

BENCHMARKING INFRASTRUCTURE 2023 IN AFGHANISTAN

SURVEY QUESTION	ANALYSIS
Regulatory and Institutional Framework for PPPs	
1. 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>The current regulatory framework governing PPPs in Afghanistan is comprised of:</p> <p>1) Presidential Decree No. 314 dated September 5, 2018 regarding the PPP Law 2018 [hereinafter “PPP Law”], which provides in Article 63, “This law shall enter into force from the date it’s published in the Official Gazette. Upon enforcement of this law Public Private Partnership Law published in official gazette number 1228 shall be nullified.” Article 61, provides, “ The Ministry of Finance, for enhanced implementation of this law, may propose regulations and enact and approve Procedures.” Such regulations to the PPP Law were not issued; 2) National Policy on Public Private Partnerships 2017 published by the Central Partnership Authority, Ministry of Finance [hereinafter “National PPP Policy”]; 3) Public Procurement Law issued in 2015 [hereinafter “Public Procurement Law”] and 4) Public Procurement Rules of 2015 [hereinafter “2015 Public Procurement Rules”].</p> <p>Article 27 of the Public Procurement Law provides that contracts for private investment in concessions regarding infrastructure projects shall be awarded in accordance with special regulations. Whilst the PPP Law and its Policy have been issued, a PPP implementing regulation to the PPP Law had not been enacted, hence both the Public Procurement Law and Rules shall only apply in as much as the PPP Law has not regulated and until the PPP implementing regulation is issued.</p> <p>The aforementioned regulations shall form the current regulatory basis that governs PPPs in Afghanistan for the 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>The regulatory framework can be found in the following government websites:</p> <ul style="list-style-type: none"> - PPP Law 2018: http://old.moj.gov.af/Content/files/OfficialGazette/01301/OG_01322.pdf - National Policy on PPPs 2017: http://mof.gov.af/Content/Media/Documents/20032017ApprovedPPPPolicyEng_Final263201710155612553325325.pdf - Procurement Law 2015: http://cms.npa.gov.af/files/Documents/ProcurementLaw/1512889031-1.pdf (http://www.ppu.gov.af/Beta/English/PPU/PL.aspx ; http://moj.gov.af/content/files/OfficialGazette/01101/OG_01186.pdf) - Rules of Procedure for Public Procurements 2015: http://legacy.npa.gov.af/Documents/RulesofProcedure/Dari/%D8%A7%D8%AD%DA%A9%D8%A7%D9%85%20%D8%B7%D8%B1%D8%B2%D8%A7%D9%84%D8%B9%D9%85%D9%84%20%D8%AA%D8%AF%D8%A7%D8%B1%DA%A9%D8%A7%D8%AA%20%D8%B9%D8%A7%D9%85%D9%87.pdf ;

	http://www.ppu.gov.af/Documents/RulesofProcedure/English/Afg%20Procurement%20Rules%20of%20Procedure%20120407%20Eng.pdf
1.1. If yes, for which of the following sectors is the above-mentioned regulatory framework applicable? Transportation	Yes
If yes, please provide the relevant legal/regulatory provisions:	The PPP Law provides under “Sectors of Public Private Partnership” Article 6: The Entity may enter into Partnership Contract with the private sector in the areas of infrastructure, water and energy, transportation, communication, administrative buildings, housing, water supply, waste and sewage, agriculture and irrigation, tourism, parks, sports, cultural, education, higher education, health, environment, mines and industries and such other areas where the provisions of the law allows.
1.1. Water Supply, Sewerage, Solid Waste Management and irrigation.	Yes
If yes, please provide the relevant legal/regulatory provisions:	The PPP Law provides under “Sectors of Public Private Partnership” Article 6: The Entity may enter into Partnership Contract with the private sector in the areas of infrastructure, water and energy, transportation, communication, administrative buildings, housing, water supply, waste and sewage, agriculture and irrigation, tourism, parks, sports, cultural, education, higher education, health, environment, mines and industries and such other areas where the provisions of the law allows.
1.1. Energy generation/transmission and distribution.	Yes
If yes, please provide the relevant legal/regulatory provisions:	The PPP Law provides under “Sectors of Public Private Partnership” Article 6: The Entity may enter into Partnership Contract with the private sector in the areas of infrastructure, water and energy, transportation, communication, administrative buildings, housing, water supply, waste and sewage, agriculture and irrigation, tourism, parks, sports, cultural, education, higher education, health, environment, mines and industries and such other areas where the provisions of the law allows.
1.1. ICT	Yes
If yes, please provide the relevant legal/regulatory provisions:	The PPP Law provides under “Sectors of Public Private Partnership” Article 6: The Entity may enter into Partnership Contract with the private sector in the areas of infrastructure, water and energy, transportation, communication, administrative buildings, housing, water supply, waste and sewage, agriculture and irrigation, tourism, parks, sports, cultural, education, higher education, health, environment, mines and industries and such other areas where the provisions of the law allows.
1.1. Social Infrastructure	Yes

If yes, please provide the relevant legal/regulatory provisions:	The PPP Law provides under “Sectors of Public Private Partnership” Article 6: The Entity may enter into Partnership Contract with the private sector in the areas of infrastructure, water and energy, transportation, communication, administrative buildings, housing, water supply, waste and sewage, agriculture and irrigation, tourism, parks, sports, cultural, education, higher education, health, environment, mines and industries and such other areas where the provisions of the law allows.
1.1. Other	Yes
If yes, specify and provide the relevant legal/regulatory provisions:	The PPP Law provides under “Sectors of Public Private Partnership” Article 6: The Entity may enter into Partnership Contract with the private sector in the areas of infrastructure, water and energy, transportation, communication, administrative buildings, housing, water supply, waste and sewage, agriculture and irrigation, tourism, parks, sports, cultural, education, higher education, health, environment, mines and industries and such other areas where the provisions of the law allows.
2.1. Besides national defense and other matters of national security, does the regulatory framework explicitly prohibits or restricts PPPs in any of the following sectors? Transportation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
2.2. Water Supply, Sewerage, Solid Waste Management and irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
2.3. Energy generation, transmission and distribution	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
2.4. ICT	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
2.5. Social infrastructure, including hospitals, education, prisons, housing, etc.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
2.6. Other.	No

If yes, specify and provide the relevant legal/regulatory provisions:	n/a
3. Please identify the PPP procuring authorities in Afghanistan and provide their website(s) (if available):	The PPP Law defines PPPs in Article 3(1) as a, “Partnership between one or more Entities with one or more Private Parties for the development and/ or provision of infrastructure, facilities and/ or service in a context that defines roles and responsibilities, appropriate risk sharing mechanism and returns to the Private Partner. Terms and conditions are set out in the Partnership Contract.” Any competent Idara (Entity) may serve as a procuring authority and is defined in Article 3(27) as, “Ministries, Authorities with independent organogram and budget, Independent Commissions, Municipalities, State Owned Enterprises, financially autonomist public Universities and corporations, where the State’s shares are more than Twenty-Five percent (25%)” can procure PPP projects. For purposes of the case study of this Report, the Ministry of Transport https://mot.gov.af/en (previously Ministry of Public Works http://mopw.gov.af/en) would serve as the procuring authority
4. Is there a specialized government entity(ies) that facilitates the PPP program (PPP Unit)?	Yes
If yes, please indicate its name(s), and its website(s) (if available):	Central Partnership Authority, (Central Public Private Partnership Authority, also referred to as Central PPP Authority or Directorate General PPP) https://mof.gov.af/en
the year of establishment:	2015
and the relevant legal/regulatory basis:	Article 12 of the PPP Law provides: (1) The Central Public Private Partnership Authority is established for the purpose of regulating government policy, proposing legal framework, promotion, advisory and coordination, capacity building; provision of technical assistance for the entities in the identification, preparation, procurement and contract management phases of projects within the Ministry of Finance. And reports to Minister of Finance. (2) The Central Public and Private Partnership Authority is called Central Partnership Authority in this Law.
4. If yes, what are the main responsibilities of the agency(ies) (check all that apply): PPP regulation and policy guidance.	Yes
4. PPP capacity building for other public authorities.	Yes
4. PPP promotion among the public and/or private sectors in national and international forums.	Yes
4. Technical support in implementing PPP projects.	Yes
4. Identification and selection of PPP projects from the pipeline.	Yes
4. Revision of fiscal risks borne by the Government.	Yes

4. Consultation with affected communities on potential impact of PPP projects.	No
4. Approval of PPP projects.	Yes
4. Undertaking the procurement of PPPs.	No
4. Oversight of PPP implementation.	Yes
4. Post-project appraisal and audit.	No
4. Other:	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions:	<p>Article 13 of PPP Law on “Powers and Functions of Central Partnership Authority” provides: The Central Partnership Authority shall have the following powers and functions:</p> <ol style="list-style-type: none"> 1. To develop and prepare the Standard Documents, rules of procedures, issuance of circulars and standards for utilizing the government support for efficient implementation of partnership program as per the provisions of this law. 2. To develop Partnership Project selection criteria, Partnership Project evaluation indicators, to review the Concept, provide technical recommendations to High Economic Council, prioritize and decide on how to take forward the proposed Partnership Projects. 3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate. 4. To set up and maintain a national registry of the Partnership Projects at all phases. 5. To receive, review, and analyze the requests for government support, and the financial and non-financial impacts of such requests; and advise the relevant authorities on the decision making. 6. To assess the fiscal commitment and contingent and non-contingent liabilities of the Partnership Project in the different phases of the project cycle. 7. To provide technical support to the Entities for development and preparation of projects after approval of Concept. 8. To review draft Prefeasibility Study, Feasibility Study and Bidding Documents including the draft Partnership Contract. 9. To assist Entities in the project procurement phase of Partnership Project. 10. To review and assess any proposed award of Partnership Contract that has been submitted by the Entities for further process. 11. To advise Entities in the project identification, preparation, procurement, and the Partnership Contract management phases of the projects, and organize public awareness programs and public private dialogues. 12. To manage the Project Development Fund; including evaluating requests and advising the relevant authorities on how to use the Project Development Fund.

	<p>13. To put in place an information and technology usage policy relating to Public Private Partnership; to facilitate the possibility of information technology application in regards to Public Private Partnerships including the establishment of an information center (database) for registration, facilitating procurement and publishing the Standard Documents.</p> <p>14. To assess the capacity and specialized skills of Entities or PPP Project Unit, and organize and deliver capacity building programs.</p> <p>15. To consolidate annual reports from the Entities or PPP Project Units and present it to relevant authorities for improvement of affairs.</p> <p>To monitor the procurement process of Partnership Project and implementation of Partnership Contract to ensure that partnership procurement principles are well maintained as per the provisions of this Law</p>
4.1. Additionally, is there a central project development fund (support mechanism) for project preparation?	<p>Yes</p>
If yes, please indicate its name, and its website (if available):	<p>Project Development Fund (it has not been established yet and thus no website is available)</p>
the year of establishment:	<p>2018</p>
and the relevant legal/regulatory basis:	<p>The PPP Law provides under “Project Development Fund” in Article 49 that:</p> <p>(1) The Ministry of Finance, may create a special fund for project development with a specified opening balance taking into consideration the financial capability of the State.</p> <p>(2) The Project Development Fund will be used to provide financial support for project identification, project preparation, employing Transaction Advisors and contract management, hiring the services of experts and consultants, capacity building or such other purpose as may be prescribed in the rules of procedure for the Project Development Fund.</p> <p>(3) The Central Partnership Authority shall be responsible for the management of the Project Development Funds in accordance with the procedure of Project Development Funds.</p> <p>(4) The Central Partnership Authority may transfer the project development cost to the Private Partner in different forms, the conditions of such transfer shall be set out in the Request for Proposal.</p> <p>(5) For efficient management and better arrangement of Project Development Funds, the Central Partnership Authority shall put in place separate rules of procedure.</p> <p>It is also worth mentioning that according the Public-Private Partnerships and Public Investment Advisory Project (PPIAP) with the Afghanistan Government, there was an establishment of an Infrastructure Project Preparation Facility (IPPF) with the World Bank, aligned with the overall budget process, to support the prioritization and preparation of public investment projects and bankable PPP projects in which it intends to undertake project preparation functions. The PPP Law nevertheless mentions the Project Development Fund.</p>
5. Please provide any additional information or comments on the answers to	<p>comment</p>

<p>the question(s) above and indicate which one(s) you are referring to:</p>	
Preparation of PPPs	
<p>6. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>The PPP law under “Powers and Functions of Ministry of Finance” provides” Article 11 The Ministry of Finance has the following powers and functions in Public Private Partnership area: 1- To approve or reject, and return for revision the Concepts which are submitted for approval. 2- To approve, reject, and return for revision the Prefeasibility Study Partnership Project Feasibility Study or prepared project which is submitted for approval. 3- Submission of Partnership Contract after the notarization of High Economic Council the Government. 4- To perform other powers and functions predicted in this law and the regulations or rules of procedure. The PPP Law also provides under “Analysis and Record of Risks and Liabilities” in Article 8: (1) Entities shall not enter in to contract with private parties until the risk and financial analysis for contingent and non-contingent liabilities has been conducted, approved and recorded by Ministry of Finance. (2) The Ministry of Finance shall control potential risks arising from the Partnership Project.</p>
<p>6.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>6.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects (e.g., including the estimated total cost of the PPP project over the life of the project in the budget cycle).</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>The PPP Law provides under “Affordability and Protection of User” in Article 23: (1) The Public Private Partnerships shall be developed in such a way that the financial commitments to be incurred by an Entity under a Partnership</p>

	<p>Contract:</p> <ol style="list-style-type: none"> 1. Can be paid by budgets allocated in the state's budget; and/or 2. Are reasonably likely to be paid by budget which will be allocated to the associated Partnership Project in future; and/ or 3. Are reasonably likely to be met by funds donated to the Partnership Project by a donor organization. <p>(2) The Public Private Partnership shall ensure the public interest is met at the lowest and affordable cost (taking into account Value for Money); the Public Private Partnership deals shall protect user rights especially of the deserving and low-income classes.</p>
6.2. Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs (e.g., disclosing information about the public sector commitments on the PPP project).	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
6.2. Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs (e.g., the public sector commitments to the PPP project are recorded in the national accounts).	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
6.3. If yes, please indicate which of the following alternatives best describes the regulation: International Public Sector Accounting Standards (IPSAS).	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
6.3. Other international standard (e.g. European System of Accounts).	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
6.3. Other	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
6.4. Does the Ministry of Finance (or government more	No

broadly) disclose PPP liabilities (explicit and implicit, direct and contingent) on an online platform/database?	
If yes, please provide the relevant legal/regulatory provisions:	n/a
and specify the website:	n/a
7. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, do(es) any other authority(ies) 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:	High Economic Council and the Cabinet (Council of Ministers).
and provide the relevant legal/regulatory provisions:	<p>According to the PPP Law, The Central Partnership Authority with the High Economic Council would have a role in approving PPP projects project before launching the procurement process, where in Article 13 the Central Partnership Authority is:</p> <p>2. To develop Partnership Project selection criteria, Partnership Project evaluation indicators, to review the Concept, provide technical recommendations to High Economic Council, prioritize and decide on how to take forward the proposed Partnership Projects.</p> <p>3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate.</p> <p>As for project procurement, Article 34 provides:</p> <p>(3) The High Economic Council may authorize an Entity to procure Partnership Project and recommend award of Partnership Contracts for one or more Entities.</p> <p>The National PPP Policy although preceding the PPP Law still reiterated and further provided in Section 7: 1. High Economic Council and Cabinet The HEC verifies PPP concept notes and feasibility studies for each project.</p> <p>Following approval by the HEC, the feasibility studies require approval by the Cabinet of the Islamic Republic of Afghanistan. The Cabinet and the HEC will verify, approve, reject or refer the feasibility studies for review to ensure that</p>
7.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(ies) approve the	Yes

PPP project before signing the PPP contract?	
If yes, please provide the relevant legal/regulatory provisions:	<p>The PPP Law under “Power and Function of the Government (Cabinet)” provides in Article 9”</p> <p>(1) The Government of Islamic Republic of Afghanistan shall give the final notarization, or amend or reject or return for revision the Partnership Contract after the notarization of Partnership Contract by High Economic Council.</p> <p>According to Article 10 of PPP Law, The High Economic Council has the following powers and functions in Public Private Partnership area:</p> <p>4- To approve, reject, and return for revision the award of the Partnership Contract as per the provisions of this law.</p> <p>The National PPP Policy while preceding such law moreover provides that:</p> <p>2. National Procurement Commission</p> <p>The National Procurement Commission (NPC), established via the Public Procurement Law, will have responsibility to approve, reject or advise modification of PPP contract awards after review by the CPA. The NPC has approved projects in different sectors such as: http://treasury.gov.af/national-procurement-commission-for-the-first-time-approved-two-public-private-partnership-ppp-investment-contracts-with-the-total-value-of-113-million/</p>
8. Please select the option that best describes the way your government ensures that PPP projects are consistent with other government public priorities (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>No</p>
If yes, please specify and provide the relevant legal/regulatory provisions:	<p>n/a</p>
8. The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific	<p>Yes</p>

procedure to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions:	<p>The PPP Law under “Project Identification” provides in Article 32 that:</p> <p>(1) The Entity shall identify the project and submit the Entity’s Proposal for assessment to the Central Partnership Authority. And the Entity shall commence the next steps of the process observing provisions of this law and rule of procedure.</p> <p>(2) The Entity shall identify and prioritize Concept from its plan using objective criteria such as national infrastructure or some public service facility policies, supply and demand gaps, expected industrial, economic and social benefits and readiness for implementation.</p> <p>The National PPP Policy p. 4 further provides, “It is the policy of the Government of Afghanistan (GoA) to use PPPs as an alternative funding method in addition to the national budget to expand efficient service delivery and physical infrastructure at the national level for:</p> <ul style="list-style-type: none"> o Attracting and utilizing private sector business expertise; o Effective use of public properties and assets; o Reducing reliance on foreign aid, and o Effective use of existing capital in the private sector and banks. “
8. The procuring authority does not evaluate PPPs against existing government priorities.	No
If yes, please elaborate and provide examples:	n/a
9. 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): 9.1. Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	Yes
Relevant legal/regulatory provision	<p>According to Article 13 of the PPP Law provides that the Central Partnership Authority is entrusted:</p> <p>3.To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate.</p>
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.2. Fiscal Affordability assessment, including the identification of the required long-term public	Yes

commitments (explicit and implicit, direct and contingent liabilities)	
Relevant legal/regulatory provision	<p>According to Article 13 of the PPP Law about the Central Partnership Authority's functions that include:</p> <ol style="list-style-type: none"> 3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate. 4. To set up and maintain a national registry of the Partnership Projects at all phases. 5. To receive, review, and analyze the requests for government support, and the financial and non-financial impacts of such requests; and advise the relevant authorities on the decision making. 6. To assess the fiscal commitment and contingent and non-contingent liabilities of the Partnership Project in the different phases of the project cycle. <p>Article 23 of the PPP Law also provides that: The Public Private Partnership and financial commitments by an Entity shall be developed under a Partnership Contract in such a way that to be incurred as follows:</p> <ol style="list-style-type: none"> 1. Be payable by the budget allocated in the state's budget for partnership project; 2. Be payable by the budget which may be allocated to the associated Project in future... <p>(2)The Public Private Partnership shall ensure the public interest is met at the lowest and affordable cost (taking into account Value for Money); the Public Private Partnership deals shall protect user rights especially of the deserving and low-income classes.</p>
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision	<p>According to Article 13 of the PPP Law about the Central Partnership Authority's functions that include:</p> <ol style="list-style-type: none"> 3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate. <p>Under "Risks Allocation", Article 22 provides that: Risks should be allocated to the party which can best manage and control it, so that the Value for Money of the project is maximized.</p> <p>Article 30 on "The Project Cycle" also provides: (1) The Project Cycle shall include the following phases:</p>

	<p>1. Project Identification: This includes all activities from project planning to approval of Concept including pre-feasibility study.</p> <p>2. Project Preparation: This includes all activities from conducting Feasibility Study and drafting Bidding documents including risk identification, allocation and translation into the Partnership Contract structure.</p> <p>Additionally, according to Section 4(3) of the National PPP Policy: “Risk allocation is a basic principle in PPPs. Risks will be allocated to the party best able to control and manage them, in order that value for money is maximized. The risks of designing, construction, maintenance, operations and services delivery are transferred to the party which is best equipped to manage these.”</p>
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.4. 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	<p>According to Article 13 of the PPP Law about the Central Partnership Authority’s functions that include:</p> <p>3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate. Moreover, Article 21 of the PPP Law on “Value for Money” provides that:</p> <p>(1) The Value for Money assessment shall be used as a core Partnership Project selection criterion for the implementation of a Partnership Project.</p> <p>(2) The result of Value for Money assessment shall include the quantitative and qualitative benefits of various options, and propose an option which is the most beneficial to the GoIRA for the estimated costs, whether the project is delivered by the private sector, the public sector, or Public Private Partnership. Also, according to Section 4 (3) of the National PPP Policy: “The value for money concept means comparing the net benefit of project implementation through the public sector or PPPs, by considering the quantity and quality of benefit, and selecting the one which is more beneficial to the GoIRA for the given costs, whether delivered by the private sector, the public sector, or a partnership between the two. The GoIRA will ensure that a PPP provides the best value for money means of delivering the desired outcome, achieving development, and funding and implementing the project. PPPs should not be seen simply as an opportunity to undertake projects that would ordinarily not obtain approval through normal public budgetary approval processes.”</p>
Is there a specific methodology?	No
If yes, please elaborate	n/a

9.5. Financial viability or bankability assessment	Yes
Relevant legal/regulatory provision	According to Article 13 of the PPP Law about the Central Partnership Authority's functions that include: 3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate.
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.6. Procurement Strategy (i.e., quick assessment to plan and better strategize the tendering process in advance so it is fit for purpose)	Yes
Relevant legal/regulatory provision	Article 30 of the PPP Law provides that: (1) The Project Cycle shall include the following phases: 3. Project Procurement: which includes all activities from procurement strategy...
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.7. Market sounding/ assessment.	
9.7.1. Including the potential interest from contractors and capacity in the market for the contract	No
Relevant legal/regulatory provision	n/a
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.7.2. Specifically designed to identify the solutions and technology available as well as the opportunities for innovation	No
Relevant legal/regulatory provision	n/a
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.8. Environmental impact assessment	Yes
Relevant legal/regulatory provision	Article 3(8) of the PPP Law defines Feasibility Studies as: A strategic, economic, financial, commercial, Value for Money, risks, legal and technical studies, environmental, social and other due diligence required to

	<p>appropriately design and structure a Partnership Project.</p> <p>According to Article 13 of the PPP Law about the Central Partnership Authority's functions that include:</p> <p>3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate.</p> <p>Article 27 of the PPP Law further provides:</p> <p>(1) The Entity shall ensure that Public Private Partnerships are planned and implemented in accordance with environmental laws and highest standards of environmental and social safeguards.</p>
Is there a specific methodology?	<p>Yes</p>
If yes, please elaborate	<p>The Administrative Guidelines for the Preparation of Environmental Impact Assessments Issued by the Director-General in terms of Executive Order No. 1/87 dated 3 June 2008 based on the Environmental Law of the Islamic Republic of Afghanistan (Official Gazette No. 912, dated 25 January 2007) and Environmental Impact Assessment Regulations (Official Gazette No. 939, dated 10 March 2008) provides guidance on conducting such assessment.</p>
9.8.1. Consultation process with affected communities explicitly included in the environmental impact assessment	<p>Yes</p>
Relevant legal/regulatory provision	<p>The Administrative Guidelines for the Preparation of Environmental Impact Assessments provides:</p> <p>5 Public Disclosure</p> <p>Public disclosure is a process of informing communities and the public in the location of the project area about the proposed project. It is designed to provide opportunities for consulting the public about the benefits and potential environmental impacts on the livelihoods of these communities. It is an abbreviated public consultation process that will be undertaken by NEPA. NEPA will reserve the right to undertake a public disclosure process that may include the following:</p> <ul style="list-style-type: none"> • Displaying public information concerning the project scope and activities at one of its Provincial offices; • Undertaking public meetings with community members who will be affected by the project; • Providing copies of the Screening Report to interested members of the public; • Providing written communication on the project scope and activities, should it be deemed possible to do so. <p>NEPA reserves the right to undertake any public consultation activities within the period of 21 days stipulated in the interim procedure. However, if it is considered that this is not necessary for any reason (e.g. previous consultation by the proponent) then the public disclosure period may be waived.</p> <p>If public disclosure is undertaken, any member of the public or affected communities may make a public submission prior to any decision being made</p>

	<p>by NEPA within the time limit stipulated (i.e. 35 days).</p> <p>If in the event that significant concerns are raised by the public during the public disclosure period, then NEPA will have the right to determine a full EIA is required despite any previous project classification assumed by the project lists provided.</p>
Is there a specific methodology?	Yes
If yes, please elaborate	<p>The Administrative Guidelines for the Preparation of Environmental Impact Assessments provides:</p> <p>5 Public Disclosure</p> <p>Public disclosure is a process of informing communities and the public in the location of the project area about the proposed project. It is designed to provide opportunities for consulting the public about the benefits and potential environmental impacts on the livelihoods of these communities. It is an abbreviated public consultation process that will be undertaken by NEPA. NEPA will reserve the right to undertake a public disclosure process that may include the following:</p> <ul style="list-style-type: none"> • Displaying public information concerning the project scope and activities at one of its Provincial offices; • Undertaking public meetings with community members who will be affected by the project; • Providing copies of the Screening Report to interested members of the public; • Providing written communication on the project scope and activities, should it be deemed possible to do so. <p>NEPA reserves the right to undertake any public consultation activities within the period of 21 days stipulated in the interim procedure. However, if it is considered that this is not necessary for any reason (e.g. previous consultation by the proponent) then the public disclosure period may be waived.</p> <p>If public disclosure is undertaken, any member of the public or affected communities may make a public submission prior to any decision being made by NEPA within the time limit stipulated (i.e. 35 days).</p> <p>If in the event that significant concerns are raised by the public during the public disclosure period, then NEPA will have the right to determine a full EIA is required despite any previous project classification assumed by the project lists provided.</p>
9.9. Social impact assessment	Yes
Relevant legal/regulatory provision	<p>Article 3(8) of the PPP Law defines Feasibility Studies as:</p> <p>A strategic, economic, financial, commercial, Value for Money, risks, legal and technical studies, environmental, social and other due diligence required to appropriately design and structure a Partnership Project.</p> <p>According to Article 13 of the PPP Law about the Central Partnership Authority's functions that include:</p> <p>3. To review Partnership Project from the strategic, management, economic, financial, commercial, Value for Money, risks allocation, legal, social and environmental impact perspectives and to provide technical</p>

	<p>recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, Proponent, and other involved stakeholders as appropriate.</p> <p>Article 27 of the PPP Law further provides:</p> <p>(1) The Entity shall ensure that Public Private Partnerships are planned and implemented in accordance with environmental laws and highest standards of environmental and social safeguards.</p> <p>(2) The Entity shall ensure that Public Private Partnership are designed in accordance with the Afghanistan Historical and Culture Heritage Preservation Law, in order to prevent damage and destruction of historical and traditional areas.</p>
Is there a specific methodology?	No
If yes, please elaborate	n/a
9.9.1. Consultation process with affected communities explicitly included in the social impact assessment	No
Relevant legal/regulatory provision	n/a
Is there a specific methodology?	No
If yes, please elaborate	n/a
10. Does the procuring authority include the assessments in the request for proposals and/or tender documents?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
10. If yes, specify which of the assessments are included in the request for proposals and/or tender documents: and specify which of the assessments are included in the request for proposals and/or tender documents: Socio-economic analysis	No
10. Fiscal Affordability assessment;	No
10. Risk identification and allocation;	No
10. Comparative assessment;	No
10. Financial viability;	No
10. Procurement strategy;	No
10. Market sounding for private sector interest;	No
10. Market sounding for technological solutions;	No

10. Environmental impact assessment;	No
10. Social impact assessment;	No
10. Any other	No
Please specify	n/a
10.1. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
specify the website:	n/a
10.1. If yes, specify which of the assessments are published online: Socio-economic analysis	No
10.1. Fiscal Affordability assessment;	No
10.1. Risk identification and allocation;	No
10.1. Comparative assessment;	No
10.1. Financial viability;	No
10.1. Procurement strategy;	No
10.1. Market sounding for private sector interest;	No
10.1. Market sounding for technological solutions;	No
10.1. Environmental impact assessment;	No
10.1. Social impact assessment;	No
10.1. Any other	No
Please specify	n/a
11. Are tender/bidding documents made available online?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
please provide the website:	n/a
11.1. Do the tender documents include a draft PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Article 13 of the PPP Law provides that: The Central Partnership Authority shall have the following powers and functions: 8. To review draft Prefeasibility Study, Feasibility Study and Bidding Documents including the draft Partnership Contract. Article 33 of the PPP Law further provides that:</p>

	<p>(1) The Entity shall prepare a prioritized project and draft Bidding Documents before the commencement of the project procurement.</p> <p>(2) The Central Partnership Authority shall assist or prepare the project if deemed necessary after the approval of the Minister of Finance for effective management and economies of scale.</p> <p>(3) The Entity shall submit the prepared project and draft Bidding Documents to the Central Partnership Authority for review and the required approvals prior to the commencement of the project procurement phase.</p>
12. Have standardized PPP model contracts and/or transaction documents been developed?	Yes
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	Standardized transaction documents are available at: http://ppp.mof.gov.af/
and provide the relevant legal/regulatory provisions:	<p>Article 7 of the PPP Law provides:</p> <p>(1) The Central Partnership Authority shall develop the Standard Documents and publish it on its website.</p> <p>(2) Entity shall use the Standard Documents set out in Clause (1) of this Article for processing Partnership Projects.</p>
13. Does the procuring authority/responsible government entity have a role in either providing or facilitating any of the following requirements? 13.1. Obtaining the required environmental permits.	No
If yes, please specify the role of the procuring authority:	n/a
and provide the relevant legal/regulatory provisions:	n/a
13.2. Obtaining the possession of required land.	Yes
If yes, please specify the role of the procuring authority:	<p>(1) The Entity shall facilitate the utilization of the relevant project site, and provide all necessary support to the Private Partner for utilization of Partnership Project site in accordance with relevant legislative documents and the Partnership Contract.</p> <p>(2) The Entity shall provide the Private Partner with rights to enter onto transit, through carry out activities or install moveable assets on the property of a third Party, and procure necessary cooperation for exercising these rights in accordance with all relevant laws Whenever the Private Partner needs the property (or part of it) of another Entity or person for project implementation, the Entity shall either lease or contract that property for the utilization of the Private Partner for the purposes of project implementation; or expropriate it in accordance with the provisions of the Expropriation law.</p>

<p>and provide the relevant legal/regulatory provisions:</p>	<p>The PPP Law in Article 39 provides that:</p> <p>(1) The Entity shall facilitate the utilization of the relevant project site, and provide all necessary support to the Private Partner for utilization of Partnership Project site in accordance with relevant legislative documents and the Partnership Contract.</p> <p>(2) The Entity shall provide the Private Partner with rights to enter onto transit, through carry out activities or install moveable assets on the property of a third Party, and procure necessary cooperation for exercising these rights in accordance with all relevant laws and the Partnership Contract.</p> <p>Article 40 provides:</p> <p>Whenever the Private Partner needs the property (or part of it) of another Entity or person for project implementation, the Entity shall either lease or contract that property for the utilization of the Private Partner for the purposes of project implementation; or expropriate it in accordance with the provisions of the Expropriation law.</p>
<p>13.3. Obtaining the required right of way.</p>	<p>Yes</p>
<p>If yes, please specify the role of the procuring authority:</p>	<p>(1) The Entity shall facilitate the utilization of the relevant project site, and provide all necessary support to the Private Partner for utilization of Partnership Project site in accordance with relevant legislative documents and the Partnership Contract.</p> <p>(2) The Entity shall provide the Private Partner with rights to enter onto transit, through carry out activities or install moveable assets on the property of a third Party, and procure necessary cooperation for exercising these rights in accordance with all relevant laws Whenever the Private Partner needs the property (or part of it) of another Entity or person for project implementation, the Entity shall either lease or contract that property for the utilization of the Private Partner for the purposes of project implementation; or expropriate it in accordance with the provisions of the Expropriation law.</p>
<p>and provide the relevant legal/regulatory provisions:</p>	<p>The PPP Law in Article 39 provides:</p> <p>(1) The Entity shall facilitate the utilization of the relevant project site, and provide all necessary support to the Private Partner for utilization of Partnership Project site in accordance with relevant legislative documents and the Partnership Contract.</p> <p>(2) The Entity shall provide the Private Partner with rights to enter onto transit, through carry out activities or install moveable assets on the property of a third Party, and procure necessary cooperation for exercising these rights in accordance with all relevant laws and the Partnership Contract.</p> <p>Article 40 provides:</p> <p>Whenever the Private Partner needs the property (or part of it) of another Entity or person for project implementation, the Entity shall either lease or contract that property forthe utilization of the Private Partner for the purposes of project implementation; or expropriate it in accordance with the provisions of the Expropriation law.</p>
<p>14. Please provide any additional information or comments on the answers to the question(s) above and</p>	<p>comments</p>

indicate which one(s) you are referring to:	
Procurement/Tendering of PPPs	
15. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one). The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
15. The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
15. The bid evaluation committee members are not required to have any specific qualifications.	Yes
If yes, please elaborate and provide examples:	<p>The regulatory provisions do not require bid evaluation committees to meet certain requirements. This would be done in each PPP project. However, Article 15 of the PPP Law does provide that:</p> <p>The Entity has the following functions and powers:</p> <p>6. To establish the bid evaluation committee; in consultation with Central Partnership Authority.</p> <p>The Public Procurement Law furthermore minimally provides guidance in Article 3:</p> <p>19. "Evaluation Committee" a committee of expert employees appointed by award authority to evaluate and compare bids, determine the responsive bids and successful bid and prepare the evaluation report, and will encompass not less than three persons.</p>
16. Does the procuring authority issue an invitation for bids/ tender notice for the PPP project?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions:	While no specific provisions are found in the PPP Law, the Public Procurement Law in Articles 19 and 42 provides that the announcement of a tendering proceeding, an invitation to pre-qualify, or a notice of a restricted tender, shall be published in the mass media, and, in the case of international tendering, published in the English language in media of wider international circulation, the expenditure for same to be met by procuring entity. For both domestic

	and international procurement, procuring entities shall to the greatest extent feasible, also publish procurement announcements through the internet.
16.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	http://www.ppu.gov.af/Beta/English/More/CADA.aspx The National Procurement Authority website: https://ageops.net/en/procurement-procedure/announcement/bidding (http://www.npa.gov.af/en/bidding-opportunities) www.acbar.org
17. Are foreign companies subject to any of the following restrictions when participating in the bidding process (check all that apply)? Prohibition to bid in the public tender (including the possibility to discretionary use a procedure that precludes the participation of foreign firms).	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
17. Requirement to have an office or a branch in the country before being allowed to bid in the public tender.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
17. Requirement to form a joint venture with domestic firm(s) to be allowed to bid in the public tender.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
17. Requirement to have prior experience in the country to bid in the public tender.	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
17. Threshold for public tenders to be open for foreign participation/to be considered international tenders.	No

If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
18. 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:	Article 31, Section 2 of the 2015 Public Procurement Rules, provided that the period specified for the procuring authority is 21- 90 days after the bid is announced. If the bid is open and domestic the minimum period for bid submission is 21 days, and if the bid is open and international, then the minimum period for bid submission is 30 days.
and the time in calendar days:	30
19. What are the procurement procedures available and/or set as default for PPP contracts?	No
19.1. Open competitive tendering/bidding: Available	
Default	No
Relevant legal/regulatory provision	n/a
19.2. Competitive tendering/bidding with pre-qualification stage (Restricted tendering): Available	No
Default	Yes
Relevant legal/regulatory provision	<p>Article 3(9) of the PPP Law defines the Partnership Tender Process as: Any proceedings for the tendering and award of a Partnership Contract carried out by or on behalf of an Entity (from pre-qualification to award of Partnership Contract).</p> <p>And in Paragraph 19 of Article 3 that: Bidder: A Person who has expressed interest to a pre-qualification notice, has submitted a pre-qualification response, and has been chosen by an Entity to participate in the Tender Process.</p> <p>Article 25 of the PPP Law provides that: In order to increase the private sector participation and ensuring that business activities are subject to appropriate commercial pressure or competitive tension, and the removal of unnecessary barriers to entry, and the implementation and enforcement of adequate competition rules. Public Private Partnership should be subject to a competitive Tender Process in order to obtain Value for Money and efficiency.</p> <p>Article 34 of the PPP Law further provides: (1) The Entity shall commence the Tender Process for the Partnership Project in accordance with provisions of this law, regulation and the rules of procedure. (2) The Entity shall prepare draft Bidding Documents for the Tender Processes and selection of the Private Partner. (3) The High Economic Council may authorize an Entity to procure Partnership</p>

	<p>Project and recommend award of Partnership Contracts for one or more Entities</p> <p>(4) Where an Entity procures a Partnership Project pursuant to Claus (3) of this Article, it is deemed to have complied to the extent that the Entity has complied with this law, regulations and the rules of procedure.</p> <p>(5) The Entity shall conclude the Partnership Contract for the project with the Preferred Bidder.</p> <p>(6) The details of Partnership Project procurement, securities and other matters related to the Partnership Project procurement shall be regulated in the regulations and the rules of procedure.</p> <p>Article 53 of the PPP Law provides:</p> <p>(1) The relevant Entity shall arrange the Tender Process in a manner that allows all bidders participate without discrimination.</p> <p>(2) The relevant Entity shall ensure that the criteria for participation in the Tender Process are the same for all bidders, without any discrimination.</p> <p>(3) The relevant Entity shall ensure that pre-qualification, Request for Proposal, and other relevant documents are prepared in a manner that does not include expressions which illegally benefit or harm any Bidder.</p> <p>(4) The Entity shall provide information regarding the Partnership Project to stakeholders at all phases of Partnership Project.</p>
19.3. Multi-stage tendering/bidding (with shortlisting of final candidate(s)): Available	No
Default	No
Relevant legal/regulatory provision	n/a
19.4. Competitive dialogue: Available	No
Default	No
Relevant legal/regulatory provision	n/a
19.5. Best and Final Offer (BAFO): Available	No
Default	No
Relevant legal/regulatory provision	n/a
19.6. Direct negotiation: Available	Yes
Default	No
Relevant legal/regulatory provision	<p>Article 10 of the PPP Law provides that: The High Economic Council has the following powers and functions in Public Private Partnership area:</p> <p>5- To approve a procurement method other than competitive procurement for carrying out the procurement of the Partnership Project, to ensure the public interest.</p> <p>The Public Procurement Law furthermore provides a basis for direct negotiation in Article 3 where:</p> <p>9. "Restricted Tendering" the procurement method in which a limited number of bidders are invited to bid for specific procurement, in accordance with</p>

	<p>provisions of this Law.</p> <p>10. "Single-Source Procurement" the method of procurement in which the procurement contract is concluded directly without tendering in accordance with provisions of this law.</p>
19.7. Other. Please, specify: Available	No
Default	No
Relevant legal/regulatory provision	n/a
19.8. If direct negotiation is either an available or default option, does the regulatory framework restrict this procedure to certain exceptional conditions and circumstances (including cases of single source providers or applicable to a certain threshold)?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>While the PPP Law has not addressed such circumstances, the rules in the Public Procurement Law Article 3 and Public Procurement Rules provide that single source procurement shall be used where:</p> <p>(1) the procurement is available only from a single provider (such as where the provider holds exclusive invention or production rights); or</p> <p>(2) other tendering methods would be impractical because of imminent threat to public health, welfare or safety, or an imminent threat of damage to property.</p>
20. 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:	<p>According to the applicable general rules, Articles 14 & 20 of the Public Procurement Law, and 30 of the Public Procurement Rules provide that stages of the procurement process should be detailed in the tender documents.</p>
21. Do the tender documents unambiguously specify the qualification requirements (or the prequalification requirements when applicable) making them available to all potential bidders as part of the tender notice/ invitation for bids?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>The general rules in the Public Procurement Law Article 20 provide:</p> <p>(1) Bidding documents and request for proposal, which shall be prepared by the entity, will be the basis of tendering and shall contain the following information:</p> <p>a. Description of the respective procurement, information contained in the</p>

	<p>procurement announcement, conditions to prepare and period for submitting bids, date and place for opening the bids.</p> <p>b. Criteria for evaluating bidders' eligibility and qualification;</p> <p>b. Bids evaluation criteria;...</p> <p>i. Bid documents distributed to bidders shall have the same subject and content and should not contradict each other;</p> <p>j. Any other information in accordance with the provisions of this Law.</p> <p>(2) The bidding documents shall be made available for all bidders who request it. Request for proposal shall be made available for eligible bidders only.</p> <p>(3) Standard Bidding documents for procurement of medicine and medical equipment will be prepared by the National Procurement Authority in consultation with the Ministry of Public Health.</p> <p>(4) Bidders can request more information about bidding documents and request for proposal, if the request is filed with the entity at least 10 days prior to bid submission deadline.</p> <p>(5) The entity is obliged to provide clarifications to the bidder and for other bidders if necessary in accordance with the rules of Procurement Procedures.</p> <p>(6) If deemed necessary, the entity may extend bid submission period before the expiration of bid submission deadline.</p> <p>Article 17 of this Law also provides:</p> <p>(1) A prequalification proceeding may be held for procurements of complex nature and for group of contracts in order to identify the bidders that are qualified to submit bids. Qualifications of bidders in prequalification proceedings will be assessed in accordance with section (6) of Paragraph (1) of article 16 this law.</p> <p>(2) Pre-Qualification evaluation documents shall be provided for all bidders responding positively to the invitation to prequalify and shall contain all information required to complete applications for prequalification.</p> <p>(3) Responses to requests for clarification of the prequalification documents shall be communicated to all bidders according to Procurement Procedure. If the bidders need sufficient time to respond, the procuring entity shall be obliged to extend the deadline for submission of applications.</p> <p>(4) The entity shall take decision with respect to each application to pre-qualify. All bidders that have been pre-qualified shall be invited to submit bids in the procurement proceedings.</p> <p>(5) Other cases that require pre-qualification of bidders will be foreseen in the Procurement Procedure.</p>
<p>21.1. Are there any parameters/limits to the qualification requirements to ensure that they do not unduly restrict competition of qualified bidders?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Article 53 of the PPP Law provides that:</p> <p>(1) The relevant Entity shall arrange the Tender Process in a manner that allows all bidders participate without discrimination.</p> <p>(2) The relevant Entity shall ensure that the criteria for participation in the Tender Process are the same for all bidders, without any discrimination.</p>

	<p>(3) The relevant Entity shall ensure that pre-qualification, Request for Proposal, and other relevant documents are prepared in a manner that does not include expressions which illegally benefit or harm any Bidder.</p> <p>(4) The Entity shall provide information regarding the Partnership Project to stakeholders at all phases of Partnership Project.</p>
22. Can potential bidders/tenderers submit questions to clarify the public procurement notice and/or the bidding/tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions:	n/a
22.1. If yes, can the bidders also suggest innovations to improve the tender documents or procurement approach, including for example the provision of value engineering and/or technologically neutral options?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
and elaborate on the kind of innovations that are allowed:	n/a
22.2. If yes, is there a timeframe for the procuring authority to address questions and clarifications by bidders?	No
If yes, please indicate the timeframe:	n/a
and provide the relevant legal/regulatory provisions:	n/a
22.3. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?	Yes
If yes, please provide the relevant legal/regulatory provisions:	Article 20 (4) of the Procurement Law and 33 of the Procurement Rules require disclosing questions and clarifications to all potential bidders.
22.4. If yes, does the procuring authority extend the proposal submission deadline due to the modifications introduced in	Yes

the bidding/tender documents?	
If yes, please provide the relevant legal/regulatory provisions:	<p>Article 20 of the Public Procurement Law provides:</p> <p>(4) Bidders can request more information about bidding documents and request for proposal, if the request is filed with the entity at least 10 days prior to bid submission deadline.</p> <p>(5) The entity is obliged to provide clarifications to the bidder and for other bidders if necessary in accordance with the rules of Procurement Procedures.</p> <p>(6) If deemed necessary, the entity may extend bid submission period before the expiration of bid submission deadline.</p>
23. Besides questions and clarifications, can the procuring authority conduct a pre-bid conference?	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the response to the queries raised by the bidders in the pre-bid conference to all bidders?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
24. Does the procuring authority require the bidders to prepare and submit a financial model with their proposals/ bids?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
If no, please elaborate:	There are no provisions that require financial models to be presented with proposals.
25. Does the procuring authority evaluate the bids/tenders strictly and solely in accordance with the evaluation criteria stated in the bidding/tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>The general rules in Article 22 of the Public Procurement Law provide:</p> <p>(3) As mentioned in paragraph (1) of this Article, the evaluation committee shall evaluate and compare the bids in compliance with the contents of the bidding documents within the period foreseen in Procurement Procedure and seek clarifications of bids in writing from bidders but cannot accept requests for changes in, or negotiate any terms of the bids with the bidders, else it shall</p>

	<p>be legally pursued.</p> <p>(4) The evaluation committee shall correct arithmetical errors appearing on the bid. A bid in which the requirements of bid documents have not been observed, or its work specifications are different with that of other bids shall not be valid.</p> <p>(5) The successful bid shall be the responsive bid which offers the lowest price after evaluation, and meets the criteria specified in the bidding documents including qualitative and technical standards of procurement. Only offering the lowest price by an offer that has not been specified responsive will not be the ground for success.</p>
<p>25.1. Can criteria other than price (non-price attributes) be used when evaluating the tenders/bids of a PPP contract?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Article 31 of the PPP Law provides that:</p> <p>(1) The Central Partnership Authority shall prepare a project selection criteria procedure, which shall be approved by Minister of Finance, and published on its website.</p> <p>(2) The minimum criteria stipulated in Clause 1 of this article are as follows:</p> <ol style="list-style-type: none"> 1. Ensuring Value for Money, 2. Is the project affordable and does it ensure financial sustainability for the Entity; and 3. Transfer risks to the party best able to manage that risk. <p>The general rules in the Public Procurement Law Article 20 provide:</p> <p>(1) Bidding documents and request for proposal, which shall be prepared by the entity, will be the basis of tendering and shall contain the following information:</p> <ol style="list-style-type: none"> a. Description of the respective procurement, information contained in the procurement announcement, conditions to prepare and period for submitting bids, date and place for opening the bids. b. Criteria for evaluating bidders' eligibility and qualification; b. Bids evaluation criteria; c. Procurement method; d. Amount and type of bid security provided by bidder; e. The amount of performance security by the successful bidder; f. The manner and currency in which the bid price is to be formulated, including elements such as expenses incidental to procurement, any applicable transportation and insurance charges, custom duties and income tax; g. Details about the nature and required technical and quality characteristics of the goods, construction work or services to be procured, procurement consistency, any incidental services to be performed; the location where construction works isto be effected or the services are to be provided; and the desired or required time for goods to be delivered, construction works or services to be performed; h. Description and amount of the penalty for delay, if any; i. Bid documents distributed to bidders shall have the same subject and

	<p>content and should not contradict each other;</p> <p>j. Any other information in accordance with the provisions of this Law.</p> <p>(2) The bidding documents shall be made available for all bidders who request it. Request for proposal shall be made available for eligible bidders only.</p> <p>(3) Standard Bidding documents for procurement of medicine and medical equipment will be prepared by the National Procurement Authority in consultation with the Ministry of Public Health.</p> <p>(4) Bidders can request more information about bidding documents and request for proposal, if the request is filed with the entity at least 10 days prior to bid submission deadline.</p> <p>(5) The entity is obliged to provide clarifications to the bidder and for other bidders if necessary in accordance with the rules of Procurement Procedures.</p> <p>(6) If deemed necessary, the entity may extend bid submission period before the expiration of bid submission deadline.</p> <p>Article 23 of the Public Procurement Law also provides that:</p> <p>(1) The Bids Evaluation Committee shall evaluate the offers as per the provisions of this law and the rules of procurement procedures, and after determining responsive bids prepare a report on the evaluation and comparison of bids in accordance with the criteria set forth in the bidding documents, The evaluation report shall be so organized as to demonstrate clearly the quantitative and qualitative advantages and disadvantages of the responsive bid. The report shall include any dissenting opinions, if any.</p>
<p>25.2. If criteria other than price are used, do they have to be justified, objective and quantifiable?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Article 53 of the PPP Law provides that:</p> <p>(1) The relevant Entity shall arrange the Tender Process in a manner that allows all bidders participate without discrimination.</p> <p>(2) The relevant Entity shall ensure that the criteria for participation in the Tender Process are the same for all bidders, without any discrimination.</p> <p>(3) The relevant Entity shall ensure that pre-qualification, Request for Proposal, and other relevant documents are prepared in a manner that does not include expressions which illegally benefit or harm any Bidder.</p> <p>(4) The Entity shall provide information regarding the Partnership Project to stakeholders at all phases of Partnership Project.</p>
<p>25.3. When price is used as one of the evaluation criteria, does the procuring authority provide a cost estimate?</p>	<p>No</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>n/a</p>
<p>26. In the case where only one proposal is submitted, which of the following options best describes the way the procuring authority</p>	<p>No</p>

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.	
Please specify and provide the relevant legal/regulatory provisions:	n/a
26. The procuring authority considers sole proposal valid as long as it meets the conditions outlined in the tender documents.	No
Please provide the relevant legal/regulatory provisions:	n/a
26. The procuring authority does not award a PPP contract if only one proposal is submitted.	No
Please provide the relevant legal/regulatory provisions:	n/a
26. The regulatory framework does not include any provisions.	Yes
27. Does the procuring authority publish the contract award notice?	Yes
If yes, please specify the means of publication and provide the relevant legal/regulatory provisions:	General provisions apply, and Article 84(2) of the Public Procurement Rules provides that the procuring entity shall publish notices of the proposed award and contract award and further elaborates that “publication” of the award means a notice in the website of PPU and such other websites that the PPU deems appropriate, that consist of characteristics of the procurement [project], the information about the procuring authority and the contractor, and the total value of the contract.
27.1. If yes, is the contract award notice published online?	Yes
If yes, please specify the website:	http://www.ppp.mof.gov.af https://ageops.net/en/procurement-procedure/contract/awarded (it was: http://www.npa.gov.af/ewarded-contracts)
28. Does the procuring authority notify all the bidders individually about the result of the PPP tendering/bidding process?	Yes
If yes, please provide the relevant legal/regulatory provisions:	General rules in Article 43 of the Public Procurement Law and 84 of the Public Procurement Rules provides that the procuring authority provide all bidders with the result of the PPP procurement process.

28.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid/tender?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
28.2. If yes, does the procuring authority provide bidders/tenderers with the option of holding a debriefing meeting to discuss why their bid/tender was not selected?	No
If yes, please provide the relevant legal/regulatory provision:	No
29. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow aggrieved unsuccessful bidders to challenge the award decision?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
and the time in calendar days:	n/a
29.1. If yes, is the standstill period set out in the notice of intention to award?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
30. Does the regulatory framework restrict material negotiations (for example price or scope) with the winning bidder between the award and the signature of the PPP contract?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
31. Does the regulatory framework allow for complaint review mechanisms pertaining to the PPP bidding/tendering process?	Yes

If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	The PPP Law provides under “Complains Assessment Committee” in Article 16 that: (1) The Complains Committee shall be established for assessing and addressing the complains in the preparation, procurement and contract management phases of projects. (2) The Ministry of Finance shall propose members of the Complains Committee to the President for approval.
31.1. If yes, is there a timeframe in which decisions on complaints are issued?	No
If yes, please elaborate the timeframe:	n/a
and provide the relevant legal/ regulatory provisions:	n/a
31.2. If yes, are decisions subject to appeal?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
31.3. If yes, is the original complaint and/or the appeal reviewed resolved by an independent administrative authority (other than the procuring authority or the courts)?	Yes
If yes, please provide the relevant legal/regulatory provisions:	The PPP Law provides under “Complains Assessment Committee” in Article 16 that: (1) The Complains Committee shall be established for assessing and addressing the complaints in the preparation, procurement and contract management phases of projects. (2) The Ministry of Finance shall propose members of the Complains Committee to the President for approval.
and identify the approving authority:	Complains Assessment Committee
32. Does the procuring authority publish the PPP contract? (notwithstanding the protection of commercially sensitive information)	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
32. If yes, which of the following elements does the publication include? 32.1. A summary of the PPP contract: Available (e.g. by request or in the official gazette)	No
Available online	No

Website	n/a
Relevant legal/regulatory provision	n/a
32.2. The full PPP contract: Available (e.g. by request or in the official gazette)	No
Available online	No
Website	n/a
Relevant legal/regulatory provision	n/a
32.3. All of the contract's annexes and appendixes: Available (e.g. by request or in the official gazette)	No
Available online	No
Website	n/a
Relevant legal/regulatory provision	n/a
32.4. Any subsequent amendment made to the PPP contract: Available (e.g. by request or in the official gazette)	No
Available online	No
Website	n/a
Relevant legal/regulatory provision	n/a
33. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:	n/a
Contract Management	
34. Does the procuring authority or contract management authority establish a system to manage the PPP contract (i.e., attributing responsibilities or establishing specific management tools)?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>The PPP Law provides under "Management of Partnership Contract" in Article 38 that:</p> <p>(1) The relevant Entity and other responsible entities shall ensure that the Partnership Contract is implemented as per the provision of this law regulations, rules of procedure and the Partnership Contract.</p> <p>(2) The Entity shall, with the assistance of the Central Partnership Authority, follow up on the Private Partner 's satisfying its contractual obligations and</p>

	<p>any amendments introduced to the Partnership Contract, while giving due regard to provisions of the Law, regulations and the rules of procedure.</p> <p>(3) Implementation of Partnership Contract by another Entity does not prevent the relevant Entity from making sure that the Partnership Contract efficiently and effectively serves the public interests.</p> <p>(4) The government may delegate the contract management responsibilities of different entities to one Entity to ensure proper contract management.</p>
<p>34.1. If yes, which of the following tools does it include (check all that apply)? Establishment of a PPP contract management team</p>	No
<p>Relevant legal/regulatory provisions</p>	n/a
<p>34.1. Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</p>	No
<p>Relevant legal/regulatory provisions</p>	n/a
<p>34.1. Elaboration of a PPP contract management manual or an equivalent document</p>	No
<p>Relevant legal/regulatory provisions</p>	n/a
<p>34.1. Establishment of personnel training programs (i.e., initial training and continued training throughout the course of the project)</p>	No
<p>Relevant legal/regulatory provisions</p>	n/a
<p>34.1. Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</p>	No
<p>Relevant legal/regulatory provisions</p>	n/a
<p>34.2. 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</p>	No

specified and/or its members are required to meet detailed qualifications.	
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
34.2. The PPP contract management team members are required to meet sufficient qualifications without specific details.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
34.2. The PPP contract management team members are not required to meet any specific qualifications.	No
If yes, please elaborate and provide examples:	n/a
35. Does the procuring or contract management authority establish a monitoring and evaluation system of the construction of the PPP project (i.e., system for tracking progress of construction, monitoring and evaluation of performance, etc.)?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>The PPP Law provides under “Monitoring and Evaluation” in Article 44 that:</p> <p>(1) The Entity and Central Partnership Authority shall monitor the ongoing management and performance of the projects.</p> <p>(2) The monitoring and evaluation mechanism and specifics shall be regulated in the Partnership Contract as per the provision of the laws of the country and internationally accepted principles.</p> <p>Article 15 of the PPP Law also provides that:</p> <p>The Entity has the following functions and powers:</p> <p>10. To monitor and evaluate implementation of the Partnership Contract and to present the report to relevant authorities and the Central Partnership Authority.</p>
35.1. If yes, is the PPP contract construction performance information made available to the public (e.g. by request or published in the official gazette/bulletin board)?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a

35.2. If yes, is the PPP contract construction performance information made publicly available online?	No
If yes, please specify the website:	n/a
36. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Article 15 of the PPP Law provides that: The Entity has the following functions and powers: 10. To monitor and evaluate implementation of the Partnership Contract and to present the report to relevant authorities and the Central Partnership Authority.</p>
36.1. If yes, which of the following tools does it include (check all that apply)? Payments are linked to performance	Yes
Relevant legal/regulatory provisions	<p>The general rules in the Public Procurement Law under “Payments” in Article 32 provide that:</p> <p>(1) The entity is obliged to include the payments proportional to the progress of work at specific phases of contract performance by having in view as the completion of a percentage of specified activities, the obligations met by contractor and compensation for the delay, in the procurement contract.</p> <p>(2) The procurement contract shall provide for the manner and retention of percentage of the progress payment as retention money.</p> <p>(3) A progress payment will be made based on the Certificate that confirms the conditions for payment in accordance with contract. In case of delay, the provisions of article 39 of this law shall apply.</p> <p>(4) The entity pays the procurement fund to the contractor provided that the assigned committee have checked and verified the procurement as well as having approved and signed the goods delivery or performing services and/or work progress or completion by recording them date-wise in accordance with the provision of articles 59 and 60 of this law.</p>
36.1. Performance is assessed against output/ Key performance indicators (KPI) set in the tender documents and the PPP contract	No
Relevant legal/regulatory provisions	n/a
36.1. The procuring or contract management authority can abate (reduce) payments for non-	Yes

performance of operating obligations under the PPP contract	
Relevant legal/regulatory provisions	<p>The general rules in Article 39 of the Public Procurement Law under “Penalty for Delay and Bonus Award” provides that:</p> <p>(1) The Procurement Contract and bidding documents shall provide cases of delay in contract performance by the entity and the contractor. Such a clause shall specify:</p> <p>a. The agreed sum to be paid per time-unit (day, week or month) of delay;</p> <p>b. The maximum penalty amount</p> <p>(2) The contractor entity shall pay the penalty for delay agreed, if he/she delays the contract performance.</p> <p>(3) The payment of penalty for delay does not affect contractor’s or the entity’s other liability as stipulated in the contract.</p> <p>(4) Penalty does not apply if the delay is beyond the control and without the fault or negligence of the contractor.</p> <p>(5) If contract performance as stipulated in the contract is fulfilled ahead of time benefiting the entity, the entity may award a bonus for the contractor. Conditions of bonus award will be regulated in Procurement Procedure.</p>
36.1. The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions	<p>Article 52(2) of the PPP Law provides that:</p> <p>The Private Partner is required to present financial reports according to the Partnership Contract terms to the Entity and the Ministry of Finance, if required.</p>
36.1. The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions	<p>Article 15 of the PPP Law provides that:</p> <p>The Entity has the following functions and powers:</p> <p>10. To monitor and evaluate implementation of the Partnership Contract and to present the report to relevant authorities and the Central Partnership Authority.</p>
36.1. The PPP contract performance information must be available to the public (e.g. by request or in the official gazette/bulletin board)	No
Relevant legal/regulatory provisions	n/a
36.1. The PPP contract performance information must be available online.	No

If yes, please specify the website:	n/a
Relevant legal/regulatory provisions	n/a
37. Is there an economic/technical regulator to oversee the implementation of PPP contracts?	No
If yes, please provide its name and website:	n/a
and the relevant legal/regulatory provisions establishing its mandate:	n/a
37.1. If yes, does the economic regulator have (check all that apply): Political autonomy (for example, through independence of its Directors' appointments of the Line Ministry or other similar mechanisms).	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
37.1. Managerial autonomy (freedom to determine the use of its budget and organization of resources)	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
37.1. Tariff setting authority.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
37.1. Dispute resolution authority.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
38. Are foreign companies restricted from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
39. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in	No

the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
39.1. 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 two years of commercial operation).	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions	n/a
39.1. Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
39.1. In other cases, flexibility to change the ownership structure and/or assign the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
40. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	Article 41 of the PPP Law under “Amendments” provides that: (1) The Parties shall determine the amendment conditions in the Partnership Contract, taking into consideration contract duration, Investment Value and profit collection in the project.

	(2) The Entity shall not process any increase in price that exceed 15 % of the value of the total payment by the Entity and/ or total turnover of the Private Partner for the duration of the Partnership Contract. In case of several amendments or variations the value shall be assessed on the basis of net cumulative value of successive amendments or variations.
40.1. If yes, is an approval from a government authority, other than the procuring authority, required?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	Article 10 of the PPP Law provides that: The High Economic Council has the following powers and functions in Public Private Partnership area: 6- To approve, reject and return for revision the request for extension and amendment of the Partnership Contract as per the provisions of this Law, regulation and rules of procedure.
40.2. If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	Article 41 of the PPP Law under “Amendments” provides that: (1) The Parties shall determine the amendment conditions in the Partnership Contract, taking into consideration contract duration, Investment Value and profit collection in the project. (2) The Entity shall not process any increase in price that exceed 15 % of the value of the total payment by the Entity and/ or total turnover of the Private Partner for the duration of the Partnership Contract. In case of several amendments or variations the value shall be assessed on the basis of net cumulative value of successive amendments or variations. Moreover, the general rules in Article 30(2) of the Public Procurement Law provide that such amendments to the contract may not change the core substance of the contract.
40.2.1. If yes, is there a threshold for which a new tendering process is required?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	Article 41 of the PPP Law under “Amendments” provides that: (2) The Entity shall not process any increase in price that exceed 15 % of the value of the total payment by the Entity and/ or total turnover of the Private Partner for the duration of the Partnership Contract. In case of several amendments or variations the value shall be assessed on the basis of net cumulative value of successive amendments or variations. The general rules in Article 30 of the Public Procurement Law moreover provide that if the amendment increases the cost of the contract previously agreed upon, the procurement process must be conducted once again.
and please elaborate:	The Entity shall not process any increase in price that exceed 15 % of the value of the total payment by the Entity and/ or total turnover of the Private Partner for the duration of the Partnership Contract. In case of several amendments or

	variations the value shall be assessed on the basis of net cumulative value of successive amendments or variations.
40.2.. A change in the risk allocation of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
40.2. A change in the financial and/or economic balance of the contract	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	<p>Article 41 of the PPP Law under “Amendments” provides that:</p> <p>(1) The Parties shall determine the amendment conditions in the Partnership Contract, taking into consideration contract duration, Investment Value and profit collection in the project.</p> <p>(2) The Entity shall not process any increase in price that exceed 15 % of the value of the total payment by the Entity and/ or total turnover of the Private Partner for the duration of the Partnership Contract. In case of several amendments or variations the value shall be assessed on the basis of net cumulative value of successive amendments or variations.</p>
40.2. A change in the duration of the contract.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	<p>Article 42 of the PPP Law provides that:</p> <p>(1) An Entity may extend the duration of the Partnership Contract for an additional period which cannot exceed more than 25% of initial duration appointed in the Partnership Contract for the following reasons:</p> <p>1- Delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;</p> <p>2- Project suspension brought about by acts of the Entity or other public authorities</p> <p>3- Increase in costs arising from requirements of the Entity not originally foreseen in the contract, if the Private Partner would not be able to otherwise recover said costs without such extension;</p> <p>4- Any other reason required to safeguard the public interest.</p> <p>(2) The conditions and obligations of a Partnership Contract duration extension shall be regulated in the Partnership Contract.</p>
40.2. A change in the agreed price or tariff or annuity payments.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	<p>Article 41 of the PPP Law under “Amendments” provides that:</p> <p>(1) The Parties shall determine the amendment conditions in the Partnership Contract, taking into consideration contract duration, Investment Value and profit collection in the project.</p> <p>(2) The Entity shall not process any increase in price that exceed 15 % of the value of the total payment by the Entity and/ or total turnover of the Private Partner for the duration of the Partnership Contract. In case of several amendments or variations the value shall be assessed on the basis of net cumulative value of successive amendments or variations.</p> <p>Article 48 of the PPP Law also provides that:</p>

	<p>(1) Tariffs, duties, lease, transit fee, and other types of revenue will be determined in the procurement phase of Partnership Project in accordance with the laws and regulations of Afghanistan.</p> <p>(2) Methods and formulas of adjustments to tariffs, duties, lease, fees, transit fees, and other types of revenue will be set out in the Partnership Contract.</p>
40.3. Can the procuring/contract management authority modify a PPP contract unilaterally?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
41. Does the regulatory framework (including standard contractual clauses) expressly address the following circumstances that may occur during the life of the PPP contract? (check all that apply): 41.1. Force Majeure.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	<p>Article 43 of the PPP Law provides that:</p> <p>(1) The parties may terminate a Partnership Contract under the conditions where the early termination can occur.</p> <p>(2) The Condition where the early termination can occur and obligations of all parties involved in the Partnership Project and related affairs will be set out in the Partnership Contract.</p> <p>(3) The minimum criteria for dealing with the early termination and the rights and obligations, effects and termination costs of all involved parties in the cases of Force Majeure, Termination by the Grantor (Government Default), Voluntary Termination, Termination due to Breach, and Termination by the Private Partner (Private Partner Default) and Entity shall be set out in the Partnership Contract.</p>
41.2. Material Adverse Government Action	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
41.3. Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
41.4. Refinancing.	No
If yes, please provide the relevant	n/a

legal/regulatory/standard contractual provisions:	
41.5. Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	<p>The general rules in Article 36 of the Public Procurement Law provide that:</p> <p>(1) The contractor may sub-contract part of the contract on condition that:</p> <p>a. Sub-contracting is provided in the bidding documents and in the contract.</p> <p>b. Written consent of the entity is obtained.</p> <p>c. Sub-contract does not contradict prime contract.</p> <p>(2) Consent to a subcontract, stated in the sub-article (1) of this article may be granted on condition that it does not affect any other responsibility of the contractor under the procurement contract, and the sub-contractor shall be qualified to carry out the sub-contracted duties and be committed to meet the obligations of the prime contract.</p> <p>(3) Conditions, procedures for sub-contracting and its permissible limits shall be foreseen in Procurement Procedure.</p>
42. Does the regulatory framework (including standard contractual clauses) allow for alternative dispute resolution mechanisms in case of disputes arising from the implementation of PPP contracts?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	The PPP Law provides under “Dispute Resolution” in Article 45 that: Disputes between parties shall be resolved based on the dispute resolution mechanism set out in the Partnership Contract.
42.1. If yes, is arbitration available as an option? Domestic arbitration only	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions	n/a
Domestic arbitration and international arbitration	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	<p>The PPP Law provides under “Dispute Resolution” in Article 45 that: Disputes between parties shall be resolved based on the dispute resolution mechanism set out in the Partnership Contract.</p> <p>The Commercial Arbitration Law of 2007 provides in Article 3 that: Arbitration can be done in two ways, domestic or international.</p> <p>An Arbitration is international:</p> <p>If in the contract it is described as such;</p> <p>If the transaction occurs between two or more countries although this has not been mentioned in the agreement.</p> <p>If it has not been mentioned in the agreement, the law of the country where the parties are transacting business, shall be applicable;</p>

	In situations not stipulated by paragraph 1) of this article it is called domestic arbitration.
No	No
42.2. If applicable, are arbitration awards enforceable by local courts?	Yes
If yes, please elaborate and provide the relevant legal/regulatory/standard contractual provisions:	Article 56 of the Commercial Arbitration Law of 2007 provides, “1) An Arbitral Award, irrespective of the country in which it was made, shall be enforceable.”
42.3. Are other Alternative Dispute Resolution (ADR) options available (including mediation or dispute resolution boards)?	Yes
If yes, please elaborate and provide the relevant legal/regulatory/standard contractual provisions:	The PPP Law provides under “Dispute Resolution” in Article 45 the option for the parties to designate their preferred choice of dispute settlement in which: Disputes between parties shall be resolved based on the dispute resolution mechanism set out in the Partnership Contract.
43. 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?	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
43.1. 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.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	n/a
43.1. The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
If yes, please specify and provide the relevant	n/a

legal/regulatory/standard contractual provisions:	
43.1. The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	n/a
43.1. Other	No
please specify:	n/a
44. Does the regulatory framework (including standard contractual clauses) expressly address the grounds for termination of a PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	<p>Article 43 of the PPP Law provides that:</p> <p>(1) The parties may terminate a Partnership Contract under the conditions where the early termination can occur.</p> <p>(2) The Condition where the early termination can occur and obligations of all parties involved in the Partnership Project and related affairs will be set out in the Partnership Contract.</p> <p>(3) The minimum criteria for dealing with the early termination and the rights and obligations, effects and termination costs of all involved parties in the cases of Force Majeure, Termination by the Grantor (Government Default), Voluntary Termination, Termination due to Breach, and Termination by the Private Partner (Private Partner Default) and Entity shall be set out in the Partnership Contract.</p>
44.1. If yes, does the regulatory framework (including standard contractual clauses) also addresses the consequences for the termination of the PPP contract?	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	n/a
45. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:	n/a
Unsolicited Proposals	

46. Are unsolicited proposals in Afghanistan (PPP): (choose only one) Explicitly prohibited by the legal framework?	No
46. Explicitly allowed by the legal framework?	Yes
46. Not regulated by the legal framework, but do happen in practice?	No
46. Not regulated by the legal framework, and do not happen in practice?	No
If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions	<p>Article 35 of the PPP Law provides that:</p> <p>(1) The Proponent shall submit its Unsolicited Proposal as long as the project is in the public interest and aligned with national development plans/ sector plans to the Entity or/and Central Partnership Authority.</p>
47. Does the procuring authority conduct an assessment to evaluate unsolicited proposals?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions:	<p>Article 35 of the PPP Law provides that:</p> <p>(2) Unsolicited Proposal is registered as Concept of Partnership Project after the approval, the Feasibility Study of the proposed Partnership Project shall be conducted as per the provisions of this law, regulations and the rules of procedure.</p> <p>(3) The procurement of Unsolicited Proposal shall be carried out based on the Partnership Project procurement methods. None of the Unsolicited Proposal shall be processed through direct-procurement, except for projects that fulfill the conditions of direct-procurement or where it is in the public interest.</p> <p>(4) The Proponent shall submit full evidence of qualifications to carry out the Partnership Contract, as an annex to Unsolicited Proposal.</p> <p>(5) The further processes of the Unsolicited Proposal shall be regulated in the regulations and the rules of procedure.</p>
47.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions:	<p>Article 35 of the PPP Law provides that:</p> <p>(2) Unsolicited Proposal is registered as Concept of Partnership Project after the approval, the Feasibility Study of the proposed Partnership Project shall be conducted as per the provisions of this law, regulations and the rules of procedure.</p> <p>(3) The procurement of Unsolicited Proposal shall be carried out based on the Partnership Project procurement methods. None of the Unsolicited Proposal shall be processed through direct-procurement, except for projects that fulfill the conditions of direct-procurement or where it is in the public interest.</p>

	<p>(4) The Proponent shall submit full evidence of qualifications to carry out the Partnership Contract, as an annex to Unsolicited Proposal.</p> <p>(5) The further processes of the Unsolicited Proposal shall be regulated in the regulations and the rules of procedure.</p>
<p>48. Which of the following options best describes 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.</p>	No
<p>If yes, please specify and provide the relevant legal/regulatory provisions:</p>	n/a
<p>48. The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</p>	Yes
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>The PPP Law provides in Article 35 that:</p> <p>(1) The Proponent shall submit its Unsolicited Proposal as long as the project is in the public interest and aligned with national development plans/ sector plans to the Entity or/and Central Partnership Authority.</p> <p>The National PPP Policy p. 4 further provides, “It is the policy of the Government of Afghanistan (GoA) to use PPPs as an alternative funding method in addition to the national budget to expand efficient service delivery and physical infrastructure at the national level for:</p> <ul style="list-style-type: none"> o Attracting and utilizing private sector business expertise; o Effective use of public properties and assets; o Reducing reliance on foreign aid, and o Effective use of existing capital in the private sector and banks. “
<p>48. The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p>	No
<p>If yes, please elaborate and provide examples:</p>	n/a
<p>49. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p>	Yes

<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>Article 35 of the PPP Law provides that:</p> <p>(2) Unsolicited Proposal is registered as Concept of Partnership Project after the approval, the Feasibility Study of the proposed Partnership Project shall be conducted as per the provisions of this law, regulations and the rules of procedure.</p> <p>(3) The procurement of Unsolicited Proposal shall be carried out based on the Partnership Project procurement methods. None of the Unsolicited Proposal shall be processed through direct-procurement, except for projects that fulfill the conditions of direct-procurement or where it is in the public interest.</p> <p>(4) The Proponent shall submit full evidence of qualifications to carry out the Partnership Contract, as an annex to Unsolicited Proposal.</p> <p>(5) The further processes of the Unsolicited Proposal shall be regulated in the regulations and the rules of procedure.</p> <p>Section 14 of the National PPP Policy further provides the general principles that govern unsolicited proposals that include, “a) Encourage private investors to develop proposals for PPPs that address policy priorities in relevant sectors; b) Ensure competitive principles are considered in unsolicited proposals; c) Ensure transparency in assessing projects and awarding contracts based on unsolicited proposals; d) Minimize incentives to submit poor-quality or frivolous project proposals, to avoid creating unnecessary workload in assessing unsolicited proposals. The MoF and relevant agencies are responsible for assessing unsolicited proposals to determine their compliance with the principles set out for PPPs in this PPP Policy. If compliant, the proposed PPP will proceed through the procurement process in the same way as other PPPs.”</p>
<p>50. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</p>	<p>Yes</p>
<p>If yes, please provide the relevant legal/regulatory provisions:</p>	<p>The same rules that apply to solicited proposals apply to unsolicited ones in this regard. Hence, Article 31, Section 2 of the 2015 Public Procurement Rules, provided that the period specified for the procuring authority is 21- 90 days after the bid is announced. If the bid is open and domestic the minimum period for bid submission is 21 days, and if the bid is open and international, then the minimum period for bid submission is 30 days.</p>
<p>and the time in calendar days:</p>	<p>30</p>
<p>51. Does the procuring authority use any of the following incentive mechanisms to reward/compensate the submission of unsolicited proposals? (check all that apply): 51.1. Access to the best and final offer (BAFO) process and/or automatic shortlisting.</p>	<p>No</p>

51.2. Developer's fee (reimbursing the original proponent for the project development cost).	No
51.3. Bid Bonus.	No
51.4. Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).1	No
51.5. Other	No
please specify:	n/a
Please provide the relevant legal/regulatory provisions:	n/a
52. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:	n/a