


**Thailand**
**East Asia & Pacific**

Income Group

**Upper middle income**

Population

**69,625,582**

GNI per Capita

**\$7,260**

Number of PPPs

**31**

PPP Investments

**\$12,435,000,000**

Number of PPPs: PPP projects that reached financial closure between January 2014 and December 2018.

PPP Investments: Total investment commitments in PPPs between January 2014 and December 2018 at the time of financial close.

## Thematic Scores for Public-Private Partnerships in Thailand



Preparation



Procurement



Contract Management



NR

● Global Average

● Regional Average

● Income Group Average

## Preparation of PPPs

35

Table shows scored questions only.

Answer: ✓ Yes ✗ No / Score: ● Good regulatory practice ● Area for improvement / Change vs. 2018: ↗

### Questions

### Answer

✓ Does the Ministry of Finance or Central Budgetary Authority approve the PPP project...

- Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process? ✓ ✓
- Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract? ✗

✓ Fiscal treatment for PPPs (budgetary, reporting or accounting requirements)

- Budgeting for PPP projects. ✗
- Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs. ✗
- Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs. ✗

✓ What is the way the government ensures that PPP projects are consistent with other government public priorities?

- 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. ✓
- 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.

✓ Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it?

- ✓ Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project) ✓
- Is there a specific methodology for the assessment? ✓
- ✓ Fiscal Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities) ✓
- Is there a specific methodology for the assessment? ✓
- ✓ Risk identification, allocation and assessment (risk matrix) ✓
- Is there a specific methodology for the assessment? ✗
- ✓ 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) ✓
- Is there a specific methodology for the assessment? ✗

<input checked="" type="checkbox"/> Financial viability or bankability assessment	✓
<input type="radio"/> Is there a specific methodology for the assessment?	✗
<input checked="" type="checkbox"/> Procurement Strategy (i.e., quick assessment to plan and better strategize the tendering process in advance so it is fit for purpose)	✗
<input type="radio"/> Is there a specific methodology for the assessment?	✗
<input checked="" type="checkbox"/> Market sounding/ assessment - Including the potential interest from contractors and capacity in the market for the contract	✓
<input type="radio"/> Is there a specific methodology for the assessment?	✗
<input checked="" type="checkbox"/> Market sounding/ assessment - specifically designed to identify the solutions and technology available as well as the opportunities for innovation	✗
<input type="radio"/> Is there a specific methodology for the assessment?	✗
<input checked="" type="checkbox"/> Environmental impact assessment	✓
<input type="radio"/> Is there a specific methodology for the assessment?	✓
<input checked="" type="checkbox"/> Consultation process with affected communities explicitly included in the environmental impact assessment	✗
<input checked="" type="checkbox"/> Social impact assessment	✗
<input type="radio"/> Is there a specific methodology for the assessment?	✗
<input checked="" type="checkbox"/> Consultation process with affected communities explicitly included in the social impact assessment	✗
<input checked="" type="checkbox"/> Does the procuring authority include the assessments in the request for proposals and/or tender documents?	
<input checked="" type="checkbox"/> Which of the assessments are included in the request for proposals and/or tender documents?	
<input type="radio"/> Socio-economic analysis	✗
<input type="radio"/> Fiscal Affordability assessment	✗
<input type="radio"/> Risk identification and allocation	✗
<input type="radio"/> Comparative assessment	✗
<input type="radio"/> Financial viability	✗
<input type="radio"/> Market sounding for private sector interest	✗
<input type="radio"/> Market sounding for technological solutions	✗
<input type="radio"/> Environmental impact assessment	✗
<input type="radio"/> Social impact assessment	✗
<input checked="" type="checkbox"/> Are the assessments published online?	
<input checked="" type="checkbox"/> Which of the assessments are published online?	
<input type="radio"/> Socio-economic analysis	✗
<input type="radio"/> Fiscal Affordability assessment	✗
<input type="radio"/> Risk identification and allocation	✗
<input type="radio"/> Comparative assessment	✗
<input type="radio"/> Financial viability	✗
<input type="radio"/> Market sounding for private sector interest	✗
<input type="radio"/> Market sounding for technological solutions	✗
<input type="radio"/> Environmental impact assessment	✗
<input type="radio"/> Social impact assessment	✗
● Are the tender documents published online?	✗
● Do the tender documents include a draft PPP contract?	✗
● Have standardized PPP model contracts and/or transaction documents been developed?	✗

Table shows scored questions only.

Answer: ✓ Yes ✗ No / Score: ● Good regulatory practice ● Area for improvement

Questions	Answer
✓ The required qualifications of the bid evaluation committee members	
○ The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.	✓
○ The bid evaluation committee members require sufficient qualification without specific details.	
✓ Does the procuring authority issue a public invitation for bids/ tender notice of the PPP project?	✓
○ Is the public procurement notice published online?	✓
✓ Are foreign companies subject to any of the following restrictions when participating in the bidding process?	
○ Prohibition to bid in the public tender (including the possibility to discretionary use a procedure that precludes the participation of foreign firms).	✗
○ Requirement to have an office or a branch in the country before being allowed to bid in the public tender.	✗
○ Requirement to form a joint venture with domestic firm(s) to be allowed to bid in the public tender.	✗
○ Requirement to have prior experience in the country to bid in the public tender.	✗
○ Threshold for public tenders to be open for foreign participation/to be considered international tenders.	✗
● Does the procuring authority grant the potential bidders a minimum period of time to submit their bids?	✓
✓ What are the procurement procedures available and/or set as default for PPPs?	
✓ Open competitive tendering/bidding	
○ Available	
○ Default	✓
✓ Competitive tendering/bidding with pre-qualification stage (Restricted tendering)	
○ Available	✓
○ Default	
✓ Multi-stage tendering (with shortlisting of final candidate(s))	
○ Available	✗
○ Default	✗
✓ Competitive dialogue	
○ Available	✗
○ Default	✗
✓ Best and Final Offer (BAFO)	
○ Available	✗
○ Default	✗
✓ Direct negotiation	
○ 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)?	✗
● Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?	✓
✓ 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?	✓
○ Are there any parameters/limits to the qualification requirements to ensure that they do not unduly restrict competition of qualified bidders?	✗
✓ Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the bidding/tender documents?	✗
○ 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?	✗
○ Is there a timeframe for the procuring authority to address questions and clarifications by bidders?	✗
○ Does the procuring authority disclose those questions and clarifications to all potential bidders, notwithstanding confidential information pertaining to the bidders?	✗
○ Does the procuring authority extend the proposal submission deadline due to the modifications introduced in the bidding/tender documents?	✗
✓ Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?	✗
○ Does the procuring authority disclose the content and the results of the pre-bid conference to all bidders (notwithstanding confidential information pertaining to the bidders)?	✗
● Does the procuring authority require the bidders to prepare and present a financial model with their proposals?	✓

✓ Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?	✓
○ Can criteria other than price (non-price attributes) be used when evaluating the tenders/bids of a PPP contract?	✓
○ If criteria other than price are used, does it have to be justified, objective and quantifiable?	✗
○ When price is used as one of the evaluation criteria, does the procuring authority provide a cost estimate?	✗
✓ In the case where only one proposal is submitted (sole proposals), how does the procuring authority deal with them?	
○ The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.	✓
✓ Does the procuring authority publish the contract award notice?	✗
○ Is the contract award notice published online?	✗
✓ Does the procuring authority provide all the bidders with the result of the PPP procurement process?	✗
○ Does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?	✗
○ Does the procuring authority provide bidders/tenderers with the option of holding a debriefing meeting to discuss why their bid/tender was not selected?	✗
✓ Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?	✗
○ Is the standstill period set out in the notice of intention to award?	✗
● Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?	✗
✓ Does the regulatory framework allow for complaint review mechanisms pertaining to the PPP bidding/tendering process?	✗
○ Is there a timeframe in which decisions on complaints are issued?	✗
○ Are decisions subject to appeal?	✗
○ Is the original complaint and/or the appeal reviewed resolved by an independent administrative authority (other than the procuring authority or the courts)?	✗
✓ Does the procuring authority publish the PPP contract? (notwithstanding the protection of commercially sensitive information)	✓
✓ A summary of the PPP contract	
○ Available (e.g. by request or in the official gazette)	
○ Available online	✓
✓ All of the contract's annexes and appendixes	
○ Available (e.g. by request or in the official gazette)	✓
✓ Any subsequent amendment made to the PPP contract	
○ Available (e.g. by request or in the official gazette)	✗
○ Available online	✗

Table shows scored questions only.

Answer: ✓ Yes ✗ No / Score: ● Good regulatory practice ● Area for improvement

Questions	Answer
Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?	✓
Which of the following tools does it include?	
○ Establishment of a PPP contract management team	✓
○ Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa	✗
○ Elaboration of a PPP implementation manual or an equivalent document	✓
○ Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)	✗
○ Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)	✗
Which of the following options best describes the required qualifications of the PPP contract management team members?	
○ The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.	✓
○ The PPP contract management team members are required to meet sufficient qualification without specific details.	
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.)?	✗
Is the PPP contract construction performance information made available to the public (e.g. by request or published in the official gazette/bulletin board)?	✗
Is the PPP contract construction performance information made publicly available online?	✗
Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?	✓
Which of the following tools does the monitoring and evaluation system include?	
○ Payments are linked to performance	✗
○ Performance is assessed against evaluation criteria set in the tender documents and the PPP contract	✗
○ The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract	✗
○ The private partner must provide the procuring or contract management authority with periodic operational and financial data	✗
○ The procuring or contract management authority must periodically gather information on the performance of the PPP contract	✓
○ The PPP contract performance information must be available to the public	✗
○ The PPP contract performance information must be available online	✗
Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?	✓
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?	✓
Which of the following circumstances are specifically regulated?	
○ Any change in the private partner during an initial period (e.g. construction and first five years of operation).	✗
○ Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.	✗
Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?	✓
Is an approval from a government authority, other than the procuring authority, required for modification or renegotiation of the PPP contract?	✓
Which of the following circumstances are specifically regulated?	
▼ A change in the scope and/or object of the contract.	✓
○ Is there a threshold for which a new tendering process is required?	✗
○ A change in the risk allocation of the contract.	✗
○ A change in the financial and/or economic balance of the contract.	✗
○ A change in the duration of the contract.	✓
○ A change in the agreed price or tariff or annuity payments.	✓
○ Can the procuring authority unilaterally modify a PPP contract?	✗
Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract?	

<input type="radio"/> Force Majeure	✓
<input type="radio"/> Material Adverse government action	✗
<input type="radio"/> Change in the Law	✗
<input type="radio"/> Refinancing	✗
<input type="radio"/> Subcontracting and replacement of the subcontractors	✗
✓ 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?	✓
✓ Is arbitration available as an option?	
<input type="radio"/> Domestic arbitration only	✓
<input type="radio"/> Domestic arbitration and international arbitration	✓
<input type="radio"/> If applicable, are arbitration awards enforceable by local courts?	✓
<input type="radio"/> Are other Alternative Dispute Resolution (ADR) options available (including mediation or dispute resolution boards)?	✓
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?	✗
✓ Which of the following options best describes the lender step-in right?	
<input type="radio"/> The regulatory framework expressly regulates the lender step-in rights.	✗
<input type="radio"/> The regulatory framework prescribes that a direct agreement should be signed with the lenders.	✗
<input type="radio"/> The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.	✗
✓ Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?	✓
<input type="radio"/> Does the regulatory framework (including standard contractual clauses) address the consequences for the termination of the PPP contract?	✓

## Unsolicited Proposals

NR

Table shows scored questions only.		Answer: ✓ Yes ✗ No / Score: ● Good regulatory practice ● Area for improvement
Questions	Answer	
✓ How are unsolicited proposals treated by the regulatory framework? *Note: If prohibited or do not happen in practice, this thematic area is not analyzed.		
<input type="radio"/> Explicitly prohibited by the legal framework		
<input type="radio"/> Explicitly allowed by the legal framework		
<input type="radio"/> Not regulated by the legal framework, but do happen in practice		
<input type="radio"/> Not regulated by the legal framework, and do not happen in practice?	✓	
✓ Does the procuring authority conduct an assessment to evaluate unsolicited proposals?	N/A	
<input type="radio"/> Is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?	N/A	
✓ Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities?		
<input type="radio"/> The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.	N/A	
<input type="radio"/> The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.	N/A	
● Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?	N/A	
● Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?	N/A	