

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN TONGA

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>There is no specific regulatory framework governing PPPs in Tonga. PPPs are rather currently procured using the following regulations: 1) Public Finance Management Act No. 27 of 2002; and 2) Public Procurement Regulations 2015 issued by the Minister of Finance according to Section 44 of the Public Finance Management Act. Section 3(1) of the Public Procurement Regulations provides, "Subject to sub-regulation (2) and to the exemptions set out in regulation 4, these Regulations apply to all procurement carried out by contracting entities." Works contracts were identified as falling under the scope of the Regulations in Section 2. The aforementioned regulations shall form the regulatory framework on PPPs in Tonga for purposes of this analysis.</p>
and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:	<p>Public Finance Act: http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2002/2002-0027/PublicFinanceManagementAct2002_1.pdf Public Procurement Regulations: http://www.finance.gov.to/sites/default/files/PublicProcurementRegulations2015%20Revision%20%20Released%20%2001-07-2016%28FinalEnglish%29.pdf</p>
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?	No
Please describe:	n/a

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.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
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	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
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.	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions:	<p>n/a</p>
3.4 Besides national defense and other matters of national	<p>No</p>

security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	No
If yes, please specify and provide the relevant legal/regulatory provision (if any):	n/a
5. Please identify the PPP procuring authorities in Tonga and provide their website(s) (if available):	<p>According to Section 3(1) of the Public Procurement Regulations stating the Regulation’s scope of application to any procurement conducted by “contracting agencies”, Section 1 of these Regulations defines these entities as, “any Ministry, Department, Division, agency or other unit of the Government or any subdivision thereof, engaging in procurement as well as the Central Procurement Unit; this shall include public enterprises and statutory bodies, as applicable.” Thus, any contracting agency may act as a procuring entity for PPP projects in its given sector. For purposes of the case study assumption, the Ministry of Finance and National Planning [hereinafter “Ministry of Finance”] - Central Procurement Unit - www.finance.gov.to and Ministry of</p>

	Infrastructure http://www.mic.gov.to/ministrydepartment/14-govt-ministries/infrastructure shall act as the relevant procuring authorities.
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	No

and implicit, direct and contingent) arising from PPPs.	
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	No

process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	
If yes, please specify the relevant authority	n/a
and provide the relevant legal/regulatory provisions (if any):	n/a
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):	The Government Procurement Committee approves PPP projects before the contract is signed. Section 7(2) of the Public Procurement Regulations provides, "In addition, for those procurements with a value exceeding \$100,000, the Government Procurement Committee shall review the bidding process and issue a "Letter of Non-objection" to the contracting entity, prior to the issuance of the Notification of Award. In so doing, the Government Procurement Committee shall review the compliance of the contract award procedure leading to that decision with these Regulations."
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):	Section 10(1) of the Public Procurement Regulations provides that Procurement Evaluation Committees in Contracting Agencies includes in addition to certain appointed members, "c) other members to provide technical, legal or commercial expertise, as appropriate." Paragraph 3 of this Section provides, "The Evaluation Committee shall include skills, knowledge and experience relevant to the procurement requirement, which may include: (a) technical skills relevant to the procurement requirement; (b) end user representation; (c) procurement and contracting skills; (d) financial management or analysis skills; or (e) legal expertise."
11. In a case comparable to the case study assumptions,	No

<p>please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</p>	<p>No</p>
<p>If yes, please provide the</p>	<p>n/a</p>

relevant legal/regulatory provisions (if any):	
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.	Yes
Please elaborate and provide examples:	There is no identified policy in place or standard practice of PPP prioritization along with the Economy's existing government priorities.
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 that apply): Socio-economic analysis	No

(cost-benefit analysis of the socio-economic impact of the PPP project)	
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
12.2. 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)	Section 12(1) of the Public Procurement Regulations provides that preparation for the procurement process must involve, "The contracting entity shall ensure that adequate funds are budgeted and allotted prior to initiating procurement proceedings including, but not limited to, any funds required for publication of notices." Section 13(1) of these Regulations also provides, "Contracting entities shall plan procurement with a view to achieving maximum value for public expenditure so that it is carried out within available financial resources and other applicable limitations and at the most favorable time."
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	It is a standard process to ensure projects are well prepared to go through the procurement process.
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	No

market for the project)	
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)	Act No. 16 of 2003 issuing the Environmental Impact Assessment Act of Tonga (2003) in Section 2 defines “environmental impact assessment” as, “the study and evaluation of the potential effects that a development project may have on the environment.” Section 6 of this Act provides, “All major projects shall be supported by an appropriate environmental impact assessment, conducted as required under this Act.” And Section 16 provides, “No major project application shall proceed, unless it has satisfied the appropriate environmental impact assessment requirements under this Act and approved in the prescribed form.”
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	No
Details:	Contributors provided that there is no clear evidence that this assessment is actually conducted in practice.
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)?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
and specify which of the assessments are included in the request for proposals and/or tender documents:	<p>n/a</p>
13.1. Are the assessments published online?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
specify the website	<p>n/a</p>
please specify which of the assessments are published online:	<p>n/a</p>
14. Does the procuring authority include a draft PPP contract in the request for proposals?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 13(1)(c) of the Public Procurement Regulations provides that the Procurement Unit in the Contracting Agency is responsible for, “preparing the draft contract documents in accordance with the templates issued by the Procurement Division, seeking advice and guidance from the Central Procurement Unit where appropriate;” and in Paragraph 3 of this Section provides that such responsibilities also includes, “prepare all requests for quotations and bidding documents in accordance with the templates issued by the Procurement Division.”</p>

If no, please elaborate	n/a
14.1. Are the tender documents published online?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 40(2) of the Public Procurement Regulations provides, "The contracting entity shall provide, in an expeditious and non discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of selective bidding, to all bidders that have been prequalified." Section 38(1)(c) of the same Regulations provides publication in cases of procurement notices, which contributors also confirm apply to tender documents as, "to the extent feasible, published on the internet, including any website established by the Procurement Division."
and please specify the website:	www.finance.gov.to
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)	Yes
Private Partner	No
Private partner with facilitation role assigned to the procuring authority	No

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

role assigned to the procuring authority (or other Government entity)	
To be established in the contract	No
Relevant legal/regulatory provision (if any)	No regulatory basis
16.5. 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)	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.	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	According to Section 10 of the Public Procurement Regulations provides, "(1) Evaluation Committees shall be appointed by the Head of the contracting entity for all contracts whose value exceeds \$ 7,500. In addition to the obligatory membership of a representative of the appropriate Procurement Unit (either of the Procurement Unit or of the contracting entity or the Central Procurement Unit), the Evaluation Committee shall be composed of a minimum of three further members which shall include: (a) the officer responsible for preparing the requirement/technical specification;

	<p>(b) the financial officer of the contracting entity; and</p> <p>(c) other members to provide technical, legal or commercial expertise, as appropriate.</p> <p>(2) The representative of the appropriate Procurement Unit shall be a non-voting member.</p> <p>(3) The Evaluation Committee shall include skills, knowledge and experience relevant to the procurement requirement, which may include:</p> <p>(a) technical skills relevant to the procurement requirement;</p> <p>(b) end user representation;</p> <p>(c) procurement and contracting skills;</p> <p>(d) financial management or analysis skills; or</p> <p>(e) legal expertise.</p> <p>(4) Members of the Evaluation Committee shall sign a declaration of impartiality and confidentiality.”</p>
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.	No
Please elaborate and provide examples:	n/a
19. Does the procuring authority issue a public procurement notice of the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	<p>Section 38(1)(c) of the Public Procurement Regulations provides, “(1) The notice of invitation to bid or to pre-qualify, as the case may be, shall be:</p> <p>published in at least one national newspaper which shall be of wide enough circulation to reach</p> <p>(a) sufficient bidders to ensure effective competition;</p> <p>(b) broadcast over the radio or television, on the stations and programmes and at a time most likely to target potential bidders; and</p> <p>(c) to the extent feasible, published on the internet, including any website established by the Procurement Division.</p> <p>(2) Where international competitive bidding is used, the notice shall also be placed in at</p>

	least two English language newspapers or other printed media with adequate circulation to attract foreign competition or on widely read internet websites.”
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	Section 38(1)(c) of the Public Procurement Regulations provides, “(1) The notice of invitation to bid or to pre-qualify, as the case may be, shall be: (c) to the extent feasible, published on the internet, including any website established by the Procurement Division. (2) Where international competitive bidding is used, the notice shall also be placed in at least two English language newspapers or other printed media with adequate circulation to attract foreign competition or on widely read internet websites.” Such website would be www.finance.gov.to
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):	Section 39(3) of the Public Procurement Regulations provides that the minimum bidding number of days required shall be, “(c) 45 days for international competitive bidding (regulation 29).”
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	No

tendering: Available	
Default	Yes
Relevant legal/regulatory provision (if any)	<p>Section 30 of the Public Procurement Regulations provides, “(1) Public procurement of goods, works and services shall be undertaken by means of single stage competitive bidding, advertised in accordance with regulation 38 to which equal access shall be provided to all eligible and qualified bidders without discrimination.</p> <p>(2) The competitive bidding method shall be used for all contracts whose value is equal to or above:</p> <p>(a) \$ 100,000 in the case of works; and</p> <p>(b) \$ 50,000 in the case of goods and services.”</p>
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Section 32(1) of the Public Procurement Regulations provides, “Selective bidding means competitive bidding preceded by pre-qualification and may be used, in the case of particularly high value of complex procurement with a view to identifying, prior to the submission of bids, those bidders that are qualified.” Section 33 of these Regulations also provides, “(1) Restricted bidding may be held in the following cases:</p> <p>(a) when the goods, works or services are only available from a limited number of bidders; or</p> <p>(b) when the time and cost of considering a large number of bids is disproportionate to the estimated value of the procurement which shall depend on the nature of the procurement.</p> <p>(2) In the case of restricted bidding, the contracting entity shall invite bids from:</p> <p>(a) all potential bidders where restricted bidding is used in accordance with sub-regulation (1)(a); or</p> <p>(b) sufficient bidders to ensure effective competition and, in any case at least three bidders, where restricted bidding is used in accordance with sub-regulation (1)(b).”</p>
22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>Section 31 of the Public Procurement Regulations provides, “(1) Competitive bidding may be held in two stages in the following cases:</p> <p>(a) when it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and</p> <p>(b) when, because of the complex nature of the goods, works or services to be procured, the contracting entity wishes to consider various technical or contractual solutions, and to discuss with bidders about the relative merits of those variants before deciding on the final technical or contractual specifications.”</p>
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:	No
Available	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 31 of the Public Procurement Regulations provides, “(1)The contracting entity’s detailed requirements with respect to quality and quantity, including any certification, testing and test methods or other means for evaluating the conformity of the performance of the contract to these requirements shall be set out clearly in the bidding documents...</p> <p>(3) The statement of a contracting entity’s requirements shall include, where appropriate:</p> <p>(f) process and materials descriptions.”</p>
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/sh ortlisting criteria (when applicable)	Yes

in order to make them available to all the bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 26(2) of the Public Procurement Regulations provides, “The contracting entity shall clearly state the qualification criteria in all bidding documents and shall, where it deems fit, require bidders to provide signed statements or documentary evidence to certify their qualifications.” Section 31 of these Regulations also provides, “The contracting entity’s detailed requirements with respect to quality and quantity, including any certification, testing and test methods or other means for evaluating the conformity of the performance of the contract to these requirements shall be set out clearly in the bidding documents.”</p>
22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?	<p>Yes</p>
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	<p>Section 51(3) of the Public Procurement Regulations provides, “Following the opening of bids, the contracting entity shall first examine the bids in order to determine whether the bids are complete and responsive to the requirements of the bidding documents.” The criteria are specified in the bidding documents as previously mentioned in Section 26 of these Regulations. This is respected by contracting authority officials in practice.</p>
If no, please elaborate:	<p>n/a</p>
23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Section 41(1) of the Public Procurement Regulations provides, “Clarifications of the bidding documents may be requested in writing by any bidder up to 5 days prior to the deadline for the submission of bids.”</p>
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	<p>Yes</p>

If yes, please provide the relevant legal/regulatory provisions (if any):	Section 41(3) of the Public Procurement Regulations provides, “Responses to requests for clarification shall be communicated simultaneously and in writing to all bidders participating in the procurement proceedings.”
23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?	Yes
If yes, please specify:	This is to uphold principles of transparency that are emphasized in the Public Procurement Regulations
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?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
If no, please elaborate:	n/a
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 51(3) of the Public Procurement Regulations provides, "Following the opening of bids, the contracting entity shall first examine the bids in order to determine whether the bids are complete and responsive to the requirements of the bidding 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	No

specific procedure before awarding a PPP contract where only one proposal is submitted.	
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.	Yes
Please provide the relevant legal/regulatory provisions (if any):	Section 44(1) of the Public Procurement Regulations only provides, “(1) The cancellation of procurement proceedings shall be avoided whenever possible, but is permitted where there is written finding that: (d) insufficient, or no responsive bids are received.” It remains at the discretion of the procuring authority to proceed with sole proposals if they still meet sufficient criteria or cancel the procurement proceedings.
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.	No
28. Does the procuring authority publish the award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):	Section 64 of the Public Procurement Regulations provides, “The Central Procurement Unit shall promptly publish, and in any event within one month from award, a notice of all procurement contract awards on the website of the Ministry of Finance and National Planning/Procurement Division.”
28.1. If yes, is the public procurement	Yes

award notice published online?	
If yes, please specify the website:	www.finance.gov.to Section 64 of the Public Procurement Regulations provides, "The Central Procurement Unit shall promptly publish, and in any event within one month from award, a notice of all procurement contract awards on the website of the Ministry of Finance and National Planning/Procurement Division."
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):	Section 59(3) of the Public Procurement Regulations provides, "In the case of contracts awarded by way of competitive bidding and in the case of any contract with a value in excess of \$ 10,000, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 days have passed following the giving of that notice."
If no, please elaborate:	n/a
29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 59(3) of the Public Procurement Regulations provides, "In the case of contracts awarded by way of competitive bidding and in the case of any contract with a value in excess of \$ 10,000, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 days have passed following the giving of that notice."

and the time in calendar days:	14
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 prevent an unfair disadvantage to the other bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions (if any):	Section 58(1) of the Public Procurement Regulations provides, "Except as provided in sub-regulation (2)(b), there shall be no negotiation between the contracting entity and a supplier or contractor with respect to a bid submitted by the supplier or contractor."
31.1. Based on your experience, is it always the case that this restriction is respected in practice?	Yes
If yes, please specify:	Contributors provided that this restriction is respected in practice to ensure fairness in the procurement process.
If no, please elaborate:	n/a
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	n/a

only one)?: Publication of the full PPP contract including all its annexes and appendixes	
Publication of the full PPP contract without including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract without publishing the full PPP contract	n/a
Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes	n/a
Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes	n/a
32.2. If yes, is it published online?	n/a
If yes, please specify the website:	n/a
32.3. If yes, does the procuring authority also publish any subsequent 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	No

contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
41.1. If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team	n/a
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	n/a
Relevant legal/regulatory provisions (if any):	n/a
Elaboration of a PPP implementation manual or an equivalent document	n/a
Relevant legal/regulatory provisions (if any):	n/a
Establishment of personnel training programs (i.e. initial training and	n/a

continued training throughout the course of the project)	
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.)	n/a
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 are required to meet sufficient qualification without specific details.	n/a

If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
The PPP contract management team members are not required to meet any specific qualifications.	n/a
Please elaborate and provide examples:	n/a
42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
42.1. If yes, is the PPP contract construction performance information made available to the public?	n/a
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?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</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	<p>n/a</p>
Relevant legal/regulatory provisions (if any)	<p>n/a</p>
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	<p>n/a</p>
Relevant legal/regulatory provisions (if any)	<p>n/a</p>
The private partner must provide the procuring or contract management authority with periodic operational and financial data	<p>n/a</p>

Relevant legal/regulatory provisions (if any)	n/a
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	n/a
Relevant legal/regulatory provisions (if any)	n/a
The PPP contract performance information must be available to the public	n/a
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	n/a
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	No

<p>composition) of the private partner and/or assignment of the PPP contract?</p>	
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	n/a
<p>45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).</p>	n/a
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	n/a
<p>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</p>	n/a
<p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p>	n/a
<p>In other cases, flexibility to change the ownership structure and/or assign the contract.</p>	n/a

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

A change in the risk allocation of the contract.	n/a
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.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the duration of the contract.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
46.3. Can the procuring authority unilaterally modify a PPP contract?	n/a
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
47. Does the regulatory framework (including standard contractual clauses)	No

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):	n/a
Material Adverse government action	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Refinancing.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
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	Yes

administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	<p>While no provisions exist in the applicable Public Procurement Regulations in connection to disputes arising from the implementation of PPP contracts, the Foreign Investment Act of Tonga (Act No. 22 of 2002) (2002) provides in Section 16, “(1) The provisions of the Arbitration Act 1996 (UK) shall apply to any arbitration under this Act. (2) Subject to this Act and any other laws, the Convention on the Settlement of Investment Disputes shall have the force of law in Tonga.”</p> <p>The Arbitration Act 1996 (1996 CHAPTER 23) (UK Arbitration Act) in Section 6 provides a definition of an arbitration agreement that it shall apply to in accordance with other Sections of the same Act as, “(1) In this Part an “arbitration agreement” means an agreement to submit to arbitration present or future disputes (whether they are contractual or not).” Arbitration remains the main available complaints mechanism for PPP projects, subject to arbitration agreements identified within the PPP contract, yet local courts are also not explicitly restricted from being competent.</p>
48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body	<p>No</p>
If yes, please specify:	<p>n/a</p>
Local courts	<p>Yes</p>
Domestic arbitration	<p>Yes</p>
International arbitration	<p>Yes</p>
Investor-State Dispute Settlement (ISDS)	<p>Yes</p>
Mediation	<p>Yes</p>
Please provide the relevant legal/regulatory/standard contractual provisions (if any)	<p>While no provisions exist in the applicable Public Procurement Regulations in connection to disputes arising from the implementation of PPP contracts, the Foreign Investment Act of Tonga (Act No. 22 of 2002) (2002) provides in Section 16, “(1) The provisions of the Arbitration Act 1996 (UK) shall apply to any arbitration under this Act. (2) Subject to this Act and any other laws, the Convention on the Settlement of Investment Disputes shall have the force of law in Tonga.”</p> <p>The Arbitration Act 1996 (1996 CHAPTER 23) (UK Arbitration Act) in Section 6 provides a definition of an arbitration agreement that it shall apply to in accordance with other Sections of the same Act as, “(1) In this Part an “arbitration agreement” means an agreement to submit to arbitration present or future disputes (whether they are</p>

	contractual or not).” Arbitration remains the main available complaints mechanism for PPP projects, subject to arbitration agreements identified within the PPP contract, yet local courts are also not explicitly restricted from being competent.
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):	Section 66(1) of the applicable UK Arbitration Act 1996 provides, “(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.”
International arbitration	Yes
If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):	Section 66(1) of the applicable UK Arbitration Act 1996 provides, “(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.” Moreover, Tonga has signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since Mar. 21, 1990, which allows for the enforcement of such awards amongst signatory parties.
Investor-State arbitration	Yes
If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):	Section 66(1) of the applicable UK Arbitration Act 1996 provides, “(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.” Moreover, Tonga has signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since Mar. 21, 1990, which allows for the enforcement of such awards amongst signatory parties.
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

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

Standard contractual provisions (if any):	
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Other.	n/a
Please Specify:	n/a
51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?	n/a
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):	n/a
Unsolicited Proposals	
34. Are unsolicited proposals in Tonga: (choose only one):	No

Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	
Explicitly allowed by the legal framework?	No
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	Yes
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	n/a
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any)	n/a
35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	n/a
If yes, please provide the	n/a

relevant legal/regulatory provisions (if any):	
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.	n/a
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.	n/a
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.	n/a

Please elaborate and provide examples:	n/a
37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	n/a
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	n/a
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.	n/a
39.2 Developer's fee (reimbursing the original	n/a

proponent for the project development cost).	
39.3 Bid Bonus.	n/a
39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).	n/a
39.5 Other.	n/a
Please specify:	n/a
Please provide the relevant legal/regulatory provisions (if any):	n/a