BENCHMARKING INFRASTRUCTURE DEVELOPMENT 2020 IN BOTSWANA - PPP

SURVEY QUESTION	ANALYSIS
Regulatory and Institutional Framework for PPPs	
2. Does the regulatory framework in your country allow procuring PPPs?	Yes
If yes, please specify the relevant regulatory framework and the year of adoption:	The main regulations applicable to the PPP contracts include: (1) Public Procurement and Asset Disposal Act Chapter 42:08, which entered into force on 2 July 2002 as amended (hereafter, "PPA"), which establishes the Public Procurement and Asset Disposal Board and its committees and provides for the procurement of works, supplies and services, for the disposal of public assets and related matters; (2) Public Procurement and Asset Disposal Regulations of 2006 (hereafter, "PPA Regulations"), which clarify the provisinos of the PPA; (3) Public Private Partnership Policy and Implementation Framework issued by the Ministry of FInance and Development Planning in June 2009 (hereafter, "PPP Policy"); (4) Public Finance Management Act Chapter 54:01 (hereafter, "PFMA"); (5) Environmental Impact Assessment Act Chapter 65:07 (hereafter, "EIA Act"); (6) Environmental Assessment Regulations S.I. 58 of 29 June 2012 (hereafter, "EIA Regulations"), which were issued to clarify provisions of the EIA Act; (7) Operations Manual, Standard Operating Policies and Procedures for Public Procurement issed by the Public Procurement & Asset Disposal Board and which became effectove on 1 April 2014 (hereafter, "Procurement Manual"), which is designed to assist procurement staff in the management of procurement and asset disposal. It provides an essential knowledge base, which imparts a clear understanding of what is expected to be done and how it should be done; (8) PPADB Circular № 8 of 2014 issued in terms of the Section 28 of the PPA on 7 July 2014 (hereafter, "Circular on Cool-Off Period"), which introduced the notion of a cool-off or a standstill period after a winner of a tender is dermined to allow for the unsuccessful bidders to lodge their complaints (if any) on an award decision. The analysis of the Public Private Partnerships (PPPs) in Botswana shall be based on the totality of the provisions contained in the aforementioned regulations, which apply to the different aspects of the procurement and management process in the country.
and provide a link to a government–supported website where the mentioned regulatory framework is available or provide an	(1) Public Procurement and Asset Disposal Act Chapter 42:08: http://www.ppadb.co.bw/documents/PPAD_Act_revised.pdf; (2) Public Procurement and Asset Disposal Regulations: http://www.ppadb.co.bw/Manuals%20%20Acts/ppadb_regulations_revised.pdf; (3) Public Private Partnership Policy and Implementation Framework: https://www.finance.gov.bw/images/Policies/PPP%20Policy%20and%20Implementation%20Framework%20Print%20Version.pdf; (4) Public Finance Management Act Chapter 54:01: https://www.finance.gov.bw/images/LawRegulations/Public%20Finance%20Management.pdf

electronic copy of it:	; (5) Environmental Impact Assessment Act Chapter 65:07: http://extwprlegs1.fao.org/docs/pdf/bot65992.pdf; (6) Environmental Assessment Regulations S.I. 58 of 29 June 2012: https://botswanalaws.com/StatutesActpdf/2012Subsidiarypdf/ENVIRONMENTAL%20ASSESSMENT%20REGULATIONS,%20S.I.%20NO.%2058%20OF%202012.pdf; (7) Operations Manual, Standard Operating Policies and Procedures for Public Procurement issed by the Public Procurement & Asset Disposal Board: http://www.ppadb.co.bw/Manuals%20%20Acts/Operations%20Manual%20-%20Review%20final%20April%202014.pdf; (8) PPADB Circular № 8 of 2014: http://www.ppadb.co.bw/Circulars/Circulars%20%202013%20-%202019/2014/Circular%20No.%208%20of%202014.pdf.
2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in or after June 2017 but BEFORE June 1, 2019?	No
Please describe:	n/a
Are ongoing and/or are planned to be adopted AFTER June 1, 2019?	Yes
Please describe:	There is information regarding the following: - certain amendments were proposed to add a specific language on PPPs in the PPA; and - the draft PPP Bill of 2019 is at a consultation stage and may be passed in the future.
2.2. For which of the following sectors is the above-mentioned regulatory framework applicable?: Transportation	Yes

please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 3.16, "<...> it is envisaged that projects in the areas of <…> transport infrastructure would be the candidates for the early PPPs in Botswana."
Water Supply, Sewerage, Solid Waste Management and irrigation.	Yes
please provide the relevant legal/regulatory provisions:	There is no explicit prohibition to conduct PPP projects in the water sector. However, the PPP Policy suggests that the focus of the PPP projects shall not be in the water sector, but rather in such sectors as serviced office accommodation, educational facilities, health facilities and transport infrastructure. Thus, according to the PPP Policy, Section 3.14, "internationally, PPPs have been applied to many sectors including <...> water and waste services. The size of the project, risk profile and complexity, market capacity, Governments' public service delivery policies and end user requirements are factors that determine which infrastructure projects are undertaken as PPPs." Furthermore, according to the PPP Policy, Section 3.15, "Government will in the initial years of the Policy, with the objective of ensuring that PPPs are implemented successfully, focus on procuring projects that are: (a) Sufficiently large to justify the transaction costs; (b) Not overly complex and that have a fair risk profile; (c) Feasible to implement in terms of private sector capacity; (d) Amenable to citizen participation in accordance with Government policy; and (e) Visible in meeting immediate end user needs and / or non-controversial in terms of where Government has traditionally provided the services." According to the PPP Policy, Section 3.16, "thus it is envisaged that projects in the areas of serviced office accommodation, educational facilities, health facilities and transport infrastructure would be the candidates for the early PPPs in Botswana."
Energy generation/transmission and distribution.	Yes
please provide the relevant legal/regulatory provisions:	There is no explicit prohibition to conduct PPP projects in the energy sector. However, the PPP Policy suggests that the focus of the PPP projects shall not be in the energy sector, but rather in such sectors as serviced office accommodation, educational facilities, health facilities and transport infrastructure. Thus, according to the PPP Policy, Section 3.14, "internationally, PPPs have been applied to many sectors <...>. The size of the project, risk profile and complexity, market capacity, Governments' public service delivery policies and end user requirements are factors that determine which infrastructure projects are undertaken as PPPs." Furthermore, according to the PPP Policy, Section 3.15, "Government will in the initial years of the Policy, with the objective of ensuring that PPPs are implemented successfully, focus on procuring projects that are: (a) Sufficiently large to justify the transaction costs; (b) Not overly complex and that have a fair risk profile; (c) Feasible to implement in terms of private sector capacity;

	(d) Amenable to citizen participation in accordance with Government policy; and (e) Visible in meeting immediate end user needs and / or non-controversial in terms of where Government has traditionally provided the services." According to the PPP Policy, Section 3.16, "thus it is envisaged that projects in the areas of serviced office accommodation, educational facilities, health facilities and transport infrastructure would be the candidates for the early PPPs in Botswana."
ICT	Yes
please provide the relevant legal/regulatory provisions:	There is no explicit prohibition to conduct PPP projects in the ICT sector. However, the PPP Policy suggests that the focus of the PPP projects shall not be in the ICT sector, but rather in such sectors as serviced office accommodation, educational facilities, health facilities and transport infrastructure. Thus, according to the PPP Policy, Section 3.14, "internationally, PPPs have been applied to many sectors including <...> IT <...>. The size of the project, risk profile and complexity, market capacity, Governments' public service delivery policies and end user requirements are factors that determine which infrastructure projects are undertaken as PPPs." Furthermore, according to the PPP Policy, Section 3.15, "Government will in the initial years of the Policy, with the objective of ensuring that PPPs are implemented successfully, focus on procuring projects that are: (a) Sufficiently large to justify the transaction costs; (b) Not overly complex and that have a fair risk profile; (c) Feasible to implement in terms of private sector capacity; (d) Amenable to citizen participation in accordance with Government policy; and (e) Visible in meeting immediate end user needs and / or non-controversial in terms of where Government has traditionally provided the services." According to the PPP Policy, Section 3.16, "thus it is envisaged that projects in the areas of serviced office accommodation, educational facilities, health facilities and transport infrastructure would be the candidates for the early PPPs in Botswana."
Social Infrastructure	Yes
please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 3.16, "<...> it is envisaged that projects in the areas of <…> educational facilities and health facilities <…> would be the candidates for the early PPPs in Botswana."
Other	Yes
please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 3.16, "<...> it is envisaged that projects in the areas of serviced office accommodation <…> would be the candidates for the early PPPs in Botswana."
3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibits or restricts PPPs in any of the	No

following sectors?: Transportation	
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.2 Water Supply, Sewerage, Solid Waste Management and irrigation	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.3 Energy generation, transmission and distribution	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.4. ICT	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.5. Social infrastructure, including hospitals, education, prisons, housing, etc.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
3.6. Other.	No
If yes, please provide the relevant	n/a

legal/regulatory provisions:	
4. Please identify the PPP procuring authorities in Botswana and provide their website(s) (if available):	According to the PPA, art. 2, ""procuring entity" means any Ministry or department duly authorised to engage in public procurement." According to the PPP Policy, Section 3.18, "this Policy is, therefore, applicable to all Ministries, Departments, Public Enterprises, Land Boards and Local Authorities (hereafter "Sponsoring Institutions") that will rely on such funding to meet their financial obligations under a PPP contract. Public Enterprises that possess their own financial resources, and are not dependent upon Central Government funding at all should evaluate all infrastructure projects in accordance with this Policy and the PPP Guidelines as a matter of good governance and corporate practice." In the context of the case-study assumptions, the Ministry of Transport and Communications (MTC) might be the relevant procuring authority: http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Transport-and-Communications/.
5. 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):	A specialist team of PPP experts within the organisational structure of the Ministry of Finance and Development Planning, known as the PPP Unit.
the year of establishment:	2009
and the relevant legal/regulatory basis:	According to the PPP Policy, Section 4.13, "a specialist team of PPP experts will be established within the organisational structure of the Ministry of Finance and Development Planning (MFDP). A generic organisation structure of the proposed PPP Unit is attached as Annexure 1. The specialist team will comprise of experts with professions and experiences at least in the fields of law, economics, corporate and financial analysis and engineering."
If yes, what are the main responsibilities of the agency(ies) (check all that apply): PPP regulation and policy guidance.	Yes
PPP capacity building for other public authorities.	Yes
PPP promotion among the public and/or private sectors	Yes

in national and international forums.	
Technical support in implementing PPP projects.	Yes
Identification and selection of PPP projects from the pipeline.	No
Revision of fiscal risks borne by the Government.	No
Consultation with affected communities on potential impact of PPP projects.	No
Approval of PPP projects.	Yes
Undertaking the procurement of PPPs.	No
Oversight of PPP implementation.	Yes
Post-project appraisal and audit	No
Other:	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 4.14, "the role of the PPP Unit, as the custodian of the PPP Policy, is to ensure the successful implementation of the PPP Policy and will be assigned with the following responsibilities:- - overall co-ordination and monitoring of the PPP Policy and projects; - technical assistance to Sponsoring Institutions; - assisting in the selection of suitable PPP projects; - approval of PPP feasibility studies and bid evaluation reports; and - advocacy for PPPs and capacity building initiatives."
5.3. Additionally, is there a central project development fund (support	No

mechanism) for project preparation?	
If yes, please indicate its name, and its website (if available):	n/a
the year of establishment:	n/a
and the relevant legal/regulatory basis.	n/a
Preparation of PPPs	
7. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.6, "the feasibility study report will conclude whether or not the project should be procured as a PPP and if so what will be the likely costs to the Institution on an annual basis. <...> The Minstry of Finance and Development Planning (MFDP) will confirm whether budgetary funds will be available for the project." Additionally, according to the PPA, art. 45, "a procuring entity shall not invite bids for which funds are inadequate or not available, or for which the Ministry has not issued a written confirmation that the required funds shall be made available in a timely manner and in the amount necessary." Therefore, proceeding with a PPP project will be impossible without a further confirmation from the MFDP that the funds are available for its realization.
7.2. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?	No
If yes, please provide the relevant	n/a

legal/regulatory provisions:	
7.4. 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).	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.2, "Government Sponsoring Institutions have the primary responsibility for identifying potential PPP projects as part of the National Development Plan (NDP) process and the annual budgetary process <…>", among others. According to the PPP Policy, Section 6.3, "this Policy requires that the Ministry of Finance and Development Planning (MFDP) recognises the financial commitment to pay the Unitary Charge for the duration of the PPP project life. It may be necessary to amend the current annual budgeting process." Additionally, according to the PFMA, art. 25(d), "any sum of money due from the Government- <...> (d) in respect of any debt lawfully incurred for and on behalf of Government including but not limited to payments made pursuant to contracts entered into by the Government for the provision of goods and services through the public-private partnership mode of procurement, shall be charged on and paid out of the Consolidated Fund."
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	n/a

legal/regulatory provisions:	
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
7.5. 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
Other international standard (e.g. European System of Accounts).	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Other	No

Please specify and provide the relevant legal/regulatory provisions:	n/a
7.7. Does the Ministry of Finance (or government more broadly) disclose PPP liabilities (explicit and implicit, direct and contingent) on an online platform/data base?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
and specify the website:	n/a
8. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, do(es) any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?	Yes
If yes, please specify the	The project committee and the PPP Unit.

relevant authority:	
and provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.6, "the feasibility study report will conclude whether or not the project should be procured as a PPP and if so what will be the likely costs to the Institution on an annual basis. The study must be approved by the project committee, the sponsoring Institution, and the PPP Unit <...>", among others. Additionally, according to the PPP Policy, Annexure 3, additional approvals are required throughout the procurement process, such as for the approval of the pre-qualification documents and bidder shortlist as well as for the tender documents and bidder shortlist from the Project Committee, PPP Unit and Public Procurement and Asset Disposal Board (PPADB).
8.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Annexure 3, for a contract award an approval from the Public Procurement and Asset Disposal Board (PPADB) is required.
9. 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	Yes

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.	
If yes, please specify and provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.2, "Government Sponsoring Institutions have the primary responsibility for identifying potential PPP projects as part of the National Development Plan (NDP) process and the annual budgetary process. PPP projects should be identified and prioritised using a cost benefit analysis that examines how well they address the NDP's development requirements. The PPP Unit shall co-ordinate this exercise to ensure that the NDPs include all projects that the Government should consider for procurement via the PPP method."
The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
The procuring authority does not evaluate	No

PPPs against existing government priorities.	
Please elaborate and provide examples:	n/a
10.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)	No
Relevant legal/regulatory provision	n/a
Is there a specific methodology?	No
If yes, please elaborate	n/a
10.2 Fiscal Affordability assessment, including the identification of the required long-term public commitments (explicit and implicit, direct and contingent liabilities)	Yes

Relevant legal/regulatory provision	According to the PPP Policy, art. 3.19(e), “a public-private partnership must demonstrate “Value-for-Money” based upon affordability to the public institution <…>“, among others. This is reiterated in the PPP Policy, Annexure 3, Section 26, “having completed the project due diligence, the next step in the feasibility study is the value assessment, which determines whether the proposed PPP project demonstrates affordability <...>“, among others. According to the PPP Policy, Annexure 3, Section 34, “an affordability assessment now follows, comparing the risk-adjusted PPP reference model with available Institution budgets, bearing in mind that the term of the project may extend beyond the NDP period. If affordability cannot be demonstrated, the Institution must either re-examine or modify the output specifications to bring them within the affordability constraint or abandon the project.”
Is there a specific methodology?	Yes
If yes, please elaborate	The affordability check is performed as part of the Value-for-Money test. The procedure on how to conduct a Value-for-Money test is contained in the PPP Policy, Annexure 3, Sections 26 to 36 with specific discussion of the affordabliy check discussed in the sections 30, 33 and 34.
10.3. Risk identification, allocation and assessment (risk matrix)	Yes
Relevant legal/regulatory provision	According to the PPP Policy, art. 3.19(e), “a public-private partnership must demonstrate “Value-for-Money” based upon <…> transfer of significant risk to the private party”, among others. This is reiterated in the PPP Policy, Annexure 3, Section 26, “having completed the project due diligence, the next step in the feasibility study is the value assessment, which determines whether the proposed PPP project demonstrates affordability <...>“, among others. According to the PPP Policy, Section 5.5, “for an Institution to select whether to procure the project as a PPP, the feasibility study must demonstrate that the PPP choice <...> transfers appropriate technical, operational and financial risk to the private party <...>“, among others. According to the PPP Policy, Annexure 3, at the Business Case / Feasibility Study Stage, a detailed analysis of a project in terms of <...> risk assessment shall be undertaken.
Is there a specific methodology?	No
If yes, please elaborate	n/a
10.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement	Yes

alternatives (i.e., value for money analysis, public sector comparator)	
Relevant legal/regulatory provision	According to the PPP Policy, art. 3.19(e), "a public-private partnership must demonstrate "Value-for-Money" <…>", among others. According to the PPP Policy, Annexure 3, Section 26, "having completed the project due diligence, the next step in the feasibility study is the value assessment, which determines whether the proposed PPP project demonstrates <...> value-for-money." According to the PPP Policy, Annexure 3, Section 27, "this assessment entails construction of a base Public Sector Comparator (PSC) model, a risk-adjusted PSC model, construction of a PPP reference model and a risk-adjusted PPP reference model, undertaking various sensitivity analyses, demonstrating affordability, conducting an initial value-for-money test, making the procurement choice, verifying all information used in making the assessment, and submission of the feasibility study for approval to proceed with procurement." Furthermore, the PPP Policy, Annexure 3, Sections 28 to 37 provide some guidance on how to construct the models mentioned in the Section 27 [above].
Is there a specific methodology?	Yes
If yes, please elaborate	According to the PPP Policy, Annexure 3, Section 29, "the risk-adjusted Public Sector Comparator (PSC) model is the base PSC model plus a costing for all the risks associated with the project. Government does not typically costs these risks, but it is necessary to do so in order to understand what the full costs to Government is if it undertakes the project. This entails first identifying all of the project risks, identifying the impacts of each risk and estimating the likelihood of each risk occurring, estimating the cost of each risk should it occur, identifying strategies for mitigating the risks and allocating the risks to the Institution, the private party, or as shared risks. For the risk-adjusted PSC, all risks are carried by the Institution as they would be for a conventional procurement." According to the PPP Policy, Annexure 3, Section 30, "to provide an early check on the project's affordability, the risk adjusted PSC model should be compared with the Institution's budget as estimated during the selection of the best solution option." According to the PPP Policy, Annexure 3, Section 31, "the next step is to construct the PPP reference model, which is a "shadow bid" involving costing the output specifications from a private party perspective. It must address the identical output specifications used in the PSC model." According to the PPP Policy, Annexure 3, Section 32, "thereafter, a risk-adjusted PPP reference model is constructed to provide the Institution an indication of what the costs would be to the Institution for procuring the infrastructure as a PPP. It is an approximation of the "all in" costs to the Institution for undertaking the project as a PPP. It must reflect the likely costs charged by the private party to manage the risks proposed to be allocated to it. And, because the purpose of this exercise is to determine the "all in" costs, the costs of the risks retained by the Institution and the costs of managing the PPP agreement must be reflected." According to the PPP Policy, Annexure 3, Section 33, "sensitivity analyses are then conducted to see how each model changes if the underlying assumptions are changed, to see how those changes affect affordability, value-for-money and risk."

10.5. Financial viability or bankability assessment	No
Relevant legal/regulatory provision	n/a
Is there a specific methodology?	No
If yes, please elaborate	n/a
10.6. Procurement Strategy (i.e., quick assessment to plan and better strategize the tendering process in advance so it is fit for purpose)	No
Relevant legal/regulatory provision	n/a
Is there a specific methodology?	No
If yes, please elaborate	n/a
10.7. Market sounding/ assessment a. Including the potential interest from contractors and capacity in the market for the contract	Yes
Relevant legal/regulatory provision	According to the PPP Policy, Annexure 3, Section 23, “each solution is then evaluated, assessing <...> capability and willingness of the private sector to undertake any option identified <...> and, finally, the suitability of the project as a PPP such as <...> whether there is market capability and appetite.”
Is there a specific methodology?	No
If yes, please elaborate	n/a

10.7. Market sounding/ assessment b. 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
10.8. Environmental impact assessment	Yes
Relevant legal/regulatory provision	According to the EIA Act, Section 4(1), "no person shall undertake or implement an activity prescribed under section 3 unless the environmental impact of the proposed activity is fully taken into account in accordance with the provisions of this Act and authorisation has been issued under section 14. " According to the EIA Act, Section 2, ""activity" includes a project <...>", among others. Furthermore, the EIA Regulations, Schedule 1 contains the list of activities, locations and thresholds for which an environmental statement is required. Among such activities are such infrastructure developments as" (a) construction of roads (primary, secondary, tertiary and access); (b) fencing of roads; (c) construction of fire breaks; (d) construction of tunnels; (e) construction of bridges over water courses; (f) infrastructure developments inside protected areas such as aerodromes, roads, power lines, wildlife watering points and tourist facilities; (g) construction of dams, levees, barrages, or weirs affecting the flow of river systems; (h) construction of wellfields where abstraction of water will be 22.27 m3 or more per second/ borehole per day; (i) intention recharging of an aquifer with any waste water; (j) construction of canals, channels, river diversions or water transfer schemes between catchments; (k) development of flood control schemes <...>" and other relevant projects.
Is there a specific methodology?	Yes

If yes, please elaborate	The EIA Act provides such a methodology.
10.8.1 Consultation process with affected communities explicitly included in the environmental impact assessment	Yes
Relevant legal/regulatory provision	According to the EIA Act, Section 7(1), “an applicant shall take all measures necessary to seek the views of the people or communities which are likely to be affected by the activity.” According to the EIA Act, Section 7(2), “in seeking the views of the people or communities in accordance with subsection (1) the applicant shall- (a) publicize the intended activity, its effects and benefits in the mass media using the official languages for a period of not less than 21 days; and (b) after the expiration of the period of 21 days, hold meetings with the affected people or communities to explain the activity and its effects.”
Is there a specific methodology?	Yes
If yes, please elaborate	The EIA Act provides such a methodology.
10.9. Social impact assessment	Yes
Relevant legal/regulatory provision	The social impact assessment is performed as part of the environmental impact assessment, because the definition of environment includes a broad category of aspects as stated in the EIA Act, Section 2, ““environment” includes the physical, ecological, archaeological, aesthetic, cultural, economic, institutional, human health and social aspects of the surroundings of a person.” Therefore, provisions of the EIA Act applicable to the EIA also apply to SIA, particularly, Section 4(1) and others.
Is there a specific methodology?	Yes
If yes, please elaborate	The EIA Act provides such a methodology.
10.9.1 Consultation process with affected communities explicitly included in the social impact assessment	Yes

Relevant legal/regulatory provision	The social impact assessment is performed as part of the environmental impact assessment. Therefore, provisions of the EIA Act applicable to the EIA also apply to SIA, particularly, Section 7 and others.
Is there a specific methodology?	Yes
If yes, please elaborate	The EIA Act provides such a methodology.
11. Does the procuring authority include the assessments in the request for proposals and/or tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 51, "the RFP generally is comprised of general information to bidders <...>", among others. According to the PPP Policy, Section 52, "general information to bidders consists of:- <…> disclosure of all available environmental impact data <…>", among others. Because SIA is a part of an EIA both EIA and SIA are provided to the bidders.
and specify which of the assessments are included in the request for proposals and/or tender documents: Socio-economic analysis;	No
Fiscal Affordability assessment;	No
Risk identification and allocation;	No
Comparative assessment;	No
Financial viability;	No
Market sounding for private sector interest;	No
Market sounding for technological solutions;	No

Environmental impact assessment;	Yes
Social impact assessment;	Yes
Any other	No
please specify:	n/a
11.2. Are the assessments published online?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
specify the website:	n/a
please specify which of the assessments are published online: Socio-economic analysis	No
Fiscal Affordability assessment;	No
Risk identification and allocation;	No
Comparative assessment;	No
Financial viability;	No
Market sounding for private sector interest;	No
Market sounding for technological solutions;	No
Environmental impact assessment;	No
Social impact assessment;	No
12. Are tender/bidding documents	No

made available online?	
If yes, please provide the relevant legal/regulatory provisions:	n/a
If yes, please provide the website:	n/a
12.3. Do the tender documents include a draft PPP contract?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the PPA, Section 2, ""bidding document" means a standard bidding package, which shall include, in relation to- (a) works- <...> (iv) form of contract; and (v) conditions of contract (general and particular) <…>", among others. Additionally, according to the PPA Regulations, Section 30(2)(c) and (d), "any solicitation document issued by the procuring entity shall include- <...> (c) the general conditions of contract or a statement of the general conditions that will apply; (d) special conditions of contract <...>", among others. According to the PPP Policy, Annexure 3, Section 51, "the RFP generally is comprised of <...> a draft PPP agreement <...>", among others. Finally, according to the PPP Policy, Annexure 3, Section 59, "the RFP must include a draft PPP agreement, based upon the Standard Clauses for PPP Agreements."
13. Have standardized PPP model contracts and/or transaction documents been developed?	No
If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:	n/a
and provide the relevant	n/a

legal/regulatory provisions:	
14.1 Does the procuring authority/responsible government entity have a role in either providing or facilitating any of the following requirements? : 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
14.4. Obtaining the possession of required land.	No
If yes, please specify the role of the procuring authority :	n/a
and provide the relevant legal/regulatory provisions:	n/a
14.7. Obtaining the required right of way.	No
If yes, please specify the role of the procuring authority :	n/a
and provide the relevant	n/a

legal/regulatory provisions:	
Procurement/Tendering of PPPs	
16. 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
The bid evaluation committee members require sufficient qualification without specific details.	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
The bid evaluation committee members are not required to	Yes

have any specific qualifications.	
Please elaborate and provide examples:	According to the PPA Regulations, Section 40(1), "the accounting officer shall appoint an evaluation committee which shall comprise not less than three members."
17. 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:	According to the PPA Regulations, Section 28(3), "a pre-qualification process shall be open to all providers, who shall be invited to participate in the process through an advertisement of a prequalification notice containing a statement as provided in sub regulation (5), published in a newspaper of wide circulation in Botswana." Furthermore, according to the PPA Regulations, Section 32(1)(a), "the method for selection of bidders to be invited to bid shall be in accordance with the provisions of Part IV and shall be - (a) by publication of a bid notice <...>", among others.
17.1. If yes, is the public procurement notice published online?	Yes
If yes, please specify the website:	Public Procurement and Asset Disposal Board website, section dedicated to tenders: http://www.ppadb.co.bw/Pages/Tenders.aspx; Integrated Procurement Management System: https://ipms.ppadb.co.bw/login.
18. 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	Yes

precludes the participation of foreign firms).	
If yes, please provide the relevant legal/regulatory provisions:	According to the PPA Regulations, Section 20(3), "a procuring entity may decide to limit participation in a procurement activity to a category of providers, so as to attain- (a) development of local or citizen capacity; or (b) compliance with provisions in agreements requiring that part of the procurement contracts are subcontracted to such providers."
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
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
Requirement to have prior experience in the country to bid in the public tender.	No
If yes, please specify	n/a
and provide the relevant legal/regulatory provisions:	n/a
Threshold for public tenders to be open for foreign participation/t	No

o be considered international tenders.	
If yes, please specify	n/a
and provide the relevant legal/regulatory provisions:	n/a
18.3. If never, what are the key reasons for their non-participation, please list:	n/a
19. 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:	According to the PPA Regulations, Section 28(6), "the pre-qualification period shall be no less than 14 days." Additionally, according to the PPA Regulations, Section 33(2), "unless otherwise determined by the Board, the minimum bidding period specified shall be- (a) six weeks, in the case of open international competitive bidding; (b) four weeks, in the case of national competitive bidding; and (c) two weeks, in the case of selective tendering on the basis of a shortlist."
and the time in calendar days:	42
20.1. Open competitive tendering/bidding: Available	No
Default	Yes
Relevant legal/regulatory provision	According to the PPA Regulations, Section 55(1), "except as provided for in these Regulations, a procuring or disposing entity shall use the open domestic bidding method." Further provisions of the PPA Regulations, Section 55 apply to the open domestic bidding procurement method.
20.2 Competitive tendering/bidding with pre-qualification stage (Restricted	No

tendering): Available	
Default	No
Relevant legal/regulatory provision	n/a
20.3 Multi-stage tendering/bidding (with shortlisting of final candidate(s)): Available	No
Default	No
Relevant legal/regulatory provision	n/a
20.4. Competitive dialogue: Available	No
Default	No
Relevant legal/regulatory provision	n/a
20.5. Best and Final Offer (BAFO): Available	No
Default	No
Relevant legal/regulatory provision	n/a
20.6. Direct negotiation: Available	Yes
Default	No
Relevant legal/regulatory provision	According to the PPA Regulations, Section 66(1), "the direct procurement method may be used where the selection of supplier is conducted on a sole supplier basis without completion, such as where- (a) there is insufficient time for any other procurement method due to an emergency situation; (b) the supplies, works or services are available from only one provider; (c) an existing contract could be extended for additional supplies, works or services of a similar nature and no advantage could be obtained by further competition, provided the prices on the extended contract are reasonable; (d) additional supplies, works or services are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional supplies, works or services from the original supplier, if the prices of the additional contract are

	reasonable; (e) it is essential or preferable to purchase additional supplies, works or services from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable; or (f) it is justified in the circumstances." Further provisions of the PPA Regulations, Section 66 apply to the direct procurement method.
20.7. Other. Please, specify: Available	No
Default	No
Relevant legal/regulatory provision	n/a
20.8. 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:	According to the PPA Regulations, Section 66(1), "the direct procurement method may be used where the selection of supplier is conducted on a sole supplier basis without completion, such as where- (a) there is insufficient time for any other procurement method due to an emergency situation; (b) the supplies, works or services are available from only one provider; (c) an existing contract could be extended for additional supplies, works or services of a similar nature and no advantage could be obtained by further competition, provided the prices on the extended contract are reasonable; (d) additional supplies, works or services are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional supplies, works or services from the original supplier, if the prices of the additional contract are reasonable; (e) it is essential or preferable to purchase additional supplies, works or services from the

	original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable; or (f) it is justified in the circumstances."
21. 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:	According to the PPA Regulations, Section 55(1), "the bidding documents shall state the procedure to be followed for the award of contract."
22. 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:	According to the PPA Regulations, Section 28(5), "a pre-qualification notice shall contain a statement of the scope of the procurement, clearly giving the necessary details of the requirements and the criteria for pre-qualification."
22.2. Are there any parameters/limits to the	No

qualification requirements to ensure that they do not unduly restrict competition of qualified bidders?	
If yes, please provide the relevant legal/regulatory provisions:	n/a
23. 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:	According to the PPA Regulations, Section 34(1), "bidding documents shall stipulate the date after which bidders may not seek clarification of the bidding documents." According to the PPA Regulations, Section 34(2), "the date to be stipulated under sub regulation (1) shall be determined to allow adequate time for all bidders to receive and study the bidding documents." Further provisions of the PPA Regulations, Section 34 apply to the issue of clarification of the bidding documents.
23.2. 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
23.4. If yes, is there a timeframe for the procuring authority to address questions and clarifications by bidders?	No
Please indicate the timeframe (number of calendar days to provide clarifications before the deadline):	n/a
and provide the relevant legal/regulatory provisions:	n/a
23.6. 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:	According to the PPA Regulations, Section 34(3), “any addendum to a bidding document shall be communicated promptly, in writing, to all bidders who purchased or were issued with bidding documents, in order to provide for adequate opportunity for bidders to seek clarification and to obtain necessary responses in accordance with regulation 34 (1).” According to the PPA Regulations, Section 34(4), “an addendum to a bidding document shall be issued in writing and the same information shall be sent to all prospective bidders.”

23.8. If yes, does the procuring authority extend the proposal submission deadline due to the modifications introduced in the bidding/tender documents?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the PPA Regulations, Section 34(5), "any extension of a bidding period shall be communicated promptly, by publication of a notice in the Gazette." Such extension is talked about in the context of clarifications and potential amendments of the bidding documents within the PPA Regulations.
24. Besides questions and clarifications, can the procuring authority conduct a pre-bid conference?	Yes
If yes, please specify and provide the relevant legal/regulatory provisions:	According to the PPA Regulations, Section 31(1), "a procuring entity may hold pre-bid meetings to- (a) allow potential bidders to either seek clarification; or (b) have access to project sites." Further provisions of the PPA Regulations, Section 31 apply to the issue of the pre-bid conferences.
24.2. 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?	Yes

If yes, please specify and provide the relevant legal/regulatory provisions:	According to the PPA Regulations, Section 31(5), "the Secretary to the Board shall prepare minutes for all pre-bid meetings and copies of the minutes shall be provided to all providers who purchased or were issued with the bidding documents."
25. 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:	The existing PPP-related regulations do not provide for a requirement to submit a financial model together with the bids.
26. 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:	According to the PPA, Section 36, "in the evaluation and adjudication of a bid, no factor outside those explicitly stated in the bidding package shall be taken into account by the evaluators or the adjudicators in arriving at a recommendation or in making an award, unless there are extenuating reasons to use additionally, an industry standard or best practice." According to the PPA, Section 51(1), "the bidding documents shall state the procedure to be followed for the award of Copyright Government of Botswana contract."
26.2. Can criteria other than price (non-price attributes) be used when evaluating the	Yes

tenders/bids of a PPP contract?	
If yes, please provide the relevant legal/regulatory provisions:	According to the PPA Regulations, Section 72(1), "a procuring entity shall use, as the basis of evaluation of works tenders, either the- (a) quality and cost method; or (b) least cost method." According to the PPA Regulations, Section 72(2), "quality and cost based selection may be used where- (a) the works are difficult to define in the bill of quantities; or (b) specific operational considerations have a significant importance in the success of the works, such as the- (i) technical quality of management and workforce, (ii) speed of mobilization, (iii) plant availability, (iv) current workload; or (v) other similar factors."
26.4. If criteria other than price are used, does it have to be justified, objective and quantifiable?	Yes
If yes, please provide the relevant legal/regulatory provisions:	For example, when evaluation by quality and cost based selection is used, then according to the PPA Regulations, Section 43(1)(b), "the quality and cost based selection evaluation method shall be conducted as follows- <...> (b) the relative weight to be given to the quality and cost components of the evaluation shall depend on the nature of the assignment and shall be stated in the invitation to bid." According to the PPA Regulations, Section 43(2), "a bid submitted under the quality and cost based selection evaluation method shall be submitted under the dual envelope submission method and evaluated to determine the- (a) quality, with regard to a technical bid, in accordance with- (i) an evaluation against set criteria on a merit point system to determine the total technical score for the technical bid received, and (ii) the total scores determined compared to the minimum technical score; (b) the total weighted cost score, with regard to a financial bid, where the bidder reached the minimum technical score; and (c) the bidder obtaining the highest total score, who shall be recommended for the award of the contract."
26.6. When price is used as one of the evaluation criteria, does the procuring authority provide a cost estimate?	Yes

If yes, please provide the relevant legal/regulatory provisions:	According to the PPA Regulations, Section 30(2)(f), "any solicitation document issued by the procuring entity shall include- <…> (f) <…> a price schedule <…>", among others.
27. In the case where only one proposal is submitted, which of the following options best describes the way the procuring authority deals with them? (Please select only one)?: The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	No
Please specify and provide the relevant legal/regulatory provisions:	n/a
The procuring authority considers sole proposal valid as long as it meets the conditions outlined in the tender documents.	No
Please specify and provide the relevant legal/regulatory provisions:	n/a
The procuring authority does	No

not award a PPP contract if only one proposal is submitted.	
Please specify and provide the relevant legal/regulatory provisions:	n/a
The regulatory framework does not include any provisions.	Yes
28. 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:	According to the PPA, Section 86(b), "the [Public Procurement and Asset Disposal] Board shall advertise all- <…> (b) <…> award decisions <…>", among others.
28.1. If yes, is the contract award notice published online?	Yes
If yes, please specify the website:	http://www.ppadb.co.bw/Pages/Tenders.aspx
29. Does the procuring authority notify all the bidders individually about the result of the PPP tendering/bidding process?	No
If yes, please provide the relevant	n/a

legal/regulatory provisions:	
If no, please elaborate:	There is a legal obligation to publish the award notices, but there is no explicit requirement to inform each bidder individually.
29.2. 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
29.4. 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?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the Procurement Manual, Section 12.9(1), "in the interests of transparency and openness, it is normal practice to debrief each participating bidder of the results of their bid. Debriefing is a mandatory requirement for every Procuring Entity (PE). The bidder/contractor will have incurred costs in preparing and developing their bid and therefore, at the very least, it is only good practice to inform them of the outcome of the results and why they were not successful. It demonstrates the PE's commitment to good practice and transparency and also it shows an appreciation of the efforts that a bidder/contractor has exhibited, in preparing their bid."
30. Is there a standstill (or pause) period after the contract award and before the	Yes

signing of the contract in order to allow aggrieved unsuccessful bidders to challenge the award decision?	
If yes, please provide the relevant legal/regulatory provisions:	According to the Circular on Cool-Off Period, Section 3, "cooling-off period is defined as "a period between the tender award and the signing of the contract" the purpose of which is to give bidders an opportunity to lodge their complaints (if any) on an award decision." Furthermore, according to the Circular on Cool-Off Period, Section 4, "the Board at its sitting of the 26th June 2014 considered the Recommendations from the Stakeholder workshop which included the unanimous concurrence of Stakeholders on the introduction of the cooling-off period. The Board therefore resolved to introduce the Cooling-off period after tender award and prior to contract signature as part of the PPADB Guidelines. This entails a stand-still period of ten (10) working days following the communication of the award decision to bidders by Procuring Entities, before contracting with the successful bidder."
and the time in calendar days:	14
30.2. 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
31. 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	n/a

legal/regulatory provisions:	
32. 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:	According to the PPP Regulation, Section 77(1), "a person who is aggrieved by any decision of the Board or of any of its committees, pursuant to matters arising under section 103 of the Act, may- (a) submit a complaint by following the review procedures of the Board, set out in regulation 78; and (b) if that person is dissatisfied with the final decision reached when the review procedures of the Board under paragraph (a) are exhausted, apply to the Independent Committee for a review of the decision."
32.1. If yes, is there a timeframe in which decisions on complaints are issued?	Yes
If yes, please elaborate the timeframe (number of calendar days to resolve):	14
and provide the relevant legal/ regulatory provisions:	According to the PPA Regulations, Section 78(6), in case of an original complaint to the Public Procurement and Asset Disposal Board, "where the Board fails to arrive at a mutually agreed settlement of the complaint with the bidder within 14 days of the submission of the complaint, a dispute shall be declared, and the Secretary of the Board shall refer the dispute to the Independent Committee <...>", among others. Furthermore, according to the PPA Regulations, Fifth Schedule, Part III, Section 11(2), "the Independent Committee shall make its decision on the complaint, lodged in compliance with the provisions of these Regulations, within a period of not more than 30 days from the receipt of the complaint."
32.2. If yes, are decisions subject to appeal?	Yes
If yes, please provide the relevant legal/	According to the PPP Regulation, Section 77(1), "a person who is aggrieved by any decision of the Board or of any of its committees, pursuant to matters arising under section 103 of the Act, may-

regulatory provisions:	(a) submit a complaint by following the review procedures of the Board, set out in regulation 78; and (b) if that person is dissatisfied with the final decision reached when the review procedures of the Board under paragraph (a) are exhausted, apply to the Independent Committee for a review of the decision."
32.3. 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:	According to the PPP Regulation, Section 77(1), "a person who is aggrieved by any decision of the Board or of any of its committees, pursuant to matters arising under section 103 of the Act, may- (a) submit a complaint by following the review procedures of the Board, set out in regulation 78; and (b) if that person is dissatisfied with the final decision reached when the review procedures of the Board under paragraph (a) are exhausted, apply to the Independent Committee for a review of the decision."
and identify the approving authority	The Public Procurement and Asset Disposal Board. The Independent Complaints Review Committee.
33. 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
33.1 A summary of the PPP contract: Available (e.g.	No

by request or in the official gazette)	
Available online	No
Website	n/a
Relevant legal/regulatory provision	n/a
33.2. 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
33.3. 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
33.4. 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
PPP Contract Management	

35. 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:	The PPP Policy, Sections 5.9 to 5.12 provide some guidance for the Contract Management (Implementation) Phase. Further the PPP Policy, Annexure 2, Sections 88 to 94 details some of the broader provisions contained in the Sections 5.9 to 5.12 related to the Contract Management.
35.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.10, "<…> the Institution must establish a contract management team, ideally comprising of some members of the project committee, as they will possess the institutional knowledge of the project and be familiar with all of the risks that must be managed going forward."
Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.10, "<…> the Institution must establish a contract management team, ideally comprising of some members of the project committee <…>", among others. According to the PPP Policy, Section 5.4, once a preliminary determination of whether the

	project is suitable for procurement as a PPP was performed, “a project committee shall be established to steer the project”, which will be involved in the procurement of a project, among others. Furthermore, according to the PPP Policy, Annexure 3, Section 89, “the stages of contract management begin with the procurement processes, where contract management requirements are considered during the drafting of the bid documents, including the PPP agreement <...>“, among others.
Elaboration of a PPP contract management manual or an equivalent document	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.11, “further, the Institution must put in place knowledge and succession management procedures for long-term PPP agreements, to ensure that all knowledge obtained during the procurement and implementation of the project is at hand, in recognition of the long-term nature of PPP contracts.”
Establishment of personnel training programs (i.e., initial training and continued training throughout the course of the project)	No
Relevant legal/regulatory provisions:	n/a
Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Annexure 3, Section 92, “<…> performance management focuses on: - <…> monitoring compliance with regard to insurance, security and safety systems <…>“, among others. Additionally, the PPP Policy, Annexure 2, Sections 16 to 18 establish clauses in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): “- Clause 15,

	Insurance, describes the private party's requirements for providing insurance. - Clause 16, Uninsurable Risks, sets forth the processes for determining uninsurable risks and the consequences of the occurrence of such risk. - Clause 17, Reinstatement, describes how insurance proceeds are to be deployed in terms of reinstating property that has been damaged or lost."
35.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
The PPP contract management team members are required to meet sufficient qualification without specific details.	Yes
If yes, please specify and provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.10, "<…> the Institution must establish a contract management team, ideally comprising of some members of the project committee, as they will possess the institutional knowledge of the project and be familiar with all of the risks that must be managed going forward."

The PPP contract management team members are not required to meet any specific qualifications.	No
Please elaborate and provide examples:	n/a
36. 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.)?	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
36.1. If yes, is the PPP contract construction performance information made available to the public (e.g. by request or published in the official	No

gazette/bulletin board)?	
If yes, please provide the relevant legal/regulatory provisions:	n/a
36.2. If yes, is the PPP contract construction performance information made publicly available online?	No
If yes, please specify the website:	n/a
37. 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:	According to the PPP Policy, Section 5.12, "for PPP projects, contract management must address three key elements, namely <...> service delivery management through monitoring performance of the project and contract administration that covers authorization of payments and maintenance of reports and reporting", among others. Additionally, according to the PPP Policy, Annexure 3, Sections 90, 92 and 93 deal with the different aspects of contract management during operational stage.
37.1. If yes, which of the following tools does it include (check all that apply)?: Payments are linked to performance	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Annexure 3, Section 92, "performance management during the delivery phase requires confirming that the outputs are delivered. The Institution must take care to focus on the delivery of the outputs and how they were delivered. Performance management focuses on: - <...> enforcing payment mechanisms, including payment

	certification and penalty assessment <...>“, among others. Additionally, the PPP Policy, Annexure 2, Section 15 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP) “Clause 14, Unitary Payment, sets forth the details of when and how payments to the private party are to take place, payment deductions, invoicing and payment arrangements, manner of payment, disputes, late payments and Botswana Withholding Tax (WHT).”
Performance is assessed against output/ Key performance indicators (KPI) set in the tender documents and the PPP contract	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Annexure 3, the chart showing PPP Project Cycle at the Contract Management Stage states that “contract is managed using contract management plan to measure service delivery against contracted standards.” Furthermore, according to the PPP Policy, Annexure 3, Section 92, “performance management during the delivery phase requires confirming that the outputs are delivered. The Institution must take care to focus on the delivery of the outputs and how they were delivered. Performance management focuses on: - <...> establishing service levels that constitute output delivery <...>“, among others. Additionally, the PPP Policy, Annexure 2, Section 5 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP) “Clause 4, Project Deliverables, addresses the obligations of the private party in terms of the Project Deliverables and further contains language relating to the fact that the parties will co-operate with each other.”
The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Annexure 3, Section 92, “<...> performance management focuses on: - <...> enforcing payment mechanisms, including <...> penalty assessment <...>“, among others. Additionally, the PPP Policy, Annexure 2, Section 15 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP) “Clause 14, Unitary Payment, sets forth the details of when and how payments to the private party are to take place and payment deductions <...>“, among others.

The private partner must provide the procuring or contract management authority with periodic operational and financial data	Yes
Relevant legal/regulatory provisions:	According to the PPP Policy, Annexure 3, Section 90, "PPP agreements will require regular reporting by the private party on the deliverables as a pre-requisite to receiving payment."
The procuring or contract management authority must periodically gather information on the performance of the PPP contract	Yes
Relevant legal/regulatory provisions:	According to the Procurement Manual, Section 12.3(7), "the Contract Manager shall set up a system whereby dates for expediting orders shall be recorded. Records of the various orders placed shall be updated, as and when information is received, and closed when delivery is completed." According to the Procurement Manual, Section 12.3(9), "the Contract Manager shall submit regular status reports on all outstanding orders to the Procurement Manager. A customized status form shall be used to enquire from the expediting section the status of a specific shipment." Additionally, according to the Procurement Manual, Section 12.7(1), "it is important that the Procurement Unit keep records of the Suppliers performance. The monitoring will include a checklist of: <...> (b) Actual performance against delivery time specified; (c) Construction completed on time and to the quality expected; (d) Response time to queries and complaints; (e) Standard of written reports and reporting requirements including minutes of site/technical meetings with the contractor acknowledged by both parties; (f) Keeping the client informed of progress; (g) Keeping the client informed of problems; (h) Speed with which problems are resolved; (i) Accuracy of claims/invoices/materials/man hours worked' (j) Relationship with the Supplier's Management Team."
The PPP contract performance information	No

must be available to the public (e.g. by request or in the official gazette/bulletin board)	
Relevant legal/regulatory provisions:	n/a
The PPP contract performance information must be available online	No
If yes, please specify the website:	n/a
Relevant legal/regulatory provisions:	n/a
38. Is there an economic/technical regulator to oversee the implementation of PPP contracts?	No
If yes, please provide it name and website:	n/a
and the relevant legal/regulatory provisions establishing its mandate:	n/a
38.1. If yes, does the economic regulator have (check all that apply): Political autonomy (for example, through independence of its	No

Directors' appointments of the Line Ministry or other similar mechanisms).	
If yes, please provide the relevant legal/regulatory provisions:	n/a
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
Tariff setting authority.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
Dispute resolution authority.	No
If yes, please provide the relevant legal/regulatory provisions:	n/a
39. Are foreign companies restricted from repatriating the income resulting from the operation of a PPP project?	No
If yes, please provide the relevant	n/a

legal/regulatory provisions:	
40. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract?	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	The PPP Policy, Annexure 2, Section 35 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP) "Clause 34, Assignment, Subcontracting and Changes in Shareholding and Control, sets forth <...> the procedures to be undertaken by the private party in terms of any change in control of the private party."
40.1. 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	n/a

contractual provisions:	
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
41. 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:	The PPA Regulations, Section 95 deals with the issue of contract amendments and Section 96 - with the issue of variation or change order to contract. Additionally, the PPP Policy, Annexure 2, Sections 23 and 38 establish the clauses in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): "- Clause 22, Variations, sets forth the procedures for adjusting the Unitary Payment for variations in the PPP agreement. <...> - Clause 37, Amendments, requires that no amendments to the PPP agreement take place except by an agreement in writing <...>", among others.
41.1. If yes, is an approval from a government authority, other than the procuring	Yes

authority, required?	
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	According to the PPA Regulations, Section 95(2), "a contract amendment shall be prepared, approved and issued in the same manner as the original contract and shall require the prior approval of the Board or any of its competent committees." According to the PPA Regulations, Section 95(4), "no contract amendment shall be issued prior to- (a) approval being obtained from the Board or any of its competent committees; (b) funding being committed in the full amount of the amended contract price over the required period of the revised contract; and (c) approval being obtained from all necessary bodies after the Board or any of its competent committees approval."
41.2. 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.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
41.2.1. 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:	According to the PPA Regulations, Section 95(6), "no individual contract amendment shall increase the total contract price by more than 15% of the original contract price." According to the PPA Regulations, Section 95(7), "where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25% of the original contract price."
and please elaborate:	Not more than 15% of the original price for a single amendment and 25% for a series of amendments.
A change in the risk allocation of the contract.	No

If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
A change in the financial and/or economic balance of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
A change in the duration of the contract.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a
A change in the agreed price or tariff or annuity payments.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	According to the PPA Regulations, Section 97(b), "in this Part- <…> (b) ''contract variation'' or ''change order'' means a change to the price <…> of a contract to facilitate adaptations to anticipated events or changes in requirements." Furthermore, the PPA Regulations, Section 96 is devoted to a description of a variation or change order to contract. Additionally, the PPP Policy, Annexure 2, Sections 23 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): " Clause 22, Variations, sets forth the procedures for adjusting the Unitary Payment for variations in the PPP agreement <...>", among others.
41.6. 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
42. 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): Force Majeure.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	The PPP Policy, Annexure 2, Section 21 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): “Clause 20, Force Majeure, sets forth the processes for claiming relief due to the occurrence of a Force Majeure event <...>“, among others.
Material Adverse Government Action	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	The PPP Policy, Annexure 2, Section 22 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): “Clause 21, Unforeseeable Conduct, describes the procedures to be followed by the private party should it suffer economic loss or benefit due to Unforeseeable Conduct <...>“, among others.
Change in the Law.	No
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	n/a

Refinancing.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	The PPP Policy, Annexure 2, Section 33 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): "Clause 32, Audit Rights, Transaction Costs and Termination, describes the processes to be followed by the private party in the event it undertakes a refinancing of the debt applicable to the project <...>", among others.
Subcontracting and replacement of the subcontractors.	Yes
If yes, please provide the relevant legal/regulatory/standard contractual provisions:	The PPP Policy, Annexure 2, Section 35 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): "Clause 34, Assignment, Subcontracting and Changes in Shareholding and Control, sets forth the processes to be followed by either the private party or the Institution should it desire to assign any of its obligations under the PPP agreement <...>", among others.
43. 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:	According to the PPA, Section 54, "in the event of a dispute amongst procuring or disposing entities or between such entities and the contractors, the Board shall, when requested by the parties to such dispute, offer its good office to amicably resolve such disputes." Additionally, the PPP Policy, Annexure 2, Section 36 establishes a clause in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): "Clause 35, Dispute Resolution, sets forth the processes to be followed in terms of resolving disputes <...>", among others.
43.1. If yes, is arbitration available as an option?: Domestic	No

arbitration only	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	n/a
Domestic arbitration and international arbitration	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	The Arbitration Act Chapter 06:01 governs domestic arbitration. The Recognition and Enforcement of Foreign Arbitral Awards Act Chapter 06:02 governs international arbitration.
No	No
43.2. If applicable, are arbitration awards enforceable by local courts?	Yes
If yes, please elaborate and provide the relevant legal/regulatory/standard contractual provisions:	According to the Arbitration Act, Section 20, for the domestic arbitration, "an award on a submission may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award." According to the Recognition and Enforcement of Foreign Arbitral Awards Act, Section 3(1), for international arbitration, "subject to the provisions of subsections (2) and (3) any arbitral award made after the coming into force of this Act in any country which is a party to the Convention shall be binding and may be enforced in Botswana in accordance with and subject to the provisions of the Convention in such manner as an award may be enforced under the provisions of the Arbitration Act and the laws of Botswana."
43.3. 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:	According to the PPA, Section 54, "in the event of a dispute amongst procuring or disposing entities or between such entities and the contractors, the Board shall, when requested by the parties to such dispute, offer its good office to amicably resolve such disputes."
44. 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
44.1. 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
The regulatory framework prescribes that a direct agreement should be signed with the lenders.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	n/a
The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	No
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	n/a
Other	No
Please specify:	n/a
45. Does the regulatory framework (including standard contractual clauses) expressly address the grounds for	Yes

termination of a PPP contract?	
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	The PPP Policy, Annexure 2, Sections 25 and 26 establish the clauses in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): "- Clause 24, Termination, describes the procedures for termination of the PPP agreement. - Clause 25, Effects of Termination, sets forth the provisions to be followed in the event of a termination <...>", among others.
45.2. If yes, does the regulatory framework (including standard contractual clauses) also addresses the consequences for the termination of the PPP contract?	Yes
If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:	The PPP Policy, Annexure 2, Sections 27 to 30 establish the clauses in a Summary of Standardized Contract Provisions for Public Private Partnerships (PPP): "- Clause 26, Compensation on Termination For Institution Default, describes the payment to the private party where termination occurs by reason of Institution Default; - Clause 27, Compensation on Termination for Private Party Default, sets forth the procedures for termination for Private Party Default including payment to the private party and its lenders; - Clause 28, Compensation on Termination for Force Majeure, describes the process for determining payments to the private party on termination for Force Majeure; - Clause 29, Compensation on Termination for Corrupt Acts, sets forth the processes for determining the amount the Institution will pay to the private party's lenders in the event of termination for Corrupt Acts <...>", among others.
Unsolicited Proposals	
47. Are unsolicited proposals in Botswana: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section G)	No

Explicitly allowed by the legal framework?	Yes
Not regulated by the legal framework, but do happen in practice?	No
Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section G)	No
f the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 6.13, "although the process and procedures outlined above do not envisage unsolicited proposals, it is possible that such an approach might demonstrate substantial technical or financial innovation; or meet an unidentified need. For this reason, the PPP Policy does not exclude unsolicited proposals but rather requires that the fundamentals of a competitive and transparent procurement process must be preserved even in the case of unsolicited proposals." Furthermore, according to the PPP Policy, Annexure 3, Section 87, "unsolicited bids are not allowed, subject to the PPP Policy, as they present a risk of entering into obligations that do not demonstrate affordability, transfer of significant risk to the private sector and value-for-money and may violate the principles of transparency, fairness and competition." Although unsolicited proposals are prohibited, they are not necessarily excluded where they demonstrate substantial technical or financial innovation or meet an unidentified need. Therefore Section 16.3 and Section 87 of the PPP Policy must be read together.
48. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 50)	No
If yes, please specify and provide the relevant legal/regulatory provisions:	n/a
48.2. If yes, is there any vetting procedure	No

and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	
If yes, please provide the relevant legal/regulatory provisions:	n/a
49. 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.	Yes
If yes, please specify and provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 5.2, "Government Sponsoring Institutions have the primary responsibility for identifying potential PPP projects as part of the National Development Plan (NDP) process and the annual budgetary process. PPP projects should be identified and prioritized using a cost benefit analysis that examines how well they address the NDP's development requirements. The PPP Unit shall co-ordinate this exercise to ensure that the NDPs include all projects that the Government should consider for procurement via the PPP method."
The regulatory framework requires unsolicited proposals to be among the existing	No

government priorities without establishing specific procedures to achieve that goal.	
If yes, please provide the relevant legal/regulatory provisions:	n/a
The procuring authority does not evaluate unsolicited proposals against existing government priorities.	No
Please elaborate and provide examples:	n/a
50. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	Yes
If yes, please provide the relevant legal/regulatory provisions:	According to the PPP Policy, Section 6.13, "<...> the PPP Policy does not exclude unsolicited proposals but rather requires that the fundamentals of a competitive and transparent procurement process must be preserved even in the case of unsolicited proposals." Therefore a competitive procurement process will have to be launched for an unsolicited proposal.
51. Does the procuring authority grant a minimum period of time to additional prospective bidders	Yes

(besides the proponent) to prepare their proposals?	
If yes, please provide the relevant legal/regulatory provisions:	According to the PPA Regulations, Section 28(6), "the pre-qualification period shall be no less than 14 days." Additionally, according to the PPA Regulations, Section 33(2), "unless otherwise determined by the Board, the minimum bidding period specified shall be- (a) six weeks, in the case of open international competitive bidding; (b) four weeks, in the case of national competitive bidding; and (c) two weeks, in the case of selective tendering on the basis of a shortlist."
and the time in calendar days:	42
52. Does the procuring authority use any of the following incentive mechanisms to reward/compensate the submission of unsolicited proposals? (check all that apply): Access to the best and final offer (BAFO) process and/or automatic shortlisting.	No
Developer's fee (reimbursing the original proponent for the project development cost).	No
Bid Bonus.	No
Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid	No

and win the contract).	
Other	No
Please specify:	n/a
Please provide the relevant legal/regulatory provisions:	n/a