

## PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN SRI LANKA

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>	There is no specific law expressly providing for procuring PPPs in Sri Lanka. However, the Guidelines on Government Tender Procedure Part II for Private Sector Infrastructure Projects (BOO/BOT/BOOT Projects) Revised Edition of January 1998 (hereinafter the “PSIP Guidelines”) and the Procurement Guidelines and Manual of 2006 (respectively the “Procurement Guidelines “and “Procurement Manual”) issued by the Ministry of Finance (successor to the National Procurement Agency) facilitate PPPs. The following analysis will be based on those regulations. In addition, a row of Supplements to the Procurement Manual were issued in 2016-2017. In our analysis, we will mostly refer to Supplements 30, which deals with unsolicited project proposals and introduces Swiss challenge procedure.
<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>	<a href="http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html#GuidelinesOnPrivateSectorInfrastructureProjects">http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html#GuidelinesOnPrivateSectorInfrastructureProjects</a>
<b>2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</b>	Yes
<b>Please describe:</b>	<p>i) The Cabinet has approved the establishment of a Public Partnership Division at the Ministry of Finance on January 01, 2017.</p> <p>ii) By Procurement Monitoring Circular 01/2016 (Ref: MF/PMU/CIR/2016) dated 29.04.2016 the Ministry of Finance established a Procurement Monitoring Unit (PMU) to address issues affecting the delays and quality of procurement. In the event the PMU is of the view that there is any issue with the procurement, it will notify the Cabinet Committee on Economic Management.</p> <p>iii) In February 2017, the Ministry of Finance issued a Guide to Project Management and Contract Management (“GPMCM”), pursuant to the Asian Development Bank’s Technical Assistance Program (TA-8562 SRI) for the Government of Sri Lanka (“GOSL”) to serve as a ready reference to Procurement Committees, Technical Evaluation Committees and PPP project staff.</p>

	<p>iv) In addition, a row of Supplements 29, 30 and 31-33 to the Procurement Manual were issued on January 25, 2016, December 26, 2016 and March 15, 2017 respectively. S. 29 supersedes sections 5.4.4, 5.4.6 and 5.4.8 of the Procurement Guidelines in regard to advance payment guarantees. S.30 deals with unsolicited project proposals and introduces Swiss challenge. S. 31 allows the Procurement Committee/Project Entity more freedom to decide suitable time periods for individual procurement actions. S. 32 supersedes the previous S. 25, and relates to payment to the members of procuring committees. S. 33 introduces authority limits for deviating from the established procurement procedure and in terms of contract awarding, recommendation/determination under competitive bidding procedure, shopping procedure, direct contracting, repeat orders.</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>MoF is developing guidelines for PPP transactions to build a housing infrastructure for war affected people. 3rd Draft Guidelines Public-Private Partnerships is being revised and will replace and supersede the Guidelines on Government Tender Procedure Part-II on Private Infrastructure Projects-I 998.</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 any of the following sectors?: Water and Irrigation</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	<p>n/a</p>
<p><b>3.3 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></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions:</b></p>	<p>n/a</p>

<b>3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other</b>	No
<b>If yes, specify and provide the relevant legal/regulatory provisions:</b>	n/a
<b>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provision (if any):</b>	No regulatory basis
<b>5. Please identify the PPP procuring authorities in Sri Lanka and provide their website(s) (if available):</b>	<p>The Procurement Guidelines indicate that “Procuring Entity” means a Government ministry, provincial council, Government department, statutory authority, government corporation, government owned company, local authority or any subdivision thereof or any other body wholly or partly owned by the Government of Sri Lanka or where the Government of Sri Lanka has effective control of such body, that engages in Procurement.</p>
<b>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</b>	Yes
<b>If yes, please indicate its name, and its website (if available):</b>	<p>Public Finance Division of the Treasury Department (hereinafter “DoPF”)  Website: <a href="http://www.treasury.gov.lk/web/departement-of-public-finance/responsibilities">http://www.treasury.gov.lk/web/departement-of-public-finance/responsibilities</a>  According to a press briefing of the Cabinet’s Decision on January 1, 2017, Sri Lanka established a PPP Unit to “to assist the relevant Ministries in providing assistance advice and facilitating when selecting projects suitable to be implemented under the Public Private Partnership collaboration, was approved by the Cabinet”. The functions of the unit are yet to be specified, but mainly the unit will develop policies for a PPP regulatory framework in the country.</p>

<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	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>	No
<b>6.9 Undertaking the procurement of PPPs.</b>	No
<b>6.10 Oversight of PPP implementation.</b>	Yes
<b>6.11 Other</b>	No
<b>6.11 please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions:</b>	<p>According to its website, the Department of Public Finance (hereinafter "DoPF") aims to improve transparency, accountability and service delivery in the public sector. Among its listed functions are: i) formulate, develop, follow up, review and update the policies, systems and procedures in Public Finance Management including the management of public assets; ii) review and monitor effective use of existing departmental fees and charges and explores the possibility of generating non-tax revenue in cost effective manner; iii) regularize, review and monitor the Ministerial / Departmental funds to ensure effective and efficient utilization of public funds with accountability and transparency; iv) promote public sector governance and assist the Parliamentary Committee on Public Accounts (COPA)</p> <p>Some of the policies, systems and procedures developed by the DoPF include: Financial Regulations, Government Procurement Guidelines , Guidelines on Asset Management.</p>
<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

<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Section 227 of the PSIP Guidelines related to Preliminary Screening states that all priority projects identified by the respective line Ministries should be discussed informally with the BII and a financial and technical viability report to screen such projects need to be prepared jointly by the proposing agency and vetted by the BII for clearance by the Ministry of Finance and Planning. Once the clearance from the Ministry of Finance and Planning is obtained the line Ministry should present a Cabinet Memorandum including formal Project Proposal seeking approval of the Cabinet to proceed with the Project.</p> <p>Moreover, according to section 231, priority projects considered by the Government of Sri Lanka (GOSL) for development through the private sector, once identified and screened by the relevant line Ministry with the assistance of the BII (in regard to the economic and financial viability of the project), should be submitted to the Ministry of Finance and Planning for preliminary clearance.</p>
<p><b>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</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>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.</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>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</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>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</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>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></p>	<p>n/a</p>

<b>Accounting and reporting according to other international standard (e.g. European System of Accounts).</b>	n/a
<b>Please specify:</b>	n/a
<b>Other.</b>	n/a
<b>Please specify:</b>	n/a
<b>9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?</b>	Yes
<b>If yes, please specify the relevant authority</b>	Cabinet of Ministers
<b>and provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 227 of the PSIP Guidelines, once the clearance from the Ministry of Finance and Planning is obtained the line Ministry should present a Cabinet Memorandum including formal Project Proposal seeking approval of the Cabinet to proceed with the Project.
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to section 235 of the PSIP Guidelines, since negotiations on project proposals may result in legal obligations on the part of the Government, recommendation for any contractual commitments and Government guarantees, if any should be made by the relevant line Ministry/BII in consultation with the Treasury and Attorney-General and be approved by the Cabinet prior to entering into any formal contractual commitment. Section 289 furthermore indicates that, before signature of the IA, the final proposal with the agreed draft agreements should be submitted to the Cabinet for approval. The line Ministry shall submit the Cabinet Memorandum and the CANC recommendations along with a report compiled by the BII, which will include:</p> <ul style="list-style-type: none"> <li>(i) the results of the appraisal of the PC summarized by BII, its consultants and the relevant State Agency involved;</li> <li>(ii) the final price and other major features negotiated;</li> <li>(iii) the major features of the negotiated IA.</li> </ul>
<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	Yes

<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Section 233 of PSIP Guidelines - The Project Committee may co-opt consultants/experts from time to time to obtain expert advice.</p> <p>Section 2.8 Procurement Guidelines - Technical Evaluation Committees may, where necessary, obtain expert advice from external members or institutions on specific subject matters.</p>
<p><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>	<p>No</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 prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Section 227 of the PSIP Guidelines - All priority projects identified by the line Ministries must be approved by the Ministry of Finance and Planning and the Cabinet.</p> <p>Section 4.2 of the Procurement Guidelines - The Procuring Entity must prepare a Master Procurement Plan detailing procurement activities for at least 3 years and regularly update at intervals not exceeding 6 months. Procurement requires the concurrence of the Secretary to the line Ministry or with respect to Foreign Funded Projects, that of the Foreign Funding Agency.</p>
<p><b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with</b></p>	<p>No</p>

<b>other government investment priorities in practice.</b>	
<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 that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?</b>	No
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	PPP Projects are not always in consistence with government priorities.
<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>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to section 2.3.1 of the Procurement Guidelines , prior to a request being made for the appointment of a PC, the Procuring Entity shall confirm to the NPA that (a) it has carried out initial environmental examination, (IEE) environmental impact assessment (EIA), social impact assessment (SIA), and all other such procurement preparedness activities as may be relevant to the project.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Socio-economic impact is assessed in practice.
<b>12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a



<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	There is no single methodology to conduct affordability assessments of PPP proposals in Sri Lanka.
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Our contributors indicate that affordability of PPP projects is assessed in practice.
<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Risk assessment is performed in practice.
<b>12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.5. Financial viability or bankability assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Section 231 of the PSIP provides that projects identified to be developed through the private sector, are screened by the relevant line ministry to assess its economic and financial viability.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	Yes

<b>Details:</b>	Preliminary screening is carried out with regard to economic and financial viability of the Project and approved by the Ministry of Finance and Planning.
<b>12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to section 2.3.1 of the Procurement Guidelines, prior to a request being made for the appointment of a Procuring Committee, the Procuring Entity shall confirm to the National Procuring Agency that (a) it has carried out, inter alia, initial environmental examination (IEE) and environmental impact assessment (EIA).
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	No regulatory basis
<b>Is the assessment done in practice?</b>	Yes
<b>Details:</b>	Prior to appointment of a Procurement Committee, the Project Entity must confirm that it has carried out initial environmental examination, environmental impact, social impact assessment.
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for</b>	Yes

<b>example, as part of an Information Memorandum to the bidders)?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Section 234 of the PSIP provides that RFP includes the criteria of assessment of technical and financial viability of the project , environmental data and information and any other relevant information. Section 244 of the PSIP Guidelines broadly sets out the content of the RFP, which will include (i) all relevant information on the Project; (ii) specific information required from the bidders to evaluate the proposal; (iii) a defined format for the bidders to follow in submitting their proposals. Therefore, even though not specified, such assessments may be included in the RFP.
<b>and specify which of the assessments are included in the request for proposals and/or tender documents:</b>	Technical viability, financial viability and environmental assessment
<b>13.1. Are the assessments published online?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>specify the website</b>	Assessments are included in the model Request For Proposal ('RFP') (not for bidding), which is published online by the relevant line Ministries.
<b>please specify which of the assessments are published online:</b>	technical viability, financial viability and environmental assessment
<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>	Section 244 of the PSIP Guidelines is related to Contents of RFP and requires to indicate the Contractual, Financial and Legal Framework (v), including (a) drafts of the contracts and agreements which will need to be entered into between the private and public sector agencies involved.
<b>If no, please elaborate</b>	n/a
<b>14.1. Are the tender documents published online?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>and please specify the website:</b>	<a href="http://www.treasury.gov.lk/procurement-notice">http://www.treasury.gov.lk/procurement-notice</a> or the website of the relevant line ministry
<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</b>	Bidding documents: <a href="http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/standard-bidding-documents.html">http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/standard-bidding-documents.html</a>

available or provide an electronic copy of them:	
<b>16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring authority (or other Government entity)</b>	No
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)	No regulatory basis
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	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)	No regulatory basis
<b>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</b>	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
<b>16.4. Obtaining the required land: Procuring authority (or other Government entity)</b>	No
Private Partner	No
Private partner with facilitation role assigned to	Yes

<b>the procuring authority (or other Government entity)</b>	
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<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>	Yes
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	No regulatory basis
<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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 2.7.6 of the Procurement Manual relates to the Composition of Project Procurement Committee for major contracts :</p> <p>a) The number of members in a Project Procurement Committee shall be three;</p> <p>b) If the Project Director, is a class 1 officer of the Sri Lanka All island Services then he shall be the chairperson otherwise a representative of the ministry who shall be a class 1 officer of the Sri Lanka All island Services shall be the Chairperson; If the project Director is not a class 1 Officer of the Sri Lanka All Island Services the CAO under the Personnel approval may delegate the Chairmanship to the Project Director</p> <p>c) If Project Director is not the Chairman then he shall be a member;</p> <p>d) One member shall be a senior officer from the Procuring Entity who is knowledgeable in the subject matter of the Procurement under consideration;</p> <p>e) One member (Class 1 officer) shall be a representative from the Ministry;</p> <p>The Chairperson of the TEC or his nominee from the TEC members shall participate as non member at all meetings for Project Procurement Committee to make clarifications.</p> <p>The Procurement Specialist of the project shall be the non member secretary for Project Procurement Committee.</p>

<b>The bid evaluation committee members require sufficient qualification without specific details.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<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 legal/regulatory provisions (if any):</b>	Pursuant to section 249 of the PSIP Guidelines, the Secretary, Ministry of Finance and Planning will invite proposals in the international and national press and give publicity through local diplomatic representatives as well as through Sri Lankan Missions abroad and the electronic media. The press notice may also be sent to all potentially interested firms that have been in contact with the line Ministry/line Agency/BO/BII or otherwise expressed an interest.
<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.treasury.gov.lk/news-and-events/38-national-planning/public-finance.html?start=10">http://www.treasury.gov.lk/news-and-events/38-national-planning/public-finance.html?start=10</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>	Section 6.2.2 of the Procurement Guidelines sets out minimum timelines based on the method of procurement. Pursuant to section 252 of the PSIP guidelines, the period for submitting proposals will normally be three months. This may be increased to six months depending on the nature of the project. Proposals received after the stipulated closing date and time or due to the reasons of critically non-conformity with the RFP, (e.g. non submission of a proposal guarantee) should be rejected by the Cabinet Appointed Negotiating Committee.  The Supplement 31 to the PSIP further states that at the first meeting the PC in consultation with the PE, shall determine the procurement time schedule allocating time slots for each action of the relevant procurement strictly

	adhering to the above time frame. In this regard the PC/PE has the freedom to decide suitable time periods for individual procurement actions (such as bid evaluation, contract award determination by the PC, appeal procedure etc.) other than compulsory bidding period depending on the nature and complexity of the procurement.
<b>and the time in calendar days:</b>	90
<b>22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	No
<b>Default</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Section 3.1 and 3.2 of Procurement Guidelines provide that International Competitive Bidding (ICB), International Publicity and National Competitive Bidding (NCB) should be used as default competitive bidding procedures. All of these procedures include open notice and bidding process. In practice, the bidding process includes pre-qualification involving technical and financial qualification criteria.
<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>	Section 3.10 of Procurement Guidelines outlines a two-stage bidding process for “contracts for large complex plants/ equipment or information technology systems or Works of a special nature, all of which require innovative approaches, or where the problem of technically unequal Bids is likely to be encountered”. (a) In the first stage un-priced technical proposals on the basis of a conceptual design or performance specifications shall be invited. Subject to clarifications on technical and commercial issues and adjustments, if any, amended bidding documents shall be prepared. (b) During the second stage there shall be an invitation for final technical proposals and priced Bids.
<b>22.4. Competitive dialogue: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.5. Direct negotiation with more than one candidate: Available</b>	No

<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.6. Direct negotiation with only one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.7 Other. Specify:</b>	Two Envelope System; Limited Bidding
<b>Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>(1) Two envelope System - Section 3.11 of the Procurement Guidelines “Two Envelope System”: two envelope system may be used when the PC determines in circumstances such as– (i) “turnkey”, “design and build” or “supply and installation” contracts, and (ii) where alternate types of technical proposals are possible. (b) In the two envelope system, bidders are required to submit their technical and financial proposals simultaneously, but in two separate envelopes. (c) technical proposals are to be opened first and reviewed to determine their response to specifications.</p> <p>(2) Limited Bidding - Section 3.3 of Procurement Guidelines : “Limited / Restricted International Competitive Bidding (LIB)and Limited/Restricted National Competitive Bidding (LNB)”: These procedures are followed when the invitation to bid is directly addressed to a pre-selected list of international or national suppliers or contractors. The procedure is chosen when only a few sources are available. All procedures followed under ICB or NCB apply except the requirements for advertising and domestic preference.</p>
<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>Pursuant to section 244 (iv) of the PSIP Guidelines, are included in the RFP elements of the Evaluation and Selection Process: This part will provide the main information required from the bidders, including the technical parameters of the project, the basis for screening and scheme of evaluation of the proposals, and subsequent steps. The information provided in this section must be set out in sufficient detail so that the selection is unambiguous and process is clearly understood by the potential investors or bidders.</p> <p>Additionally, Section 5.2 of the Procurement Guidelines provides that the bidding document must contain all relevant information necessary for a prospective bidder to prepare a bid.</p>
<b>If no, please elaborate:</b>	n/a
<b>22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in</b>	Yes



<b>order to make them available to all the bidders?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to section 3.12 of the Procurement Manual, advertisements and invitations for prequalification should have the following information: eligibility requirements for potential bidders, suppliers and contractors. Additionally, Section 234 of the PSIP Guidelines lists out certain details to be provided in the RFP, including any other relevant information not specifically mentioned therein. Shortlisting criteria will fall under such other relevant information, in the absence of a explicit requirement to provide the same.
<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>	Contributors confirm that specified criteria are generally adhered to in practice.
<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 legal/regulatory provisions (if any):</b>	According to section 247 of the PSIP Guidelines, the RFP will have instructions inviting bidders to seek clarifications or supplementary information in writing, within the time stipulated but not exceeding two months following the date of issue of the RFP. Cabinet Appointed Negotiating Committee may convene a bidder's conference on their own or if requested by at least two bidders within a specified period of time not exceeding two months from the date of publication of the RFP.
<b>23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to section 247 of the PSIP Guidelines, the Project Committee in consultation with the relevant Ministry, will supply written answers to all questions, and send copies of these to all parties which have purchased the RFP, provided such answers will not amend or add to the RFP in any way.
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	Each individual potential bidder is usually informed in writing.

<b>If no, please elaborate:</b>	n/a
<b>24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to section 247 of the PSIP Guidelines, CANC may convene a bidder's conference on their own or if requested by at least two bidders within a specified period of time not exceeding two months from the date of publication of the RFP.</p> <p>Additionally, Section 5.3.14 of Procurement Guidelines states that in the case of Works or complex Goods contracts a pre-bid meeting may be arranged whereby potential bidders have the opportunity of seeking clarifications from the PE's representative/s.</p>
<b>24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 247 of the PSIP Guidelines: Clarifications are forwarded to all those who purchased the RFP.</p> <p>Section 5.3.14 (d) of the Procurement Guidelines - Minutes of the pre-bid meetings must be circulated to all prospective bidders.</p>
<b>24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	Yes
<b>If yes, please specify:</b>	All of the contributors confirmed that the procuring authority discloses the content and the results of the pre-bid conference to all bidders.
<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>	<p>Section 271 of the PSIP Guidelines provides a methodology to evaluate the financial plan, including a financing model.</p> <p>The main criteria are:</p> <ul style="list-style-type: none"> <li>(i) the financial standing and resources of the sponsor and its bankers in relation to the size of the project;</li> <li>(ii) the soundness and flexibility of the financing plan in terms of the Project Company's liquidity position throughout the life of the project, and its ability to survive adverse events which could result in a loss or reduction of cash flow;</li> <li>(iii) the quality and clarity of the financial model.</li> </ul>
<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>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to section 7.9.10 of the Procurement Guidelines , bids shall be first evaluated strictly according to the criteria and methodology specified in the bidding documents and such evaluated. Bids shall be compared to determine the lowest evaluated substantially responsive Bid. Further, Section 257 of the PSIP Guidelines provides that evaluation of the proposals will strictly adhere to the criteria specified in the RFP.</p>
<b>Evaluation criteria is not set in the tender documents</b>	<p>No</p>
<b>27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.</b>	<p>Yes</p>
<b>Please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>Section 3.1 of the Supplement 30 of the Procurement Manual outlines the procedure to be followed before awarding a PPP contract where only one proposal is submitted. According to Section 7.12.2 (a) of Procurement Guidelines, even when only one bid is received, after wide publicity has been given, the bidding process may still be considered valid, if the prices quoted are reasonable in comparison to market values. In such a situation, if prices quoted by the single bidder are high, the TEC may negotiate with the bidder for a downward revision of prices.</p>
<b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	<p>No</p>
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>The procuring authority does not award a PPP contract if only one proposal is submitted.</b>	<p>No</p>
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>

<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>	<p>Pursuant to section 8.10.1 of the Procurement Guidelines , the PE should publish promptly in its website (if available), the NPA website and/or any other appropriate media, the following particulars in regard to contracts on which awards have been made:</p> <p>(a) description of the items/Works for which bids were invited;</p> <p>(b) total number of bids received;</p> <p>(c) name of the successful bidder;</p> <p>(d) amount at which the contract was awarded;</p> <p>(e) in the case of a contract awarded to a foreign principal who has a local agent, the name of the local agent.</p> <p>Moreover, if the contract value exceeds SLR 250,000,000 (Sri Lanka Rupees Two Hundred and Fifty Million), publication of contract awards in at least one widely circulated national newspaper, the NPA website and government gazette is mandatory (section 8.10.2).</p>
<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.treasury.gov.lk/web/guest/procurement-awards">http://www.treasury.gov.lk/web/guest/procurement-awards</a> and the website of the Procurement Entity
<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>	According to section 8.2.1 of the Procurement Guidelines, the Secretary to the Line Ministry must notify all the bidders about the selection of the successful bidder and the intention to award the contract to such bidder. This notice must be issued within one week of the recommendation of the Cabinet Appointed Procurement Committee/Ministry Procurement Committee. The notice to the bidders is given in writing.
<b>If no, please elaborate:</b>	n/a
<b>29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful</b>	Yes

<b>bidders to challenge the award decision?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to Section 8.3.1 (a) of the Procurement Guidelines, and Supplement 24 of Procurement Manual, issued on 21-03-2012, the Secretary to the Line Ministry shall within one week of being informed of the recommendation of the CAPC inform the unsuccessful bidders in writing, to make their representations, (if any) against the recommendation of the CAPC/intention to award the contract to the successful bidder, to the Procurement Appeal Board at the Presidential Secretariat. Therefore, if no representation is made against the decision of the Standing Cabinet Appointed Procurement Committee SCAPC by unsuccessful bidders, the minimum standstill period will be seven working days.
<b>and the time in calendar days:</b>	9
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	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>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	No
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	The majority of the contributors did not confirm that the restriction is respected in practice.
<b>32. Does the procuring authority publish the PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>32.1. If yes, which of the following options best describes this publication (choose only one)?:</b>	n/a

<b>Publication of the full PPP contract including all its annexes and appendixes</b>	
<b>Publication of the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract without publishing the full PPP contract</b>	n/a
<b>Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes</b>	n/a
<b>Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes</b>	n/a
<b>32.2. If yes, is it published online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>PPP Contract Management</b>	
<b>41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>According to section 233 of the PSIP Guidelines, the Project Committee will service project development and will also be responsible for guiding the project through its various stages of implementation. Furthermore, section 234 indicates that the other responsibilities of the Project Committee are as follows: (ii) Monitor the progress during project development phase and report to CANC periodically. (iii) Co-ordinate all activities including scheduling meetings, correspondence, etc., relating to the project.</p> <p>In addition, Guide to Project Management and Contract Management Manual, published in February 2017 provides further details for contract management.</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>	Section 233 of the PSIP Guidelines: the Project Committee will be constituted once the Cabinet approves the project, in principle. The Project Committee will be appointed by the Secretary to the Treasury at the request of the Secretary of the line Ministry in liaison with BII. Its membership will include representatives of the following Ministries/Departments (...). Sections 2.7 and 2.8 of the Procuring Guidelines outline establishment of both a Procurement Committee and a Technical Evaluation Committee once the Procuring Entity completes preliminary obligations such as the EIA assessments.
<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	The Project Committee (PC) includes representatives of the Line Ministry and the Ministry of Planning and Finance. The Ministry of Finance and Planning, the Line Ministry and the PC participates in various stages of the PPP procurement process including but not limited to: Preliminary Clearance (Guideline 231), preparing the request for proposal (Guideline 234), recommendations for Contractual Commitment (Guideline 235), preliminary and final evaluation, Announcement of Proposal (Guideline 249), Issuing of Request For Proposal (Guideline 250), preparing the Letter of Intent (LOI) (Guideline 275).
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	Pursuant to PSIP guidelines 285 (i), is signed an Implementation Agreement between the Government and the Project Company. Guideline 288 furthermore provides that the contents of the Implementation Agreement will be negotiated by the Bureau of Infrastructure Investment, the line Ministry or Agency involved and the Project Company who may be assisted by their legal advisors and will be submitted to the CANC for approval. Guide to Project Management and Contract Management Manual, published in February 2017 further elaborate on PPP implementation.
<b>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Establishment of a risk mitigation mechanism which</b>	No

considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	
Relevant legal/regulatory provisions (if any):	n/a
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	Section 233 of the PSIP Guidelines provides that the project committee should be appointed by the Secretary to the Treasury at the request of the Secretary to the Line Ministry in liaison with BII. Its members should include representatives from the following 1. Line Ministry 2. Ministry of Finance and Planning 3. BOI/BII 4. Relevant state agencies 5. Attorney General's Department 6. Any other Ministry/ Department/Agency as appropriate 7. Central Environmental Authority
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.	No
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	In terms of section 233 of the PSIP Guidelines, PC must monitor the progress during project development phase and report to CANC periodically
42.1. If yes, is the PPP contract construction performance information made available to the public?	No



<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to section 234 of the PSIP Guidelines, the other responsibilities of the PC are as follows: (ii) Monitor the progress during project development phase and report to CANC periodically.
<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>	No regulatory basis
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The private partner must provide the procuring or contract management authority with periodic operational and financial data</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The procuring or contract management authority must periodically gather information on the</b>	Yes

<b>performance of the PPP contract</b>	
<b>Relevant legal/regulatory provisions (if any)</b>	According to section 234 of the PSIP Guidelines, the other responsibilities of the PC are as follows: (ii) Monitor the progress during project development phase and report to CANC periodically.
<b>The PPP contract performance information must be available to the public</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>43.2. Is PPP contract performance information made publicly available online?</b>	No
<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>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<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>	n/a
<b>If yes, please provide the relevant legal/regulatory/standard</b>	n/a

<b>contractual provisions (if any):</b>	
<b>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>In other cases, flexibility to change the ownership structure and/or assign the contract.</b>	n/a
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<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>	<p>Section 8.13.4 (supplement 14) of the Procurement Guidelines is related to Variations to contracts</p> <p>Further, the GPMCM provides that during the term of a contract, if it becomes necessary to make changes to the Works. the changes should be instructed as a variation to the contract and the variation should be managed in accordance with the provisions in the contract. Changes to the scope of the Contract should be affected through an amendment to the contract, which will require the agreement of both parties to a revised contract price and time for completion of the Works. Contract amendments require approval of relevant authorities depending on the value of the contract.</p>
<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>	Section 8.13.4 of Procurement Guidelines - When the contingency provision is exceeded or where there is no contingency provision, the contract variation must be approved by Technical Evaluation Committee and/or the Procurement Committee based on the variation, as applicable. In practice, the provisions of the PPP contract may address amendment of its terms generally (i.e., that amendments must be executed in writing by authorized signatories

	of the parties).
<b>46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Pursuant to Section 8.13.4 (supplement 14) of the Procurement Guidelines , no variation order on change of scope which involves the increase of contract price shall be issued without the prior approval obtained following the procedure indicated.</p> <p>A: Net variation within 10% of the Contract Award Price:  Head of the Department (HD) or Project Director (PD) may approve the variation by revising the TCE, if required and subject to the following:</p> <ul style="list-style-type: none"> <li>a) By obtaining explanatory note from the persons involve;</li> <li>b) By Satisfying that: <ul style="list-style-type: none"> <li>i. Change of scope could not have foreseen at the time of award of contract;</li> <li>ii. the change of scope is justifiable;</li> <li>iii. The quantity variation/s are marginal or are due to unforeseen situation/s.</li> </ul> </li> </ul>
<b>A change in the risk allocation of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the financial and/or economic balance of the contract.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>A change in the duration of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	According to section 8.14.1 of the Procurement Guidelines, extensions of time may be granted by an authorized person, in exceptional circumstances or due to Force Majeure situations, when the contractor or the supplier establishes to the satisfaction of the PE, that delays are attributable to circumstances beyond the control of the contractor/supplier.
<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>	According to section 8.14.1 of the Procurement Guidelines, extensions of time may be granted by an authorized person, in exceptional circumstances or due to Force Majeure situations, when the contractor or the supplier establishes to the satisfaction of the PE, that delays are attributable to circumstances beyond the control of the contractor/supplier.
<b>Material Adverse government action .</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Change in the Law.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Refinancing.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Subcontracting and replacement of the subcontractors.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>48. Does the regulatory framework (including standard contractual clauses)</b>	Yes

<p><b>allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b></p>	<p>Sections 5.4.14, 5.4.15 and 5.4.16 of the Procurement Guidelines provides for Dispute Resolution :</p> <p>(a) All disputes arising out of contract agreements shall be governed in accordance with the provisions of the Arbitration Act No. 11 of 1995 of Sri Lanka, as amended.</p> <p>(b) A reference must be made in the bidding documents, that settlement of disputes would be by way of arbitration and a detailed arbitration clause should be included in the contract to such effect.</p> <p>(c) For Foreign Funded Projects dispute resolution provisions recommended by the Foreign Funding Agency shall be complied with.</p> <p>Moreover, subject to the provisions of the Arbitration Act, the Rules of Arbitration of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL) or any other set of acceptable rules are recommended for usage.</p> <p>The venue of arbitration shall be in Sri Lanka, for GoSL funded projects. The venue of arbitration for Foreign Funded Projects would be determined in accordance with the requirements of the Foreign Funding Agency</p> <p>Section 6.1.1 of Procurement Guidelines stipulates the procedure for handling complaints.</p> <p>Moreover, PPPs are subject to the provisions of the Arbitration Act, the Rules of Arbitration of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL) or any other set of acceptable rules are recommended for usage. The venue of arbitration shall be in Sri Lanka, for GoSL funded projects. The venue of arbitration for Foreign Funded Projects would be determined in accordance with the requirements of the Foreign Funding Agency</p>
<p><b>48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body</b></p>	<p>No</p>
<p><b>If yes, please specify:</b></p>	<p>n/a</p>
<p><b>Local courts</b></p>	<p>No</p>
<p><b>Domestic arbitration</b></p>	<p>Yes</p>
<p><b>International arbitration</b></p>	<p>Yes</p>
<p><b>Investor-State Dispute Settlement (ISDS)</b></p>	<p>Yes</p>
<p><b>Mediation</b></p>	<p>Yes</p>

<p><b>Please provide the relevant legal/ regulatory/standard contractual provisions (if any)</b></p>	<p>Sections 5.4.14, 5.4.15 and 5.4.16 of the Procurement Guidelines provides for Dispute Resolution :</p> <p>(a) All disputes arising out of contract agreements shall be governed in accordance with the provisions of the Arbitration Act No. 11 of 1995 of Sri Lanka, as amended.</p> <p>(b) A reference must be made in the bidding documents, that settlement of disputes would be by way of arbitration and a detailed arbitration clause should be included in the contract to such effect.</p> <p>(c) For Foreign Funded Projects dispute resolution provisions recommended by the Foreign Funding Agency shall be complied with.</p> <p>Moreover, subject to the provisions of the Arbitration Act, the Rules of Arbitration of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL) or any other set of acceptable rules are recommended for usage.</p> <p>The venue of arbitration shall be in Sri Lanka, for GoSL funded projects. The venue of arbitration for Foreign Funded Projects would be determined in accordance with the requirements of the Foreign Funding Agency</p> <p>Section 6.1.1 of Procurement Guidelines stipulates the procedure for handling complaints.</p> <p>Moreover, PPPs are subject to the provisions of the Arbitration Act, the Rules of Arbitration of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL) or any other set of acceptable rules are recommended for usage. The venue of arbitration shall be in Sri Lanka, for GoSL funded projects. The venue of arbitration for Foreign Funded Projects would be determined in accordance with the requirements of the Foreign Funding Agency.</p> <p>Sri Lanka is a signatory party of both the New York Convention and the ICSID.</p>
<p><b>48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b></p>	<p>In terms of section 31 of the Arbitration Act No. 11 of 1995 and ratified the New York Convention of 1998 on the recognition and enforcement of Foreign Arbitral Awards, an application for recognition or enforcement of an arbitral award - local or foreign - can be made to the appropriate High Court within one year after the expiry of 14 days of the making of the award.</p>
<p><b>International arbitration</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</b></p>	<p>Sri Lanka is a signatory party of the New York Convention. Accordingly, an arbitral award irrespective of the country in which it was made is recognized in Sri Lanka as binding and enforceable upon an application made to the High Court (Section 33 of the Arbitration Act, No. 11 of 1995).</p>
<p><b>Investor-State arbitration</b></p>	<p>Yes</p>
<p><b>If yes, please provide the relevant legal/ regulatory provisions/standard</b></p>	<p>Sri Lanka is a signatory party of the ICSID.</p>

<b>contractual provisions (if any):</b>	
<b>49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	n/a
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a



The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	n/a
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	No regulatory basis
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
<b>Unsolicited Proposals</b>	
34. Are unsolicited proposals in Sri Lanka: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No

<p><b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</b></p>	<p>Supplement 30 to the Guidelines on Government Tender Procedure - Part II (Private Sector Infrastructure Projects) published on 26.12.2016 (Swiss Challenge Procedure) provides rules applicable to unsolicited proposals.</p>
<p><b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b></p>	<p>Yes</p>
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b></p>	<p>According to Supplement 30 to Procurement Guidelines, to proceed with such an unsolicited/stand alone proposal, the Secretary to the relevant line ministry or the Head of a Government Agency must initially be satisfied that such proposal appears to be exceptionally beneficial to the country in terms of funding or otherwise. The Secretary to the line ministry and the head of government agency should recommend the proposal to the Cabinet-appointed Negotiation Committee under the purview of Cabinet Committee on Economic Management for a decision. Further details on the criteria for unsolicited project evaluation can be found in sections 3.1 and 3.2 of the Supplement 30.</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>Section 237 of the PSIP Guidelines - Unsolicited proposals must be processed according to the procedures applicable to solicited proposals. Also, Section 3.3 of the Supplement 30: The Designated Authority whether i. The proposal and the associated funding offer being acceptable and meeting the sectoral priorities in the Public Investment Plan within the Government’s overall policy strategies; ii. The project proponent possesses reputation and the knowhow in the given sector/industry or field. The Designated Authority submits a detailed written recommendation to the Special Committee functioning under the Cabinet Committee on Economic Management (“CCEM Special Committee”). The CCEM Special Committee shall ascertain the suitability of Unsolicited Proposal received and merits of the Project, considering the following aspects: a. Economic, Social and Environmental viability of the Project; b. Contribution to the economic development of the country; c. Employment generation and technology transfer; d. Proposed technology; e. Acceptability of the method of financing; f. Relevancy and the compatibility with existing facilities; g. Risk and Rewards and the proposed mechanism for sharing the same with the relevant Government Entity; h. Responsibilities and obligations of the Government or the relevant Government Entity in connection with the project; i. Compliance with applicable laws and national policies; and j. Expected income/yield or final outcome and impacts of the Project.</p>
<p><b>36. Which of the following options best describe how the</b></p>	<p>No</p>

<p><b>procuring authority ensures that unsolicited proposals are consistent with existing government priorities?</b>  <b>(Please select only one): The procuring authority follows a specific 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>	n/a
<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>	Yes
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	Section 237 of the PSIP Guidelines: the unsolicited proposals must be processed according to the procedures applicable to solicited proposals. The SCP - Unsolicited proposal must meet the sectoral priorities in the Public Investment Plan with the Government's overall policy strategies.
<p><b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b></p>	No
<p><b>Please elaborate and provide examples:</b></p>	n/a
<p><b>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b></p>	Yes
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	Section 3.5 of the Supplement 30 of the PSIP Guidelines: the Special Committee can endorse the proposal and advise to invite competitive counter proposals to benchmark with the original proposal, the line ministry shall invite counter proposals from prospective bidders giving wide publicity, nationally and internationally.
<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

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Section 3.5(b) of the Supplement 30 to Procurement Guidelines, the time given to submit counter proposals must not be less than 30 days avoiding Sundays and Public Holidays in Sri Lanka. According to section 252 of the PSIP guidelines, the period for submitting proposals will normally be three months. This may be increased to six months depending on the nature of the project. Proposals received after the stipulated closing date and time or due to the reasons of critically non-conformity with the RFP, (e.g. non submission of a proposal guarantee) should be rejected by the Cabinet Appointed Negotiating Committee.
<b>and the time in calendar days:</b>	90
<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>	No
<b>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</b>	Yes
<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>	Yes
<b>39.5 Other.</b>	No
<b>Please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	<p>The Supplement 30 "Reference 237 – Dealing with Unsolicited Project Proposals; Introduction of "Swiss Challenge" Procedure", provides that the "Swiss Challenge" Procedure method to be used in Sri Lanka by Procurement Entities. It covers the applicability of the Swiss Challenge Guidelines, process to be followed, submission and proposal screening, approval, negotiation etc. It also provides that unsolicited proposals should be endorsed/managed by the Special Committee functioning under the Cabinet Committee on Economic Management.</p> <p>According to Clause 3.5(f) of the Supplement 30 "Reference 237 – Dealing with Unsolicited Project Proposals; Introduction of "Swiss Challenge" Procedure", party who submitted the selected Counter Proposal shall be requested to reimburse a part or the whole of the development cost of the original proposal to the Original Bidder as determined by the Designated Authority. The cost to be so reimbursed shall be stated in the RFP."</p>