

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN TURKEY

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>Article 47 of the Turkish constitution allows the use of public-private partnerships, but the Turkish legislation does not have one single framework law and/or regulation concerning PPPs. (Note: there is a draft act on PPP but not enacted yet). In the current situation, there are different types of PPPs and therefore there are more than one regulatory framework that allows procuring PPPs. The most commonly referred ones are: a. Build-Operate-Transfer Model(BOT): enacted for different infrastructure areas like transportation, energy and water supply and treatment: Act No. 3996 on Certain Infrastructure and Public Investments and Services with BOT Model adopted in 1996. (Published in Official Gazette No. 21959 dated 13 June 1994) [and its New Implementation Decree of 2011]. b. Build-Operate (BO) is regulating the BO Model in the electricity generation sector: Law on Building and Operation of Thermal Power Plants with the BO Model adopted in 1997 ("Law No 4283") (Published in the Official Gazette numbered 23054 dated 19 July 1997). Finally, the Public Procurement Law No 4734 is also applicable to PPPs, and we refer to it in our 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>(1) All the regulatory framework and Decrees can be accessed through "http://www.mevzuat.gov.tr/", "www.resmigazete.gov.tr" , and "www.basbakanlik.gov.tr"</p> <p>(2) The access links for specific legislations are below: a. BOT: http://www.cakmak.av.tr/articles/Construction_Infrastructure/The%20New%20Implementation%20Decree%20of%20the%20Build-Operate-Transfer%20Law.pdf; http://www.mevzuat.gov.tr/MevzuatMetin/1.5.3996.pdf and http://mevzuat.basbakanlik.gov.tr/Metin1.aspx?MevzuatKod=1.5.3996&MevzuatIliski=0&sourceXmlSearch=&Tur=1&Tertip=5&No=3996 (Law No. 3996) [and for the new implementation decree: http://www.cakmak.av.tr/articles/Construction_Infrastructure/The%20New%20Implementation%20Decree%20of%20the%20Build-Operate-Transfer%20Law.pdf] http://www.mevzuat.gov.tr/MevzuatMetin/1.5.3465.pdf (Law No. 3465) http://www.resmigazete.gov.tr/eskiler/2011/06/20110611M1-11-1.pdf: Decree of the Council of Ministers Regarding the Principals and Procedures of Realization of Certain Projects under the Build-Operate-Transfer Model was published in the Official Gazette dated 11 June 2011 b. BO: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4283.pdf (Law No. 4283) c. BLT: Law No 6428:</p>

	<p>http://www.mevzuat.gov.tr/Metin1.Aspx?MevzuatKod=1.5.6428&MevzuatIliski=0&sourceXmlSearch=&Tur=1&Tertip=5&No=6428</p> <p>d. TOR: Law No. 4046: http://www.mevzuat.gov.tr/Metin1.Aspx?MevzuatKod=1.5.4046&MevzuatIliski=0&sourceXmlSearch=&Tur=1&Tertip=5&No=4046</p> <p>(3) Alternatively, a compilation of up to date PPP legislations in effect (including the rarely used and rarely referred ones) can be accessed in the Ministry of Development's publication: (in Turkish) http://www.kalkinma.gov.tr/Documents/Kamu%20%C3%96zel%20%C4%B0%C5%9Fbirli%C4%9Fi%20Mevzuat%C4%B1-2015.pdf</p> <p>(4) Public Procurement Law No. 4734: http://www2.ihale.gov.tr/english/4734_English.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?	<p>No</p>
Please describe:	<p>n/a</p>
2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?	<p>Yes</p>
Please describe:	<p>There is a Governmental Proposition Draft with regard to “Realization of Investments and Services Within the Framework of Private and Public Partnership Models”. This PPP Draft would regulate a great variety of PPP models, and it would also introduce a new approach in project selection and a new governmental body responsible for PPP projects. According to Article 31 of this Draft, it will be in effect after six months as of its publication in the Official Gazette. However, the publication date of this governmental proposition draft has not been announced yet (Note: this article may be amended in the future as this draft has not been enacted yet).</p>
3.1 Besides national defense and other matters of national security, does the	<p>No</p>

regulatory 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	No

and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other	No
If yes, specify and provide the relevant legal/regulatory provisions:	n/a
4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?	Yes
If yes, please specify and provide the relevant legal/regulatory provision (if any):	<p>According to Article 12 of law n. 3996 - All works and transactions to be carried out by the administration, the capital company or the foreign company within the scope of the issues specified in the 2nd item and the build-operate-transfer model shall be made according to the stamp tax taken in accordance with the Law No. 488 dated 1.7.1964 and the Law No. 492 dated 2.7.1964 exempt from fees received.</p> <p>Also, Act no. 3065, provisional article 29: Project deliveries to be carried out within the framework of the BOT Law numbered 3996 and BLT Law numbered 6428 have been excluded from VAT for the goods delivered and services rendered under the project during</p>

	<p>the investment period.</p> <p>Finally, we note that, although the health sector is not included in the scope of our analysis, Law no 6428, article 9 provides for exemption from stamp tax received in accordance with the law no. 488 and charges received in accordance with the law no. 492.</p>
<p>5. Please identify the PPP procuring authorities in Turkey and provide their website(s) (if available):</p>	<p>The PPP procuring authority will depend on the sector of investment. (Note: the sectors are widely listed under Law number 3996 and each administrative authority responsible to provide services under such sector will be the PPP procuring authority); provided that the PPP project is duly approved in accordance with Law number 3996, and the other PPP legislation indicated above. (1) In the event of a tunnel project, the General Directorate of Infrastructure Investments which is subordinated to the Ministry of Transportation, Maritime and Communication will be the PPP procuring authority. http://www.dlh.gov.tr/ (2) In the event of a health facility, the General Directorate of Health Investments which is subordinated to the Ministry of Health will be the PPP procuring authority. http://www.saglikyatirimlari.gov.tr/ (3) Ministry of Transport, Maritime Affairs and Communication - General Directorate of State Airports Authority in case of airports. www.dhmi.gov.tr and www.udhb.gov.tr(4) In the event of a bridge/highway project, the General Directorate of Highways will be the procuring authority www.kgm.gov.tr(5) For Transfer of Operation Rights, except the airports, Republic of Turkey Privatization Administration - http://www.oib.gov.tr/(6) Ministry of Education, www.meb.gov.tr(7) Higher Education Credit and Hostels Institution, www.yurtkur.gsb.gov.tr(8) Information and Communication Technologies Authority (“ICTA”)- www.btk.gov.tr(9) Municipalities via Ministry of Interior http://www.icisleri.gov.tr(10) Ministry of Environment and Urbanization http://www.csb.gov.tr/turkce/index.php(11) Ministry of Customs and Trade http://www.gtb.gov.tr</p>
<p>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</p>	<p>Yes</p>
<p>If yes, please indicate its name, and its website (if available):</p>	<p>Turkey’s PPP unit is based in the Ministry of Development (MoD). Its official name is “Department of PPP” located under the General Directorate of Investment Programming, Monitoring and Assessment. (http://www.kalkinma.gov.tr/Pages/KamuOzellikBirligiProjelerindeGelismeler.aspx) Other entities facilitating the PPP program in coordination with this unit are: (1) Ministry of Finance (https://www.maliye.gov.tr/Sayfalar/Eng/AnaSayfa.aspx)ad (2) Under secretariat of Treasury (http://www.treasury.gov.tr/en-US/Mainpage);</p>
<p>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP</p>	<p>No</p>

regulation and policy guidance.	
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.	Yes
6.4 Technical support in implementing PPP projects.	No
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.	Yes
6.9 Undertaking the procurement of PPPs.	No
6.10 Oversight of PPP implementation.	Yes
6.11 Other	No
6.11 please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>Article 13 of the Decree on Organization and Duties of Ministry of Development (http://www.mevzuat.gov.tr/MevzuatMetin/4.5.641.pdf) provides: (1) The duties of the General Directorate of Investment Programming, Monitoring and Evaluation are as follows:</p> <p>A) Public investment policies within the framework of the priorities identified under development plans and programs. To analyze and research investments, to develop project ideas to be implemented by public institutions. To provide support, to analyze projects and to prepare, monitor and evaluate the public investment program,</p> <p>B) to develop appropriate financing models in the realization of public investments, to implement public-private partnership projects, and analyzing the principles and procedures of project planning and monitoring and evaluation activities of public</p>

	institutions and organizations, as well as to support capacity building in these areas. C) To perform similar duties assigned by the Minister.
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):	As per article 4 of the Act no. 3996, approval is sought from the High Planning Commission (HPC) within the Ministry of Development (MoD). Article 2 of the Act no. 6428 also refers to the approval of the HPC with regards to the health PPP projects. Tender process is initiated following the decision of the HPC. The HPC comprises of ministers to be determined by the Prime Minister and under the supervision of the Prime Minister. The approval process, during which a feasibility report and other documents are submitted for review, is executed by the MoD. After necessary review is concluded, it is submitted to the HPC for approval. As per article 5 of Decree number 2011/1807, the HPC, while making its decision on the approval, may request the opinion of the Ministry of Finance, Ministry of Development and Under secretariat of Treasury and other related authorities in case deemed necessary.
8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
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	Yes

and implicit, direct and contingent) arising from PPPs.	
If yes, please provide the relevant legal/regulatory provisions (if any):	According to the Article 49 of the Public Finance Management and Control Law, it is stated that accounting standards which apply to the public administrations, shall be in line with international standards. In relation to this Article, General Management Accounting Regulation has been enacted by the Governmental Accounting Standards Board. Its provisional Article 1 has regulated the inventory procedures of the PPPs and has authorized the Ministry to regulate the procedures and principles related to PPP's inventories. In the Article 13(2) of the Public Private Partnership Applications' Accounting Transactions General Communiqué, it is stated that Public Private Partnership Projects Notification Form shall be filled in and sent to the accounting units. General Directorate of Accounting under the Ministry of Finance published its announcement No.28165485-010,05-7968 (Communiqué N. 29410 on Accounting Transactions of Public Private Partnership Practices), dated 18 August 2015 with the subject of tracing the PPP investments under governmental inventory system.
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).	Yes
Accounting and reporting according to other international standard (e.g. European System of Accounts).	No
Please specify:	According to Article 49 of the Law on Public Financial Management and Control numbered 5018, all public authorities shall use internationally accepted standards of accounting.

Other.	No
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	<p>(1) Pursuant to Article 5 of Regulation for Law 3996: Each procuring authority must submit its PPP project to the HPC through its relevant ministry. I.e. Highway agency through Ministry of Transport. Likewise, local authorities should submit PPP project proposals to HPC through Ministry of Interior and universities and higher education institutes through Ministry of Education. This step is more like a coordination point rather than a stage of approval. Process for BOT projects to be implemented under Law 3996 and BLT projects under Law 6428: Implementing agencies and local authorities, intending to implement PPP projects should seek for the approval of High Planning Council (which is the ultimate decision body for key economic issues including PPPs) , comprised of Ministers in charge of different parts of economy who are supervised by the Prime Minister. PPP projects are then evaluated by the Ministry of Development (MoD), the Ministry of Finance (MoF) and the Treasury. Acting as the secretariat of HPC, the MoD organizes and coordinates all the technical works for HPC to make a decision. A formal approval process starts with submission of feasibility reports, technical analysis and other documents concerned by the implementing agency. MoD evaluates the project with a view to ensuring that the project is economically, financially and socially value-adding, and in line with sectoral, regional and other policies. MoD also consolidates reviews from Treasury and MoF. Based on the analysis carried out by MoD and supported by Treasury and MoF, MoD prepares a comprehensive review and submits to HPC, which then approves the project to be included in the pipeline. (Note: If MoD finds the technical preparations insufficient, MoD may ask for revisions/additions/changes). (2) Pursuant to Article 3 of Law No. 4046: In the case of Transfer of Operating Rights, implementing agencies should obtain the approval of High Council of Privatization.(3) Pursuant to Article 12 of the Regulation for Law 3465: For the implementation of BOT road projects under Law 3465 (which is outdated and not used in practice), the approval authority is General Directorate of the Highways.(4) Pursuant to Article 7 of Decree of Cabinet of Ministers (No: 2012/3682) for Law 652: For BLT projects in schools and education facilities, the approval authority is the Ministry of National Education.</p>

and provide the relevant legal/regulatory provisions (if any):	<p>(1) (i) Pursuant to Article 5 of Decree number 2011/1807, the High Planning Committee which is the approving authority under the Law Numbered 3996, may request the opinion of the Ministry of Finance, Ministry of Development and Under secretariat of Treasury and other related authority (ii) Article 4 of Law 3996 provides that the administration wishing to procure PPP is required to submit its preliminary project to High Planning Committee without the approval of which, the administration cannot procure PPP. (iii) Article 2 of Law 6428 provides for the same approval requirement from HPC regarding PPPs submitted by the Ministry of Health or other subordinated institutions. (2) Article 3 of Law No. 4046(3) Article 12 of the Regulation for Law 3465(4) Article 7 of Decree of Cabinet of Ministers (No: 2012/3682) for Law 652</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>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
10. Does the procuring authority use transaction advisors during the PPP project cycle?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Pursuant to Article 12 of the Regulation for Law 3996: In the projects to be carried out by the build-operate-transfer model, the consultancy services can be procured during construction and operation periods.</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	<p>Yes</p>

<p>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>Turkey has strategic documents that define the framework of the priority investment areas and projects which are 5-year Development Plans, 3-Year revolving Medium Term Programs and Annual Programs. PPP projects are chosen within this priority framework and thus from the public investment pipeline.</p> <p>10th Development Plan, Action 589: In public investments including PPP model, education, health, drinking water and sewerage, science-technology, transportation and irrigation sectors will be given priority.</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 relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>

<p>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</p>	<p>No</p>
<p>If yes, please elaborate:</p>	<p>n/a</p>
<p>The procuring authority does not evaluate PPPs against existing government priorities.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above?</p>	<p>Yes</p>
<p>If yes, please specify:</p>	<p>In practice, the procuring authority generally evaluates the consistency of PPPs with other government investment priorities in Turkey</p>
<p>If no, please elaborate:</p>	<p>n/a</p>
<p>12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit</p>	<p>Yes</p>

analysis of the socio-economic impact of the PPP project)	
Relevant legal/regulatory provision (if any)	Article 4 of Law 3996 (BOT) provides that investments and services provided under the BOT model will require a cost-benefit analysis of the socio-economic impact of the PPP project.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	According to our contributors, a socio-economic assessment is always done in practice when identifying and preparing a PPP project in Turkey
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)	(1) Article 4 of Law number 3996 provides for an affordability assessment (including the identification of the long term public commitments). in fact, this article states that a study should be conducted about the scope of the contract and the investment result in order to determine the cost of goods and services, taking in consideration other principles of Finance, Public Works, Transport, Energy and Natural Resources ... and (2) Article 7 of Law number 3996 provides that the duration of the project (that cannot exceed 49 years) needs to be determined in order to undertake the construction and operation investment cost, as well as the projected profits, the loans to be taken and the repayment period (taking in consideration the amount of capital available and the operating principles). (3) Article 2 of Law 6428 (BLT for health projects) also requires this analysis.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	The affordability assessment, including the identification of the required long term public commitments, is always done in practice
12.3. Risk identification, allocation and assessment (risk matrix)	Yes

Relevant legal/regulatory provision (if any)	Article 2 of the New Implementation Decree of BOT Law number 3996 providing that the High Planning Council shall determine at the beginning of the project the contribution fees and demand guarantees , if any, and the risk sharing principles.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	The risk identification, allocation and assessment is done in practice in Turkey
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)	Article 4 of Law number 3996 (Multi-sectoral BOT regime) require the procuring authorities carry out VfM analysis.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes
Details:	A comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives is done in practice when identifying and preparing a PPP in Turkey
12.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision (if any)	Article 4 of Law number 3996 provides for financial viability assessment. Article 2 of Law 6428 (BLT for health projects) also requires this analysis.
Is there a specific methodology for the assessment?	No
If yes, please elaborate	n/a
Is the assessment done in practice?	Yes

Details:	The financial viability or bankability assessment is done in practice when identifying and preparing a PPP in Turkey
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 6(3) of the Environmental Impact Assessment (EIA) Regulation states that a project cannot be tendered before the tender environmental impact assessment is obtained. Additionally, Article 7 provides for the preparation of an EIA report for the projects which enters into the scope application of the regulation. and finally, Articles 8, 9, 10, 11, 12, 13 and 14 set forth the methodology of the preparation of report is regulated
Is there a specific methodology for the assessment?	Yes
If yes, please elaborate	Articles 8, 9, 10, 11, 12, 13 and 14 of the Environmental Impact Assessment (EIA) Regulation set forth the methodology of the preparation of report is regulated
Is the assessment done in practice?	Yes
Details:	The environmental impact assessment is done in practice when identifying and preparing a PPP in Turkey
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	Yes

request for proposals?	
If yes, please provide the relevant legal/regulatory provisions (if any):	No regulatory basis
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):	According to Article 6 of the Decree for Law no 3996, tender announcements are published in the Official Gazette that is published online.
and please specify the website:	http://www.resmigazete.gov.tr/default.aspx and on the websites of the relevant procuring authority launching the call for tender
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	No

authority (or other Government entity)	
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)	Article 18 of the Decree for Law no 3996 sets forth that (j) that the contract shall include the permits required by the legislation.
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)	Article 18 of the Decree for Law no 3996 sets forth that (j) that the contract shall include the permits required by the legislation.
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)	Article 18 of the Decree for Law no 3996 sets forth that (j) that the contract shall include the permits required by the legislation.
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)	According to ARTICLE 39 of Law 3996- (1) The expropriation proceedings required for the investments and services proposed in its opinion shall be filed by the administration..."
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):	<p>Article 23 of the PPP Regulations (2014/6282) states that the commission should consist of one chairman, two experts depending on the subject, one accountant and one expert for the financial issue. Furthermore, relating to our case study, article 16 of the Regulation of Highways (No. 21552) provides that the committee consists of 5 permanent members and 5 reserve members who have expertise in the subjects handled.</p> <p>Additionally, General BOT Law (N. 3996) Articles 10 and 11 state that the qualification of the committee members shall be regulated by the procuring authority.</p> <p>ARTICLE 10- (1) The procuring authority is free to make ten qualification assessments. A ten competency commission shall be established if the procuring authority who will also set the features of such Commission as well as the working procedures and requirements of the tender.</p> <p>ARTICLE 11- (1) The commissioning committee of the senior manager of the mentor who will perform the forecasting shall be appointed. Administrative and technical staff can be assigned to assist the Commission, not to participate in the decision of clerking.</p> <p>(2) The commission and the working procedures are regulated by the procuring authority.</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>Article 25 of Regulation No. 2014/6282 regarding the open tender procurement, notice should be issued at least one month prior to last application date of bid. For the negotiated tender this period is only one week. Furthermore As per Article 6 of the BOT Decree, projects to be carried out under the BOT Law must be announced in the Official Gazette of the Republic of Turkey and in a minimum number of two nationwide newspapers with high circulation, at least one month prior to the date of bidding. Finally, in relation to our case study, Article 20 of the Highway Regulation provides that an announcement needs to be made in the Official Gazette , which is distributed in two high circulation newspapers , at least fifteen days before the date of bidding.</p>
19.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	<p>The records of the Official Gazette are available online. http://www.resmigazete.gov.tr/default.aspx and http://www.oib.gov.tr/index_eng.htm</p>
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	Yes

authority grant the potential bidders a minimum period of time to submit their bids?	
If yes, please provide the relevant legal/regulatory provisions (if any):	Article 25 of Regulation 2014/6282, regarding the open tender procurement, notice should be issued at least one month prior to last application date of bid. For the negotiated tender this period is only one week. According to Article 6 of the General BOT Law Implementation Decree (2011/1807): A minimum of 30 days. Finally, in relation to our case study , Articles 20 and 22 of the Highway Regulation, A minimum of 15 days for pre-qualification, and a minimum of 45 days for construction projects and a minimum of 30 days for projects with purposes other than construction.
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)	Articles 13 and 16 of the BOT Decree N. 2011/1807 provide that open tender among all bidders is deemed the principal tender procedure, and deviations therefrom require that a reasoning be provided in the tender announcement or the specifications
22.2. Restricted tendering (with pre-qualification stage): Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	Article 10 of the BOT implementation Decree provides that the procuring authority can decide to adopt a restricted tendering procedure. In this case, if preliminary qualification is decided, a Pre-qualification commission is established. The procuring authority would determine the commission's establishment and working procedures.
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	No
Default	No
Relevant legal/regulatory provision (if any)	n/a
22.5. Direct negotiation with more than one candidate: Available	Yes
Default	No
Relevant legal/regulatory provision (if any)	<p>ARTICLE 12 of the BOT implementation Decree provides that - (1) The following procedures are available:</p> <ul style="list-style-type: none"> a) bidding among all bidders (auto-selected method, any deviation from bidding among all the bidders requires a reasoning to be reflected in tender documents) b) bidding among predetermined bidders c) bargaining method <p>Furthermore, Article 15 provides that in cases where neither the open tender procedure, nor the restricted procedure can be used, the procuring authority can use the direct negotiation with more than one candidate. The qualifications and requirements of the business are assessed on the basis of the fees and services.</p>
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	Yes

information to all the bidders?	
If yes, please provide the relevant legal/regulatory provisions (if any):	The following articles provide that the tender documents must indicate the stages of the procurement process:- Article 8 of the General BOT Law Implementation Decree.- Articles 35, and 36 of the Implementation Regulation of Road PPP Law (indirect provisions)- Article 10 of the Highway Regulation
If no, please elaborate:	n/a
22.9. Do the tender documents specify the prequalification/s hortlisting 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):	Laws and regulations applicable to PPPs usually provide general criteria for participants to assess whether they are appropriate to participate in the prequalification and/or tender stages. These provisions are provided under the following articles: Articles 8, 9, 10, and 19 of the Implementation Regulation of Road PPP Law: Article 8 - To participate in the work to be carried out in accordance with this Regulation bidders must; a) be compliant with the provisions of private law or of capital companies established in Turkey: commitment to the establishment of the joint-stock company , b) show an address for service in Turkey , c) inform the statutory residence, d) possess the necessary qualifications and competence, e) provide the required collateral and documents, Pre- selection and assignment to those who can not participate. Article 9 - The following are required for preselection or conditions to participate: a) to prepare the work assignment process, execute, finalize, approve or oversee the spouses of the persons mentioned by the officials ... b) Those temporarily or permanently banned from participating in public tenders or assignment in accordance with Regulation the 3713 Anti-Terrorism Act of organized crime within the scope and convicted for crimes and, c) from the date of the definitive acceptance of the documents was made before the lapse of 3 years preparing the assignment documents loaded for related consultancy services d) The fraudulent bankruptcy by the relevant authorities...Article 10 - General Directorate indicates every aspect send specifications of the work subject and specifications, (finalized with the approval of the Minister). The special conditions and technical specifications will be based on the nature of the task; it must show: a) the nature of the task, kind and scope , b) the rates and terms of the performance bond , c) the place, manner and terms of delivery and receipt of obligations, d) Appointed jobs and deadlines, as well as delay penalties, e) conditions and documents sought in equity companies ... j) method of dispute resolution. Article 19 - in order to ensure the most favorable conditions for the conclusion of the assignment, the willingness of financial and technical competences and qualifications for preselection made in accordance with the purpose of scoring basis. For Preselection purposes, the companies will be asked to apply depending on the task feature to determine the adequacy of information. The documents prepared by the General Directorate indicate that the pre-selection will be evaluated according to a set of principles and information...

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>The prequalification criteria specified in the tender documents are always respected in practice in Turkey.</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>According to Article 30 (4) of the Regulation numbered 2014/6282, bidders can request clarification on the tender documents during the preparation to the tender and at the latest 10 days before the tender submission date</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):	<p>Article 11 of the Implementation Regulation of Road PPP Law states that the relevant authority shall deliver the clarifications in writing on the tender documents to all the bidders.</p>
23.2. Based on your experience, is it always the case that this disclosure of	<p>Yes</p>

information is done in practice?	
If yes, please specify:	In Turkey, the disclosure of information is always done in practice. In fact, the procuring authority discloses the questions and answers to all bidders at the same time regardless of the identity of the bidder raising the question. One of our contributors provided that such information was disclosed at least in the cases that they witnessed: two cases in the context of port PPPs and three cases in the context of highways PPPs in Turkey
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?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
If no, please elaborate:	<p>Procuring authorities are required to choose the bidder which provides the most profitable financial terms for the construction and operation of projects. Even though participants are required to present certain financial data and projections, there are no provisions in the Turkish laws and regulations describing specific information to include as to consider the forms submitted as “financial models”</p>
26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>Articles 37, 38, and 40 of the Public Procurement Law provide that the procuring authority must evaluate the bids based on their financial terms and then choose the bid which is the most economically advantageous, which determination is either: (1) solely based on quotation; or (2) based on operation and maintenance costs, cost efficiency, efficiency, quality and technical value or other similar factors in addition to quotation. Additionally, we will mention the Regulation of Highways that is directly related to our case study. Pursuant to article 30, the details of evaluation of the most economically advantageous shall be stated in tender specifications.</p>
Evaluation criteria is not set in the tender documents	<p>No</p>
27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way	<p>No</p>

<p>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>	Yes
<p>If yes, please specify the means of publication and</p>	No regulatory basis

provide the relevant legal/regulatory provisions (if any):	
28.1. If yes, is the public procurement award notice published online?	Yes
If yes, please specify the website:	http://www.saglikyatirimlari.gov.tr/Default.aspx?tabid=241 and www.oib.gov.tr as well as websites of related ministries
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):	Although the BOT law does not include a specific provision about providing all bidders with the result of the PPP procurement process, the general Public Procurement Law does provide in its Article 41 that the tender result shall be provided to all tenderers within three days from the approval by the procuring authority... Furthermore, Article 29 of the Communique on Tenders Related to Authorization in Electronic Communication Industry provides that the tender decision is served upon all bidders within 15 business days of the approval, including the winner by personal delivery, registered mail, or a letter. Finally, relating to our case study, Article 32 of Regulation of Highways also sets out that the Commission provides all bidders with the result of the PPP procurement process along with the facts
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):	Although the BOT law does not include a specific provision regarding notification of the grounds for the selection of the winning bid, the general Public Procurement Law provides in its Article 41 that the tender result shall be provided to all tenderers ... The reasons for excluding tenderers from the evaluation or not finding the tender eligible, shall be included.
30. Is there a standstill (or pause) period after the contract award and before the signing of the	Yes

contract in order to allow unsuccessful bidders to challenge the award decision?	
If yes, please provide the relevant legal/regulatory provisions (if any):	According to the Article 41(3) of the Public Procurement Law, the contract can not be signed until ten days, following the notification of tender result to all bidders. Unsuccessful bidders who do not approve the result, will have the chance to make an application for complaint to the Authority within this period
and the time in calendar days:	10
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?	No
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?	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):	<p>According to Article 25 of the BOT implementation Decree, the Administration may supervise or have another company supervise the Procuring company to determine whether or not the private company is running the PPP project in accordance with the provisions of the signed contract. In fact, it provides that the Administration officials covered by the contract save all the activities registered in the company's documents at all stages for studies or audit purposes: control of expenses and that all terms specified in the contract are being applied. Additionally, Article 74 of the Implementation Regulation of Road PPP Law also provides that the procuring authority may either supervise the activities of the company in relation to the PPP contract at any stage or outsource such supervision. (Supervision shall also be regulated in the PPP contract).</p>
41.1. If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract	Yes

management team	
Relevant legal/regulatory provisions (if any):	Article 16 of the Decree for Law no 3465 and Article 10 and Article 11 of the Decree for Law no 3996 a commission (management team) will be formed by the procuring authority.
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	Yes
Relevant legal/regulatory provisions (if any):	<p>According to ARTICLE 18 of the BOT implementation Decree- (1) The Implementation contract is prepared according to the specifications set forth in this article</p> <p>(2) The implementation contract includes the following:</p> <ul style="list-style-type: none"> A) The parties. B) The issue of the contract. C) Time. Ç) General principles of investment and services. D) Standard and quality of goods and services. E) Performance criteria in assignments, RIM and its services are conditional on keeping the order. F) Financing. G) Determination of fee and contribution if any. Ğ) Treasury investment guarantee and / or demand guarantee (If not, amount and duration). H) Investment time, date of acceptance and operation. I) Delay in completion of work during the investment period and cost changes. I) Expropriation and / or land consolidation. J) Permissions to be taken in accordance with the legislation. K) Collateral. L) Monthly and annual reports. M) Control. N) Safety and environmental measures. O) Force Majeure and Insurance. P) Maintenance and repair. R) Your assignment is devolved. S) Termination. Ş) Transfer of the facility at the end of the period. T) The period

	<p>U) Loans. Ü) Liability and compensation. V) The default interest will be applied. Y) Education. Z) Resolution of applicable law and disputes. Aa) Who will pay the contract costs. Bb) Notification. Cc) Contract language. Changes in the Contract Dd) Other contracts. Ee) Effective date of the contract. Ff) Other</p>
Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	Yes
Relevant legal/regulatory provisions (if any):	<p>According to ARTICLE 18 of the BOT implementation Decree- ... (2) The implementation contract includes the following: ... Y) Education.</p> <p>Therefore, the regulation of training programs in the PPP contract is mandatory. The PPP contracts usually stipulate for the relevant training to be procured by and as a responsibility of, the private partner whereby the procuring authority has the right to audit the private partner and receive information on the content of the training.</p>
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	Yes
Relevant legal/regulatory provisions (if any):	No regulatory basis
41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only	No

<p>one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.</p>	
<p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The PPP contract management team members are required to meet sufficient qualification without specific details.</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>Article 10 of Decree for law N. 3996 provides: The administration is free to make ten qualification assessments. A ten competency commission shall be established if the administration decides to implement the procedure of offering and to assess ten qualifications between certain interested parties. The features of the Commission and the working procedures and requirements of the tender are determined by the administration</p>
<p>The PPP contract management team members are not required to meet any specific qualifications.</p>	<p>No</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<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>	<p>Yes</p>

If yes, please provide the relevant legal/regulatory provisions (if any):	<p>ARTICLE 25 of the BOT implementation Decree provides that- (1) The Contracting Entity shall be entitled to all activities, documents and records at all stages. (2) The party responsible for the audit costs will be specified in the PPP contract.</p> <p>Therefore, the Procuring authority will set out the system for tracking progress and completion of construction works in the PPP contract</p>
42.1. If yes, is the PPP contract construction performance information made available to the public?	<p>No</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>n/a</p>
42.2. If yes, is the PPP contract construction performance information made publicly available online?	<p>n/a</p>
If yes, please specify the website:	<p>n/a</p>
43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	<p>Yes</p>
If yes, please provide the relevant legal/regulatory provisions (if any):	<p>According to Articles 18 (1) j) and 25 of the General BOT Law Implementation Decree number 2011/1807, the PPP contract of a PPP Project should include provisions regarding audit and monitoring mechanism. Also, relating to our case study, Article 74 of the Communique number 93/4186 on Application of Law (Regulation of Highways), the control of the PPP project stages will be controlled by the General Directorate of the Highways or by someone who is authorized by the General Directorate of the Highways.</p>
43.1. If yes, which of the following tools does it include (check all that apply)?:	<p>No</p>

Performance is assessed 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)	No regulatory basis
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions (if any)	According to Article 25 of the BOT implementation Decree, the relevant administration supervises, or alternatively may commission another entity to supervise, the operations of the project company. In fact, Art. 25 provides that (1) The Contracting Authority shall be entitled to all activities, documents and records at all stages; and (2) The party responsible for the audit costs will be specified in the application contract.
The PPP contract performance	No

information must be available to the public	
Relevant legal/regulatory provisions (if any)	n/a
43.2. Is PPP contract performance information made publicly available online?	No
If yes, please specify the website:	n/a
44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions (if any):	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	The provisions of the PPP regulations simply state that the transfer of the project company is permitted provided that the affirmative opinion of the PPP Procuring Authority and the approval of the relevant Minister is obtained. In fact, Article 27 of Decree No. 2011/1807 provides that the project company may assign its duties and rights under the implementation contract to a third party subject to the consent of the relevant administration and the approval of the relevant Minister (and, if the implementation contract was subject to the approval of the High Planning Council, the approval thereof). The details of share transfers, on the other hand, are usually addressed in secondary

	<p>legislations and the relevant project agreements.</p> <p>Additionally, standard contractual clauses usually include restrictions on change of control in the private partner and notification obligations in case of any share transfer in the private partner.</p>
<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>	No
<p>If yes, please provide the relevant legal/regulatory/s tandard 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>	Yes
<p>If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):</p>	<p>The provisions of the PPP regulations simply state that the transfer of the private partner is permitted provided that the affirmative opinion of the PPP Procuring Authority and the approval of the relevant Minister is obtained. In fact, Article 27 of Decree No. 2011/1807 provides: Transfer of Assignment</p> <p>(1) The private partner may transfer its all rights and obligations which arise from the implementation contract, to another company which also conformed to this Decree with the same conditions in accordance with the principals and procedures as it is indicated in this Decree by having Administration review and Ministry approval.</p> <p>(2) Transfer of assignment on assignments which is HPC approves implementation contracts is possible with the affirmative opinion of the PPP Procuring Authority and HPC decision.</p> <p>Article 60 of Regulation No. 2014/6282 and Article 41 of Regulation No. 2012/3682 regulate transfer of contract issue.</p>
<p>In other cases, flexibility to change the</p>	No

ownership structure and/or assign the contract.	
If yes, please provide the relevant legal/regulatory/s tandard 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/s tandard contractual provisions (if any):	Article 18 (1) of the BOT implementation Decree number 2011/1807 provides that regulation of amendments should be inserted to the PPP 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/s tandard contractual provisions (if any):	n/a
46.2. If yes to question 46, which of the following circumstances are specifically	No

regulated? (check all that apply): A change in the scope and/or object of the contract.	
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	n/a
A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/s tandard 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/s tandard contractual provisions (if any):	n/a
A change in the duration of the contract.	No
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	n/a
A change in the agreed price or tariff.	No
If yes, please provide the relevant legal/regulatory/s tandard	n/a

contractual provisions (if any):	
46.3. Can the procuring authority unilaterally modify a PPP contract?	No
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	n/a
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	Yes
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	Article 26 of the General BOT Law Implementation Decree requires that the force majeure events must be specifically determined in the contract that will be executed between administration and bidder. Article 4(9) of the BLT Law indicates that “the issues relating to force majeure and the termination of the agreement upon the mutual understanding between the administration and contractor shall be determined in the contract. In the event of termination of the contract, the performance bond shall be returned and the calculation of the works completed up to that point shall be made according to the general provisions.” Article 59 of the BLT Regulation lists the force majeure circumstances to be set under the relevant BLT agreements.
Material Adverse government action .	No
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	n/a
Change in the Law.	No

If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	n/a
Refinancing.	No
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	n/a
Subcontracting and replacement of the subcontractors.	No
If yes, please provide the relevant legal/regulatory/s tandard 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/s tandard contractual provisions (if any):	The PPP legislation in general allow arbitration for resolution of disputes arising from the PPP project agreements. In some cases the venue of arbitration is restricted to Turkey whereas in some other cases the parties also have the option to set the seat of arbitration outside of Turkey. This applies to PPP projects provided for in Article 32 of the General BOT Law Implementation Decree (No. 2011/1807) stating that Turkish law shall govern the disputes which may arise from the performance of the PPP contracts executed by and between the project company, PPP procuring authority and other administrative authorities and Turkish courts shall have jurisdiction for the settlement of disputes.

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)	The PPP legislation in general allow arbitration for resolution of disputes arising from the PPP project agreements. In some cases the venue of arbitration is restricted to Turkey whereas in some other cases the parties also have the option to set the seat of arbitration outside of Turkey. This applies to PPP projects provided for in Article 32 of the General BOT Law Implementation Decree (No. 2011/1807) stating that Turkish law shall govern the disputes which may arise from the performance of the PPP contracts executed by and between the project company, PPP procuring authority and other administrative authorities and Turkish courts shall have jurisdiction for the settlement of disputes. Additionally, as per Article 32 of the Decree for Law 3996, Turkish court are authorized to settle disputes arising from the PPP contracts. The parties may alternatively choose arbitration.
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 436(3) of the Civil Procedure Law No. 6100 states that the arbitral award shall be notified to the parties and shall be sent to the local court with the file. Such award shall be preserved by the local court.
International arbitration	Yes
If yes, please provide the relevant legal/regulatory	According to the provisions of the International Private and Procedural Law No. 5817 and the NY Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

provisions/standard contractual provisions (if any):	
Investor-State arbitration	Yes
If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):	Investor-State arbitration is enforceable by the local courts according to the provisions of the Washington Convention on the International Settlement of Investment Disputes to which Turkey is a member
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	Yes

service obligations?	
If yes, please provide the relevant legal/regulatory/s tandard contractual provisions (if any):	Article 44 of the General BOT Law Implementation Regulation
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.	Yes
If yes, please specify and provide the relevant legal/regulatory/s tandard contractual provisions (if any):	Article 44 of the General BOT Law Implementation Regulation
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/s tandard contractual provisions (if any):	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No

If yes, please specify and provide the relevant legal/regulatory/s tandard contractual provisions (if any):	n/a
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/s tandard contractual provisions (if any):	<p>According to Article 28 of Decree number 2011/1807, events resulting the termination of PPP contract are the non-performance of its terms, infringement of the PPP contract, bankruptcy, composition of debts, insolvency of the private partner and the termination related provisions and consequences of the termination will be set forth in the PPP contract. Note: Communique number 93/4186 on Application of Law provides: (1) Article 49: in the event that the private partner does not provide the required guarantee, the contract will be terminated. (2) Article 55: in the event that the private partner waives from its undertakings, the contract will be terminated. (3) Article 60: in the event that the private partner is incapable, the contract will be terminated. (4) Article 74: in the event that the private partner does not assign a public accountant company within 3 months after the starting date, the contract will be terminated. (Additionally, alternative termination grounds may be determined in the contract). Furthermore, related to our case study, Article 60 of the Implementation Regulation of the Road PPP Law provides that if the project company goes bankrupt, or goes under liquidation Article 28 of Decree number 2011/1807 on the Implementation of Law numbered 3996; Article 60 of the Implementation Regulation of the Road PPP Law; (and Communique number 93/4186) provide guidelines on this issue.</p>
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/s standard contractual provisions (if any):	<p>Article 28 of the General BOT Law Implementation Decree and Article 60 of the Implementation Regulation of the Road PPP Law provides that the consequences of termination must be determined under the PPP contract. Also, Art. 40 of the General BOT Law implementation provides that (4) If the contract is terminated for any reason, all rights and use permits are also automatically terminated ... no rights can be claimed.</p>
Unsolicited Proposals	
34. Are unsolicited proposals in Turkey: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)	<p>No</p>
Explicitly allowed by the legal framework?	<p>No</p>
Not regulated by the legal framework, but do happen in practice?	<p>No</p>
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)	<p>Yes</p>
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	<p>n/a</p>
35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not,	<p>n/a</p>

skip to question 37)	
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 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.	n/a
If yes, please specify and provide the relevant legal/regulatory provisions (if any):	n/a
The regulatory framework requires	n/a

<p>unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p>	<p>n/a</p>
<p>Please elaborate and provide examples:</p>	<p>n/a</p>
<p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	<p>n/a</p>
<p>If yes, please provide the relevant legal/regulatory provisions (if any):</p>	<p>n/a</p>
<p>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</p>	<p>n/a</p>

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 proponent for the project development cost).	n/a
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