving the transfer of the required capacity and solvency; the execution of, at least, 20% of the contract's value or, in case of service concessions, of one fifth of its length).</p>
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 226 of the TRLCSP regulates assignment and/or transfer of the Public Works Concessions contract requiring the prior approval of the contracting authority and the fulfillment of other three requisites (the formalization of the transfer by public deed; the existence on the firm receiving the transfer of the required capacity and solvency; the execution of, at least, 20% of the contract's value or, in case of service concessions, of one fifth of its length).</p>
In other cases, flexibility to	<p>Yes</p>

change the ownership structure and/or assign the contract.	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 226 of the TRLCSP regulates assignment and/or transfer of the Public Works Concessions contract requiring the prior approval of the contracting authority and the fulfillment of other three requisites (the formalization of the transfer by public deed; the existence on the firm receiving the transfer of the required capacity and solvency; the execution of, at least, 20% of the contract's value or, in case of service concessions, of one fifth of its length).</p>
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 243, complemented by articles 105-108, and 249 regulate modification of contract for concession of public works. While, article 219, complemented by articles 105-108, regulates contract modifications for collaboration between public and private parts. Articles 219 and 243 basically make reference to the articles 105-108. The latter contain procedures and conditions for contract modification. They regulate modifications stated in the tendering documents and those not included in them. Also, they forbid modifications that add new provision (of services or infrastructure) not included originally. Additionally, article 249 (complemented with article 250) regulates the rights of the public entity to modify the contract in case of public interest (with the obligation to maintain the economic balance).</p>
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/	<p>Under some circumstances the approval from other entities is required. According to Article 317 of the Law TRLCSP the Council of Ministries have to approve amendments if they approved the project in the first place. Also, according to Article 249, for PPPs promoted by the Autonomous Communities, an advisory body of the procuring authority</p>

standard contractual provisions (if any):	(Consejo de Estado or Consejos Consultivos de las Comunidades Autónomas) must previously report the modification of the PPP contract, in certain cases (if the PPP contractor does not agree with the modification, or if the modification has a certain economic amount).
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Articles 105-18 of the Law TRLCSP contain procedures and conditions for contract modification. They regulate modifications stated in the tendering documents and those not included in them. Also, they forbid modifications that add new provision (of services or infrastructure) not included originally. Moreover, according to article 250 of the TRLCSP 3. The modifications that, due to their physical and economic characteristics, allow their independent exploitation will be the object of a new tender for their construction and exploitation.
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the financial and/or economic balance of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 243, complemented by articles 105-108, and 249 regulate modification of contract for concession of public works. While, article 219, complemented by articles 105-108, regulates contract modifications for collaboration between public and private parts. The economic balance is mentioned explicitly on those provisions.
A change in the duration of the contract.	Yes

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>TRLCSP foresees the modification of the duration of the contract as a compensation mechanism for the economic rebalance of the contract (article 258 of TRLCSP).</p>
A change in the agreed price or tariff.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 243, complemented by articles 105-108, and 249 regulate modification of contract for concession of public works. While, article 219, complemented by articles 105-108, regulates contract modifications for collaboration between public and private parts. The economic balance is mentioned explicitly on those provisions. According to Article 107 the prices (tariffs) are considered essential conditions of the tendering and as such they can justify modifications to balance the economic equilibrium. Also, article 255.3 of the TRLCSP states: The tariffs shall be reviewed in accordance with the procedure determined by the specific administrative clauses and in accordance with the provisions of Chapter II of Title III of this Law.</p>
46.3. Can the procuring authority unilaterally modify a PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>For concessions of public works, Article 249 of the Law TRLCSP (complemented with article 250) regulates the rights of the public entity to modify the contract in case of public interest (with the obligation to maintain the economic balance).</p>
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	<p>Yes</p>

If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>This is explicitly mentioned in article 107 of the law TRLCSP.</p>
Material Adverse government action .	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>For the case of concessions of public works, article 258 of the Law TRLCSP, states that the government actions (especially those arising from the contracting Administration) affecting the economic and financial balance of the PPP project allow the contracting authority to modify the contract in order to provide the restoration of such balance</p>
Change in the Law.	<p>No</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
Refinancing.	<p>No</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>n/a</p>
Subcontracting and replacement of the subcontractors.	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 227 of the TRLCSP- The contractor may conclude with third parties the partial implementation unless the contract or the specifications provide otherwise, or that by its nature and conditions it is deduced that it must be executed directly by the successful bidder. The conclusion of the subcontracts will be subject to compliance with the requirements set forth in article 227 of the TRLCSP. 273 regulates the same aspect specifically for Public Works Concession Contracts</p>
48. Does the regulatory	<p>Yes</p>

framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Disputes arising from the implementation of PPP contracts, once they have been formalized, may be directly challenged before the Contentious-administrative Courts although a previous appeal before the contracting authority is available (art. 211.4 of Royal Legislative Decree 3/2011 and Law 29/1998, of July 13th on Contentious Administrative Jurisdiction).</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	<p>No</p>
If yes, please specify:	<p>n/a</p>
Local courts	<p>Yes</p>
Domestic arbitration	<p>No</p>
International arbitration	<p>No</p>
Investor-State Dispute Settlement (ISDS)	<p>No</p>
Mediation	<p>No</p>
Please provide the relevant legal/regulatory/stand	<p>Article 50 of the TRLCSP forbids Public Administrations from submitting to arbitration mechanisms. Therefore, the arbitration is only a feasible dispute resolution tool for the</p>

ard contractual provisions (if any)	contracting authorities that are not considered as Public Administrations (i.e. public companies)
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	n/a
If yes, please provide the relevant legal/regulatory provisions/stand ard contractual provisions (if any):	n/a
International arbitration	n/a
If yes, please provide the relevant legal/regulatory provisions/stand ard contractual provisions (if any):	n/a
Investor-State arbitration	n/a
If yes, please provide the relevant legal/regulatory provisions/stand ard contractual provisions (if any):	n/a
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial	Yes

difficulty prior to insolvency?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Article 224.5 of the TRLCSP: In the event of a declaration of insolvency, and until the opening of the liquidation phase, the Administration may continue the contract if the contractor provides sufficient guarantees in the opinion of the contractor for its execution.</p>
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?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Articles 262.2 of the TRLCSP (Public Works Concessions): When resolution of the concession for breach of any of the concessionaire’s obligations occurs, the Administration, before resolving, will hear the mortgage creditor in case he offers to subrogate himself in its compliance and the Administration considers compatible such offer with the good end of the concession.</p> <p>315 of the TRLCSP (PPP): In the event that the contract is terminated, the procuring authority shall, before agreeing to the latter, give a hearing to the creditors in case they offer to subrogate themselves in the performance of the contract, directly or through an investee, under conditions considered compatible with its good purpose, provided that they meet the requirements of the successful tenderer.</p>
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework	<p>Yes</p>

expressly regulates the lender step-in rights.	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>Articles 262.2 of the TRLCSP (Public Works Concessions): When resolution of the concession for breach of any of the concessionaire's obligations occurs, the Administration, before resolving, will hear the mortgage creditor in case he offers to subrogate himself in its compliance and the Administration considers compatible such offer with the good end of the concession.</p> <p>315 of the TRLCSP (PPP): In the event that the contract is terminated, the procuring authority shall, before agreeing to the latter, give a hearing to the creditors in case they offer to subrogate themselves in the performance of the contract, directly or through an investee, under conditions considered compatible with its good purpose, provided that they meet the requirements of the successful tenderer.</p>
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	No
Please Specify:	n/a
51. Does the regulatory framework (including	Yes

<p>standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</p>	
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Article 223 and those following of the TRLCSP for all contracts; and Article 269 and those following of the TRLCSP specifically for public works concessions regulate the causes of termination/resolution</p>
<p>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?</p>	<p>Yes</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Article 271 of the TRLCSP In the event of a resolution, the Administration will pay the concessionaire the amount of investments made due to expropriation, execution of construction works and acquisition of necessary assets for the exploitation of the work object of the concession. In the cases set forth in paragraphs g), h) and i) of article 269, and without prejudice to the provisions abovementioned, the granting Administration shall indemnify the concessionaire for damages and losses that may be levied. In order to determine the amount of the compensation, the future benefits that the concessionaire will not receive will be taken into account, operating results in the last five years where possible, and the loss of the value of the works and installations that are not to be delivered, considering its depreciation rate. When the contract is resolved for cause attributable to the concessionaire, the bond will be seized and must also compensate the Administration for damages and losses caused in excess of the amount of the seized guarantee. The contracting authority may also agree on the resolution of the contracts for the use of the complementary areas. The contracting authority may also agree, as a consequence of the resolution of the concession, the resolution of the contracts awarded commercial exploitation, paying the compensation that if appropriate. This indemnity will be paid by the concessionaire when the resolution occurs as a result of cause attributable to it When the contract is settled by mutual agreement, the rights of the parties will be adjusted to what is validly stipulated between them</p>
<p>Unsolicited Proposals</p>	

34. Are unsolicited proposals in Spain: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	<p>No</p>
Explicitly allowed by the legal framework?	<p>Yes</p>
Not regulated by the legal framework, but do happen in practice?	<p>No</p>
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	<p>No</p>
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	<p>Article 128.5 of TRLCSP allows the presentation of private initiative viability studies for potential Public Works Concessions. According to this provision, Unsolicited proposals are permitted in the sense that a private party can submit to the procuring authority or competent body a viability proposal for an eventual Public Works Concession. However, if the competent body decides that is an interesting undertaking it will have to assume the idea and proceed as it would with any regular contract since the private initiative is only permitted regarding the viability study.</p>
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	<p>Yes</p>
If yes, please specify and provide the relevant	<p>Article 128.5 of TRLCSP Article states that: 5. The private initiative will be admitted for the presentation of studies of feasibility of eventual concessions. The study will be submitted to the competent body so that within a period of three months, it communicates to the individual the decision to process or not to process the same or set a longer period for its</p>

legal/regulatory provisions (if any	study, which in no case will exceed six months. The silence of the Administration or of the corresponding entity will be equivalent to the non-acceptance of the study.
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework requires	Yes

unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	No
Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>The second paragraph of Article 128.5 states that In the event that the feasibility study culminates in the granting of the corresponding concession after the timely tender (...). This indicates that a regular tender procedure is required to award a Public Works Concession originated in an unsolicited viability study provided by a private entity. its author will have the right, provided that it has not been awarded and unless the study had proved insufficient according to its own purpose, to the compensation of the expenses incurred for its preparation, increased by 5 per cent as compensation, expenses that may be imposed on the concessionaire as a contractual condition in the corresponding specification of particular administrative clauses. The amount of the expenses will be determined by the Granting Administration according to those that are proven by the person who presented the study, according to the nature and content of the study and according to market prices.</p>

38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>There is not a specific procedure for private initiatives. However, general rules for concession of public works apply for private initiatives. Hence, Law TRLCSP defines limits for open tendering and restrictive procedure (the default methods for concession of public works). Article 159 states minimum periods for open tendering. The minimum for projects with harmonized regulation (to European rules) is 52 days. The minimum for non-harmonized projects is 26 days. Article 164 states minimum periods for restricted tendering. The minimum for projects with harmonized regulation (to European rules) is 37 days. The minimum for non-harmonized projects is 10 days.</p>
and the time in calendar days:	<p>52</p>
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	<p>No</p>
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	<p>Yes</p>
39.3 Bid Bonus.	<p>No</p>

39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	<p>No</p>
39.5 Other.	<p>No</p>
Please specify:	<p>n/a</p>
Please provide the relevant legal/regulatory provisions (if any):	<p>Article 128 of the Law TRLCSP states that in case the proponent did not win the awarded concession (after a tendering process) it shall be reimbursed (total expensed plus 5% as compensation). According to the second paragraph of Article 128.5 In the event that the feasibility study culminates in the granting of the corresponding concession after the timely tender its author will have the right, provided that it has not been awarded and unless the study had proved insufficient according to its own purpose, to the compensation of the expenses incurred for its preparation, increased by 5 per cent as compensation, expenses that may be imposed on the concessionaire as a contractual condition in the corresponding specification of particular administrative clauses. The amount of the expenses will be determined by the procuring authority according to those that are proven by the person who presented the study, according to the nature and content of the study and according to market prices.</p>