

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN TOGO**NOTE**

Please note that Togo has a dual regime of PPPs and Concessions. Both regimes are evaluated and scored separately in order to ensure the accuracy of the analysis. This document contains the data for **both** regimes. For your convenience, we have specified the page numbers for when the analysis for each regime begins and ends.

PPP	Concession
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PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN TOGO (PPP)

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>In Togo, 2 types of contracts are considered to be PPPs within the scope of the study : Partnership contracts and Concessions. They are both regulated by the law no 2014-014 dated 22 October 2014 (hereinafter the 2014 Law), respectively in Title I for partnerships contracts and Title II for Concessions (public service delegations).</p> <p>Article 1 of this Law explicitly indicates that partnership contracts are not regulated by other texts related to public procurement or concessions, or to any other statute pertaining to the provision of public goods by a public authority.</p> <p>A partnership contract is defined by article 2 as an administrative contract by which a public entity entrusts a third party for a duration determined according to the amortization period of the investments or the reserved financing terms, a global mission having for object, totally or partially, in a cumulative or alternative way, the financing, the design, the construction, the transformation, the renovation, the maintenance, the maintenance, the operation or the management of works, equipment or intangible assets for the public person.</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	Not available online
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	No
Please describe:	n/a
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	Decrees implementing the 2014 law are being prepared, as well as standard documents and contracts.
3.1 Besides national defense and other matters of national security, does the regulatory	No

framework explicitly prohibit or restrict PPPs in any of the following 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 national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes

If yes, please specify and provide the relevant legal/regulatory provision (if any):	Pursuant to article 8 of the 2014 Law, the partnership contract is subject to a performance based payment, that can be made through tax or customs exonerations, in accordance with the Investment Code.
5. Please identify the PPP procuring authorities in Togo and provide their website(s) (if available):	Article 2 of 2014 Law indicates partnership contracts are procured by a public entity.
6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name, and its website (if available):	Article 11 of the 2014 Law provides for a special Unit for studying public-private partnerships. It seems however that this Unit has not been created yet, and no website exists.
6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.	No
6.2 PPP capacity building for other public authorities.	Yes
6.3 PPP promotion among the public and/or private sectors in national and international forums.	No
6.4 Technical support in implementing PPP projects.	Yes
6.5 Identification and selection of PPP projects from the pipeline.	No
6.6 Revision of fiscal risks born by the Government.	No
6.7 Consultation with affected communities on potential impact of PPP projects.	No
6.8 Approval of PPP projects.	No
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	Yes
6.11 please specify:	Preparation of the prefeasibility studies.
Please provide the relevant legal/regulatory provisions:	Pursuant to Article 11 of the 2014 Law, the PPP Unit will be in charge of preparing the prefeasibility study, train and inform for practicing the partnership contract, offer a technical and legal assistance personalized for each contracting authority, monitor and oversight the contract's implementation and regularly audit every partnership contract of the State.

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):	No regulatory basis
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 15 of the 2014 Law, the PPP contract is signed by the Ministry of Finance and the sectorial minister (s), after authorisation given by a decree taken in Council of Ministers.
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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).	n/a
Accounting and reporting according to other international standard (e.g. European System of Accounts).	n/a
Please specify:	n/a
Other.	n/a

Please specify:	n/a
9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	Yes
If yes, please specify the relevant authority	Council of Ministers
and provide the relevant legal/regulatory provisions (if any):	Pursuant to article 13 of the 2014 Law, an ad hoc commission is created for each PPP project, which is competent to conduct the procurement and select the private partner. This creation is made through a Decree by the Council of Ministers. Consequently, the Council of Ministers shall approve the project before the launch of the procurement process.
9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to article 14 of the 2014 Law; signing of a contract must be authorized by a Decree from the Ministries' council. Pursuant to article 15 of the 2014 Law, the PPP contract is signed by the Ministry of Finance and the sectorial minister (s), after authorisation given by a decree taken in Council of Ministers.
10. Does the procuring authority use transaction advisors during the PPP project cycle?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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	No

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.	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
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.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	Yes
If yes, please elaborate:	Creation of a pipeline of projects is under preparation.
The procuring authority does not evaluate PPPs against existing government priorities.	No
Please elaborate and provide examples:	n/a
11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all	Yes

that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Socio-economic impacts are in practice analyzed despite the absence of a provision.
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)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Affordability is in practice analyzed despite the absence of a provision.
12.3. Risk identification, allocation and assessment (risk matrix)	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
12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)	Yes

Relevant legal/regulatory provision (if any)	Pursuant to article 10 of the 2014 Law, using partnership contract is only possible when the cost/advantages balance is more favorable with this contract than with another type of contract. The cost/advantages analyze must take into account : the project's characteristics, public service requirements, difficulties in similar projects, and differed payment cannot be an advantage on itself.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	n/a
12.5. Financial viability or bankability assessment	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
12.6. 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 38 of the Law no 2008-05 related to the environment requires an environmental impact assessment to be prepared for all activities, projects, programmes or development plans which, because of the dimensions or incidences, could harm the environment, are submitted to an authorization of the Ministry in charge of environment. That authorization is granted based on an impact study including all negative and positive consequences on the environment. The report is prepared by the promotor taking into account the cumulative effects on short, mid and long term. Details shall be provided by Decree.

Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	n/a
12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract in the request for proposals?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate	No provision explicitly requires a draft PPP to be included in the request for proposals
14.1. Are the tender documents published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and please specify the website:	n/a
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	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes

Relevant legal/regulatory provision (if any)	No regulatory basis
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to article 24 of 2014 Law, If a contract involves public domain's occupation, it implies an authorization to occupy for its duration.
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	Pursuant to article 24 of 2014 Law, If a contract involves public domain's occupation, it implies an authorization to occupy for its duration.
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to have any specific qualifications.	Yes
Please elaborate and provide examples:	No provision explicitly require the committee members to meet specific qualifications.
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 12 of the 2014 Law, for ordinary award procedures, the contract award is preceded by a publication allowing several bids to be presented.
19.1. If yes, is the public procurement notice published online?	No
If yes, please specify the website:	n/a
20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP	No

projects? Open tendering: Available	
Default	Yes
Relevant legal/regulatory provision (if any)	Pursuant to article 16 of the 2014 Law, the default procedure for partnership contracts is the tender process.
22.2. Restricted tendering (with pre-qualification stage): Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.4. Competitive dialogue: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	No regulatory basis
22.5. Direct negotiation with more than one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Pursuant to article 20 of the 2014 Law, a contract can be directly awarded, with or without competition, if: (i) no offer has been presented after the call for proposals, (ii) no regular offer has been presented, (iii) urgency, (iv) when it is established that a new competitive process would have very few chances to succeed.
22.6. Direct negotiation with only one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Pursuant to article 20 of the 2014 Law, a contract can be directly awarded, with or without competition, if: (i) no offer has been presented after the call for proposals, (ii) no regular offer has been presented, (iii) urgency, (iv) when it is established that a new competitive process would have very few chances to succeed.
22.7 Other. Specify:	No
Available	n/a
Default	n/a
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same	Yes

information to all the bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	n/a
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a

24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	The law does not provide any regulation for financial models to be presented by the bidders.
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 16 of the 2014 Law indicates that the contract is awarded to the bidder who submitted the most advantageous offer by applying criteria defined in the public procurement notice.
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the	No

<p>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>	No
<p>Please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<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 provisions (if any):</p>	n/a
<p>The regulatory framework does not include any provisions.</p>	Yes
<p>28. Does the procuring authority publish the award notice?</p>	No
<p>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>28.1. If yes, is the public procurement award notice published online?</p>	n/a
<p>If yes, please specify the website:</p>	n/a
<p>29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?</p>	No
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	n/a
<p>If no, please elaborate:</p>	No specific provisions require the procuring authority to provide all bidders with the result of the procurement process.

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?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
30.1. Is the standstill period set out in the notice of intention to award?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 13 of the 2014 Law, negotiations are made by an ad hoc Commission (which also is in charge of conducting the procurement process and select the winning bidder). The organization and functioning of this Commission will be defined by a decree.
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	No
If yes, please specify:	n/a
If no, please elaborate:	The Law appears too recent for the procuring authorities to apply those restrictions to negotiation.
32. Does the procuring authority publish the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a

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	n/a
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	n/a
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Article 21 (7) and (9) of the 2014 Law, shall be included in the contract the control of the procuring authority on the investments (which shall be made according to the contract) and the contract's execution.

41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	No
Relevant legal/regulatory provisions (if any):	n/a
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	No
Relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document	No
Relevant legal/regulatory provisions (if any):	n/a
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 detailed qualifications.	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members	n/a

are required to meet sufficient qualification without specific details.	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	n/a
Please elaborate and provide examples:	n/a
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):	Pursuant to Article 25 of the 2014 Law, the private operator must write an annual report to the procuring entity. Furthermore, the Ministry of finance can request a periodical audit of any partnership contract between the State and a private operator (Article 26).
42.1. If yes, is the PPP contract construction performance information made available to the public?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	n/a
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to Article 25 of the 2014 Law, the private operator must write an annual report to the procuring entity. Furthermore, the Ministry of finance can request a periodical audit of any partnership contract between the State and a private operator (Article 26).
43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed	No

against evaluation criteria set in the tender documents and the PPP contract	
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	Pursuant to Article 25 of the 2014 Law, the private operator must write an annual report to the procuring entity.
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.	Yes

stakeholder composition) of the private partner and/or assignment of the PPP contract?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to section 21 (13) of the 2014 Law, the contract shall include clauses related to the procuring authority's control over the transmission of the contract and over a change in the partnership controlling interests.
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
In other cases, flexibility to change the ownership structure and/or assign the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant	Pursuant to article 21 of the 2014 Law, the contract must include provisions regarding modification of the contract to take into account an evolution in the

legal/regulatory/standard contractual provisions (if any):	procuring entity's needs, innovation or modifications of the financing conditions.
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a

46.3. Can the procuring authority unilaterally modify a PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 21 (12) of the 2014 Law, the contract shall include clause related to the modalities in which the procuring authority can unilaterally modify certain aspects of the contract, or terminate the contract, to take into account an evolution in the procuring authority's needs, technological innovations or modifications in the financing conditions obtained by the private partner.
47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Refinancing.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 21 (12) of the 2014 Law, the contract shall include clause related to the modalities in which the procuring authority can unilaterally modify certain aspects of the contract, or terminate the contract, to take into account [...] modifications in the financing conditions obtained by the private partner.
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 21 (9) of the 2014 Law requires the contract to include clauses related to the control of the procuring authority over the implementation of the contract, including the conditions within which the private partner recurses to other companies.
48. Does the regulatory framework (including	Yes

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):	Pursuant to Article 21 (18) of the 2014 Law, the contract must include provisions regarding dispute resolutions and conditions to use arbitration.
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	No
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	Pursuant to Article 21 (18) of the 2014 Law, the contract must include provisions regarding dispute resolutions and conditions to use arbitration. Article 8 of the Investment code indicates that, in case of a dispute between an investor and the state related to applying the Code, it can be resolved by the national jurisdictions, the arbitration court of Togo, the Justice court of WAEMU, the Justice court of ECOWAS; the Justice court of OHADA; the court of justice and arbitration of OHADA; ICSID; and any other arbitration of their choosing.
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Article 30 of the OHADA Uniform Act on Arbitration dated March 11, 1999: The arbitration judgment is subject to forced execution only by virtue of a decision of exequatur by the competent judge in the State.
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Article 30 of the OHADA Uniform Act on Arbitration dated March 11, 1999: The arbitration judgment is subject to forced execution only by virtue of a decision of exequatur by the competent judge in the State.
Investor-State arbitration	Yes

<p>If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):</p>	<p>Togo is a member of the ICSID convention, which entered into force on Sep 10, 1967</p>
<p>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?</p>	<p>No</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<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>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>Both Articles 21.17 and 22 of the 2014 Law require the contract to include provisions regarding the lenders substitution in case of a failure by the private operator.</p>
<p>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.</p>	<p>No</p>
<p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	<p>n/a</p>
<p>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</p>	<p>No</p>
<p>If yes, please specify and provide the relevant</p>	<p>n/a</p>

legal/regulatory/standard contractual provisions (if any):	
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Both Articles 21.17 and 22 of the 2014 Law require the contract to include provisions regarding the lenders substitution in case of a failure by the private operator.
Other.	No
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):	Pursuant to article 21 (12) of the 2014 Law, the contract must include provisions regarding termination of the contract by the procuring authority to take into account an evolution in the procuring entity's needs, innovation or modifications of the financing conditions.
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 21.15 of the 2014 Law, contract must regulate consequences of a termination, early or not, especially regarding property.
Unsolicited Proposals	
34. Are unsolicited proposals in Togo: (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	No

done in practice, skip to section F)	
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	Articles 17 to 19 of the 2014 Law authorize unsolicited proposals and provide rules to follow for those proposals.
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	No regulatory basis
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 unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not evaluate unsolicited	Yes

proposals against existing government priorities.	
Please elaborate and provide examples:	Public initiated projects are not prioritized, neither are unsolicited proposals.
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):	Pursuant to Article 18 of the 2014 Law, if the procuring entity accepts an unsolicited proposal, it then organizes a call for tenders in which the author takes part.
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and the time in calendar days:	n/a
39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	No
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No
39.3 Bid Bonus.	No
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No
39.5 Other.	Yes
Please specify:	If the private initiator is not selected by the competitive tender, he shall get a prime according to conditions specified by Decree.
Please provide the relevant legal/regulatory provisions (if any):	Article 19 of the 2014 Law

**PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN TOGO
(CONCESSION)**

SURVEY QUESTION	ANALYSIS
PPP Regulatory Framework	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	<p>In Togo, 2 types of contracts are considered to be PPPs within the scope of the study: Partnership contracts and Concessions. They are both regulated by the law n 2014-014 dated 22 October 2014, respectively in Title I for partnerships contracts and Title II for Concessions.</p> <p>Additionally, concessions are regulated by the Law no 2009-013 (“Concessions Law”) related to public procurement and public service delegations and the Decree no 2009-277/PR (“Concessions Decree”) creating a code for public procurement and public service delegations. The standard tender documents for public service delegations of March 2012 provide some details on the procurement process (hereinafter the “standard tender documents”). Article 2 of the Concession decree indicates that provisions related to procurement apply to both public service delegations and public procurement contracts, while implementation provisions apply to public procurement contracts solely. Title V related to dispute resolution explicitly includes public service delegations.</p> <p>Concessions are defined in article 28 of the 2014 law as contracts by which the procuring authority, State, local authority or public institution, entrusts a concessionaire who can be a private entity, the operation of a service and/or the realization of a public work, the concessionaire bearing risks, for a definite duration, and for a remuneration paid by the users of the service.</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	http://www.armp-togo.com/
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?	No
Please describe:	n/a
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	Yes
Please describe:	Decrees implementing the 2014 law are being prepared.

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.	No
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 national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax	No

incentives, special tax depreciation treatment, etc.)?	
If yes, please specify and provide the relevant legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in Togo and provide their website(s) (if available):	Pursuant to article 3 of the Concessions Law, procuring entities are the State and its public institutions, Regional authorities, National public societies and public associations.
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):	No regulatory basis
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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).	n/a
Accounting and reporting according to other international standard (e.g. European System of Accounts).	n/a
Please specify:	n/a
Other.	n/a
Please specify:	n/a

<p>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.)?</p>	<p>No</p>
<p>If yes, please specify the relevant authority</p>	<p>n/a</p>
<p>and provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>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?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>According to Article 19 of the Concessions Law: Selection process is first validated by the National direction of public procurement's control. Moreover, pursuant to Article 77 of the Concessions Decree, contracts must be approved by the Council of Ministers before being signed.</p>
<p>10. Does the procuring authority use transaction advisors during the PPP project cycle?</p>	<p>Yes</p>
<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</p>	<p>No</p>

ensure the consistency of PPPs with other public investment priorities.	
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
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.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 12 of the Concessions Law provides for the development of the provisional plan: Contracting authorities are required to develop and widely publish their annual plans for public procurement, established in line with the funds allocated to them and on the basis of their program of activities. Contracts awarded by contracting authorities must have previously been enrolled in these forward plans except in case of emergency under this law.
The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.	No
If yes, please elaborate:	n/a
The procuring authority does not evaluate PPPs against existing government priorities.	No
Please elaborate and provide examples:	n/a
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?	No
If yes, please specify:	n/a
If no, please elaborate:	Prioritization has not been established since the Law was passed.
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	Yes

of the socio-economic impact of the PPP project)	
Relevant legal/regulatory provision (if any)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Socio-economic impacts are in practice analyzed despite the absence of a provision.
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)	No regulatory basis
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	Affordability is in practice analyzed despite the absence of a provision.
12.3. Risk identification, allocation and assessment (risk matrix)	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
12.4. 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)	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
12.5. Financial viability or bankability assessment	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
12.6. 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 38 of the Law no 2008-05 related to the environment requires an environmental impact assessment to be prepared for all activities, projects, programmes or development plans which, because of the dimensions or incidences, could harm the environment, are submitted to an authorization of the Ministry in charge of environment. That authorization is granted based on an impact study including all negative and positive consequences on the environment. The report is prepared by the promotor taking into account the cumulative effects on short, mid and long term. Details shall be provided by Decree.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	Projects' environmental impacts are not in practice assessed.

12.8. Consultation process with affected communities on potential impact of the PPP project	No
Relevant legal/regulatory provision (if any)	n/a
Is there a specific methodology for the assessment?	n/a
If yes, please elaborate	n/a
Is the assessment done in practice?	n/a
Details:	n/a
13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and specify which of the assessments are included in the request for proposals and/or tender documents:	n/a
13.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
specify the website	n/a
please specify which of the assessments are published online:	n/a
14. Does the procuring authority include a draft PPP contract in the request for proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate	No provision explicitly requires a draft PPP to be included in the request for proposals.
14.1. Are the tender documents published online?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
and please specify the website:	n/a
15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	Standard tender documents are available on the following website: http://armp-togo.com/dossier-type-ao/
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	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)	No
Private Partner	No

Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.4. Obtaining the required land: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	Yes
Relevant legal/regulatory provision (if any)	No regulatory basis
16.5. Obtaining the required right of way: Procuring authority (or other Government entity)	No
Private Partner	No
Private partner with facilitation role assigned to the procuring authority (or other Government entity)	No
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
PPP Procurement	
18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members require sufficient qualification without specific details.	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The bid evaluation committee members are not required to have any specific qualifications.	Yes
Please elaborate and provide examples:	No provision explicitly requires the committee members to meet specific qualifications.
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	According to Article 71 of Concessions Decree, procurement must be preceded by a notice in order to inform about the project. Furthermore, this publication shall be in the public procurement journal or any other national/international news paper and online (Article 43 of the Concessions Decree).
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	www.marchespublics-togo.com
20. Are foreign companies prohibited from participating in the bidding process?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 71 of the Concessions Decree, the time between the publication of a procurement notice and the reception of bids shall be of at least 45 days.
and the time in calendar days:	45
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	No
Default	Yes
Relevant legal/regulatory provision (if any)	Pursuant to article 16(1) of the Concession Law and article 16 of the Concession Decree , open tendering is the rule. Recourse to any other procedure shall be within defined conditions.

22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 19 of the Concession Decree indicates open tendering can be preceded by a prequalification stage when the equipment is large, complex or specialized services.
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Pursuant to article 21 of the Concession Decree, a two stage tendering can be used when the procuring authority awards the contracts depending on performance criteria or detailed technical specifications. 2 stages tendering is preceded by a prequalification.
22.4. Competitive dialogue: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.5. Direct negotiation with more than one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.6. Direct negotiation with only one candidate: Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.7 Other. Specify:	Tendering with competition
Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Pursuant to article 24 of the concession Decree: The call for tenders can be made through competition when motives of technical, esthetic or financial order justify particular researches. The competition concerns the design of a work or an architectural project. This mode of call for tenders is recommended in the following cases: - When the administration is not capable of defining the main lines of the design of the work; - When the works contain measures which are a depending of special technical processes.
22.8. Do the tender documents detail the procedure of the procurement process providing the same	Yes

information to all the bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 39 of the Concession Decree, the tender documents shall include (d) the particular rules of the tender process.
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 20 of the Concession Decree, the notice of pre-qualification is published in the same conditions as the notice of call for tenders such as specified in the article 43 below. The documents of pre-qualification contain at least: - A precise description of the conditions to be filled to be qualified. Article 75 - specific to public service delegations - furthermore requires the evaluation criteria to be included in the tender documents.
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	Shortcoming in application of the concession regulatory framework sometimes prevents the pre-qualification criteria to be included in the prequalification documents.
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 7 of the standard tender documents make provision for clarifications to be requested by candidates.
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 7 of the standard tender documents require the procuring authority to provide the question and the answer, excluding the name of the inquirer, to all potential candidates having received the tender documents.
23.2. Based on your experience, is it always the case that this disclosure of	Yes

information is done in practice?	
If yes, please specify:	In practice, it seems the information provided to a contributor following a question are circulated to other candidates.
If no, please elaborate:	n/a
24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	No
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
24.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	n/a
If yes, please specify:	n/a
If no, please elaborate:	n/a
25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
If no, please elaborate:	The law does not provide any regulation for financial models to be presented by the bidders. There is no established practice in that regard either.
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 16 of the Concessions Law indicates that the tender is the procedure by which the procuring authority decides the offer meets technical specifications, is the best one, and that the bidder meets the qualification criteria. This

	procedure is concluded without negotiation, on the basis of objective evaluation criteria previously brought to the attention of candidates in the tender documents, in connection with the subject of the contract and expressed in monetary terms. Furthermore, pursuant to Article 75 of the Concessions Decree : allocation shall be based on the optimal combination of evaluation criteria included in the tender documents
Evaluation criteria is not set in the tender documents	No
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework does not include any provisions.	Yes
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Pursuant to article 76 of the Concessions Decree, the procuring authority must publish a notice of award. This notice shall designate the winner and include a summary of the main provisions of the delegation agreement.
28.1. If yes, is the public procurement award notice published online?	Yes

If yes, please specify the website:	http://www.marchespublics-togo.com/
29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 17 of the Concessions Law, the contracting authority shall notify in writing to any unsuccessful tenderer of the reasons for rejection of its offer, the amount of the contract awarded , the name of the successful tenderer within five (5) business days from receipt of the request written . Contracting authorities observe a minimum period of fifteen (15) working days after the publication of the reports referred to in paragraph 1 of this Article , prior to signing the contract and submit it for approval to the competent authorities. In this period , tenderers must , to avoid foreclosure, perform the actions referred to in Articles 20 and following of this law.
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 17 of the Concessions Law and article 62 of the Concessions Decree only require the name of the winning bid, the amount of the contract awarded and the reject justification to be indicated to unsuccessful bidders. Clause 43 of the standard tender documents requires the procuring authority to communicate to all unsuccessful bidders the grounds for rejecting its offer and any other relevant information.
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 62 of the concession decree, the procuring authority waits for at least 15 business days after notifying all bidders before signing the contract.
and the time in calendar days:	19
30.1. Is the standstill period set out in the notice of intention to award?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to	No

prevent an unfair disadvantage to the other bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	n/a
If yes, please specify:	n/a
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):	Pursuant to article 77 Concessions Decree, to come into force, concessions must be published in the official journal.
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 annexes and appendixes	Yes
Publication of a summary of the PPP contract without publishing the full PPP contract	No
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	No
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	No
32.2. If yes, is it published online?	Yes
If yes, please specify the website:	The Official journal is available online : http://www.legitogo.gouv.tg/
32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract?	No

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
PPP Contract Management	
41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 6 of the Concessions Decree, the procuring authority shall designate a person by contract, responsible for setting the award procedures and implementation of concessions. The person in charge of public procurement is required to establish an execution report for each contract under its jurisdiction according to a model defined by a ministerial order and provide a copy to the national direction of public procurement, the regulatory authority for public procurement and the Court of Auditors.
41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	Yes
Relevant legal/regulatory provisions (if any):	Pursuant to article 6 of the Concessions Decree, the procuring authority shall designate a person by contract responsible for setting the award procedures and implementation of concessions.
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	Yes
Relevant legal/regulatory provisions (if any):	Pursuant to article 6 of the Concessions Decree, the procuring authority shall designate a person by contract, responsible for setting the award procedures and implementation of concessions.
Elaboration of a PPP implementation manual or an equivalent document	No
Relevant legal/regulatory provisions (if any):	n/a
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.)	<p>No</p>
Relevant legal/regulatory provisions (if any):	<p>n/a</p>
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to article 7 of the concession decree, the person responsible of public procurement is, unless specific designation, (i) the line Ministry for state contracts, (ii) the representative of the collectivity in charge of signing the contract for regional entities; (iii) representative of the institution for public establishments, public companies and other procuring entities.</p>
The PPP contract management team members are required to meet sufficient qualification without specific details.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
The PPP contract management team members are not required to meet any specific qualifications.	<p>No</p>
Please elaborate and provide examples:	<p>n/a</p>
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to article 6 of the Concessions Decree, the person in charge of public procurement is required to establish an execution report for each contract under its jurisdiction according to a model defined by a ministerial order and provide a copy to the national direction of public procurement, the regulatory authority for public procurement and the Court of Auditors.</p>

	According to Article 41 of the Concessions Decree, the private operator shall prepare a annual report for the procuring authority.
42.1. If yes, is the PPP contract construction performance information made available to the public?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.2. If yes, is the PPP contract construction performance information made publicly available online?	n/a
If yes, please specify the website:	n/a
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to article 6 of the Concessions Decree, the procuring authority shall designate a person by contract, responsible for setting the award procedures and implementation of concessions.</p> <p>The person in charge of public procurement is required to establish an execution report for each contract under its jurisdiction according to a model defined by a ministerial order and provide a copy to the national direction of public procurement, the regulatory authority for public procurement and the Court of Auditors.</p> <p>Furthermore, according to Article 41 of the same decree, the private operator shall prepare a annual report for the procuring authority.</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 tender documents and the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	No
Relevant legal/regulatory provisions (if any)	n/a

The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions (if any)	According to Article 41 of the Concessions Decree, the private operator shall prepare a annual report for the procuring authority.
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?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in	n/a

the private partner during an initial period (e.g. construction and first five years of operation).	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
In other cases, flexibility to change the ownership structure and/or assign the contract.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 42 of the 2014 Law, modifications of the contract are only possible in the following situations : <ul style="list-style-type: none"> - it was planned in the contract ; - additional works or services are necessary and a change of operator would affect the contract's balance ; - they are non substantial modifications, which do not change the global nature of the contract.
46.1. If yes, is an approval from a government authority, other than the procuring authority, required?	No
If yes, please provide the relevant legal/regulatory/standard	n/a

contractual provisions (if any):	
46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 42 of the 2014 Law, modifications of the contract are only possible in the following situations : - they are non substantial modifications, which do not change the global nature of the contract.
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.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.3. Can the procuring authority unilaterally modify a PPP contract?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
47. Does the regulatory framework (including	Yes

standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure	
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Article 44 of the 2014 Law states that termination is possible in case of force majeure.
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Refinancing.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 30 of the 2014 Law, dispute resolution mechanisms must be included in the contract. Moreover, articles 25 and 26 of Concessions Law states that action must be made in front of the procuring authority or its hierarchical authority before going to judges or arbitration and disputes are

	<p>submitted to jurisdictions according to the contract's provisions. Details of the possible actions and their rules are provided in articles 122 to 130 of the Concessions Decree. Articles 122-128 are however related to disputes pertaining to the procurement process. Article 129 requires to seek a resolution through a first recourse to the procuring authority or its hierarchical authority before going to court or arbitration. Article 130 indicates that, after 15 days, a non resolved dispute will be presented to the courts or arbitral institutions.</p> <p>Article 8 of the Investment code indicates that, in case of a dispute between an investor and the state related to applying the Code, it can be resolved by the national jurisdictions, the arbitration court of Togo, the Justice court of WAEMU, the Justice court of ECOWAS; the Justice court of OHADA; the court of justice and arbitration of OHADA; ICSID; and any other arbitration of their choosing.</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	No
If yes, please specify:	n/a
Local courts	Yes
Domestic arbitration	Yes
International arbitration	Yes
Investor-State Dispute Settlement (ISDS)	Yes
Mediation	Yes
Please provide the relevant legal/ regulatory/standard contractual provisions (if any)	<p>Pursuant to article 30 of the 2014 Law, dispute resolution mechanisms must be included in the contract. Moreover, articles 25 and 26 of Concessions Law states that action must be made in front of the procuring authority or its hierarchical authority before going to judges or arbitration and disputes are submitted to jurisdictions according to the contract's provisions. Details of the possible actions and their rules are provided in articles 129 and 130 of the Concessions Decree. Article 129 requires to seek a resolution through a first recourse to the procuring authority or its hierarchical authority before going to court or arbitration. Article 130 indicates that, after 15 days, a non resolved dispute will be presented to the courts or arbitral institutions.</p> <p>Article 8 of the Investment code indicates that, in case of a dispute between an investor and the state related to applying the Code, it can be resolved by the national jurisdictions, the arbitration court of Togo, the Justice court of WAEMU, the Justice court of ECOWAS; the Justice court of OHADA; the court of justice and arbitration of OHADA; ICSID; and any other arbitration of their choosing.</p>
48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration	Yes

If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Article 30 of the OHADA Uniform Act on Arbitration dated March 11, 1999: The arbitration judgment is subject to forced execution only by virtue of a decision of exequatur by the competent judge in the State.
International arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Article 30 of the OHADA Uniform Act on Arbitration dated March 11, 1999: The arbitration judgment is subject to forced execution only by virtue of a decision of exequatur by the competent judge in the State.
Investor-State arbitration	Yes
If yes, please provide the relevant legal/ regulatory provisions/standard contractual provisions (if any):	Togo is a member of the ICSID convention, which entered into force on Sep 10, 1967
49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 38 of 2014 Law, the contract can include provisions allowing lenders step-in rights in case of failure of initial operator.
50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly	No

regulates the lender step-in rights.	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	Pursuant to article 38 of 2014 Law, the contract can include provisions allowing lenders step-in rights in case of failure of initial operator.
Other.	No
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):	The termination grounds for a public service delegation are : Public interest, force majeure, mutual agreement, misconduct and liquidation. Termination grounds are regulated by articles 43 to 47 of the 2014 Law.
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	In case of a termination for public interest, the operator shall be compensated (article 43 of the 2014 Law) and the contract shall include provisions regarding property at termination (article 30).
Unsolicited Proposals	

34. Are unsolicited proposals in Togo: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	No
Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	Yes
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	While no express reference to USP is contained in the regulatory framework, our contributors consider that they can happen in practice.
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	Yes
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	No regulatory basis
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	n/a

legal/regulatory provisions (if any):	
The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	Yes
Please elaborate and provide examples:	Neither the regulatory framework nor the practice require a prioritization of unsolicited proposals.
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):	No regulatory basis
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Pursuant to article 71 of the Concessions Decree, the time between the publication of a procurement notice and the reception of bids shall be of at least 45 days.
and the time in calendar days:	45
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.	No
39.2 Developer's fee (reimbursing the original proponent for the project development cost).	No

39.3 Bid Bonus.	Yes
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	No
39.5 Other.	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	No regulatory basis