

# About *Benchmarking PPP Procurement 2017*

The links between infrastructure and economic growth are well established. They include the impact of infrastructure on poverty alleviation, growth, and specific development outcomes.<sup>3</sup> As economies face growing demand for infrastructure, Public-Private Partnerships (PPPs) continue to play a crucial role in improving efficiencies in delivering public services, one of the key elements to narrowing the infrastructure gap.<sup>4,5</sup> A PPP is defined as a contractual arrangement between a public entity or authority and a private entity for providing a public asset or service in which the private party bears a significant risk and assumes management responsibilities.<sup>6</sup> During the past 25 years, more than 5,000 infrastructure projects in 121 low- and middle-income economies were delivered through PPPs, representing investment commitments of \$1.5 trillion. PPPs have supported the development of crucial infrastructure such as roads, bridges, light and heavy rail, airports, power plants, and energy and water distribution networks.<sup>7</sup>

The United Nations' Sustainable Development Goals (SDGs) recognize both the relevance of quality infrastructure and the role of partnerships with the private sector in the post-2015 development agenda. In particular, the quality of the procurement process is a driver of PPP efficiency. The Addis Ababa Action Agenda of the Third International Conference on Financing for Development states the intent to “build capacity to enter into public-private partnerships, including with regard to planning, contract negotiation, management, accounting, and budgeting for contingent liabilities.” Corrupt procurement practices continue to obstruct the delivery of quality infrastructure. Moreover, the design of the procurement process itself has an impact on the ability of governments to take full advantage of the potential benefits of PPPs for delivering infrastructure.<sup>8</sup> This includes their ability to identify which projects are best done as PPPs and also to manage contracts in a transparent and effective way.

*Benchmarking Public-Private Partnerships Procurement (Benchmarking PPP Procurement)* was launched in 2015 with the goal of supporting a better policy-making decision process by highlighting key aspects of an economy's regulatory framework for the procurement of PPPs. The exercise was inspired by the methodology of the World Bank Group's *Doing Business* report, which assesses the business climate in 189 economies and has a track record of leveraging more than 2,500 reforms to date. By assessing economies' laws, regulations, and practices against recognized good practices, *Benchmarking PPP Procurement* offers data to fuel academic research, helps governments assess the performance of their procurement systems, and delivers a unique information tool for the private sector and civil society. We expect that the *Benchmarking PPP Procurement* exercise will help identify areas for reform to achieve more transparent, competitive, and efficient PPP procurement systems and increase private sector participation in infrastructure and service delivery.

## What Does Benchmarking PPP Procurement 2017 Measure?

### Thematic Coverage

*Benchmarking PPP Procurement* presents cross-economy analysis of 82 economies on issues affecting the procurement of PPPs. The standardized survey instrument includes 50 questions organized by areas, which were selected with guidance from a review of academic literature<sup>9</sup> and input from the expert consultative group (ECG).

The areas covered by the survey instrument are as follows:

- > *Regulatory and institutional framework for PPPs*: This introductory section aims to identify the extent to which the regulatory frameworks in the measured economies cover PPPs. It highlights alternative approaches to regulate PPPs that different economies have adopted. It also attempts to capture a general understanding of the overall institutional arrangement for PPPs, such as who the procuring authorities are and whether a specific PPP unit or other government agency with similar functions exists.
- > *Preparation of PPPs*: This section covers the period and activities that precede and inform the decision to launch a PPP procurement process. It explores whether the identification of a potential PPP project happens within the broader context of public investments and thereby its consistency with government priorities. It also examines which assessments are required or conducted to define key features of the PPP project and its feasibility. In addition, it considers other activities that lead to the procurement of the PPP project (that is, activities undertaken before publishing the public tender notice, such as preparing the draft contract or obtaining land and permits).
- > *Procurement of PPPs*: This section focuses on the process for selecting a private partner to undertake the responsibility of developing the PPP project. The range of topics in this section reflects recognized good practices in selecting private partners and examines whether different regulatory frameworks adhere to them. The transparency and fairness of the process, evaluation criteria for bids, and specific provisions regarding lack of competition are major themes in this section.
- > *Unsolicited proposals for PPPs*: This section first defines whether the regulatory framework allows for the submission of unsolicited proposals (USPs). When applicable, it examines whether a specific procedure is in place to evaluate their feasibility and their consistency with other government priorities. In addition, it assesses whether a competitive procedure is required to select the private partner. It also explores what compensation mechanisms are in place for USPs.
- > *PPP contract management*: This section considers the existence of a well-established and comprehensive contract management framework to facilitate smooth implementation of a PPP project. It assesses the monitoring and evaluation systems for PPPs, as well as the regulatory provisions regarding PPP contract modification and renegotiation, dispute resolution, lender step-in rights, and termination.


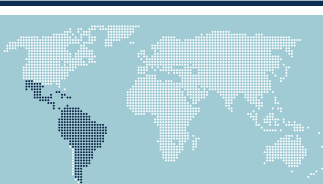

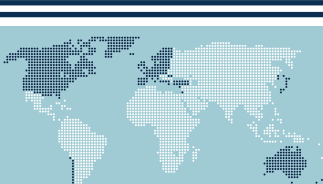
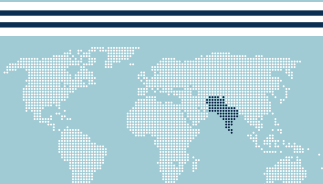
*Benchmarking PPP Procurement* provides de jure and de facto data:

- > *De jure* data capture the characteristics of laws and regulations encompassing PPP procurement rules, other legal texts of general application, and judicial decisions and administrative rulings setting precedents in the procurement of PPPs.
- > *De facto* data assess actual practice in connection with some of the de jure data points covered in the survey. A subset of relevant regulatory questions is followed by questions that capture the extent to which the legal requirements are respected in practice, according to the survey respondents. A number of questions capture contributors' perceptions of the time required to complete relevant stages of the PPP procurement process, based on their significant and routine experience in PPP transactions.

On the basis of the lessons learned from the pilot exercise released in June 2015, which covered 10 economies, the *Benchmarking PPP Procurement* team refined the methodology.<sup>10</sup> Since its inception, the team has relied on extensive research regarding the latest PPP practices, along with frequent consultations with PPP experts. An extensive review of the academic literature was conducted to identify internationally accepted good practices as well as recognized issues that private operators face when entering into PPP transactions. Concurrently, the team consulted with and was guided by the project's ECG,<sup>11</sup> which includes renowned PPP specialists, academics, and representatives from private organizations. The consultation process, along with the academic literature review, enabled the team to refine the survey instrument, generating a set of questions that measures the good practices and allows for a valid cross-economy analysis.

PPP procurement is usually carried out by different levels of government within each economy and is sometimes carried out along sectoral lines. Because of resource considerations, the study has looked at situations in which the procuring authority is national or federal (with two exceptions; figure 1) and has used the transport sector (highways) where sector-specific considerations are assumed (box 1). In addition, some economies have separate regimes for concessions (usually defined as *user-pays projects*) and PPPs (defined as *government-pays projects*). In such cases (Brazil, France, Senegal, Togo, and the Russian Federation), both regimes were evaluated.

**Figure 1 Economies covered in Benchmarking PPP Procurement 2017**

<p><b>East Asia and Pacific</b></p> <p><b>12</b> economies</p>		<p>Cambodia China Indonesia Malaysia Mongolia Myanmar</p> <p>Papua New Guinea Philippines Singapore Thailand Timor-Leste Vietnam</p>
<p><b>Europe and Central Asia</b></p> <p><b>13</b> economies</p>		<p>Albania Armenia Bosnia and Herzegovina Bulgaria Kazakhstan Kyrgyz Republic Lithuania</p> <p>Moldova Romania Russian Federation Tajikistan Turkey Ukraine</p>
<p><b>Latin America and Caribbean</b></p> <p><b>14</b> economies</p>		<p>Argentina Brazil Colombia Costa Rica Dominican Republic</p> <p>Ecuador Guatemala Honduras Jamaica Mexico</p> <p>Nicaragua Panama Peru Uruguay</p>
<p><b>Middle East and North Africa</b></p> <p><b>7</b> economies</p>		<p>Algeria Egypt, Arab Rep. Iraq Jordan</p> <p>Lebanon Morocco Tunisia</p>
<p><b>OECD High income</b></p> <p><b>10</b> economies</p>		<p>Australia* Canada Chile France Italy</p> <p>Korea, Rep. Poland Portugal United Kingdom United States**</p> <p><small>* State of New South Wales    ** Commonwealth of Virginia</small></p>
<p><b>Sub-Saharan Africa</b></p> <p><b>20</b> economies</p>		<p>Angola Benin Cameroon Congo, Dem. Rep. Congo, Rep. Côte d'Ivoire Gabon</p> <p>Ghana Kenya Madagascar Malawi Mauritius Mozambique Nigeria</p> <p>Senegal South Africa Tanzania Togo Uganda Zambia</p>
<p><b>South Asia</b></p> <p><b>6</b> economies</p>		<p>Afghanistan Bangladesh India</p> <p>Nepal Pakistan Sri Lanka</p>

Note: Benchmarking PPP Procurement uses the World Bank Group regional and income group classifications, available at <http://data.worldbank.org/about/country-and-lending-groups>. Regional averages presented in figures and tables in the Benchmarking PPP Procurement 2017 report include economies from all income groups (low, lower middle, upper middle and high income), though high income OECD economies are assigned the "regional" classification OECD high income. PPP = public-private partnership. The scope of the assessment is limited to infrastructure projects developed by procuring authorities at the national or federal level. However, in the cases of Australia and the United States, the study focuses on measuring only the State of New South Wales and the Commonwealth of Virginia, respectively.

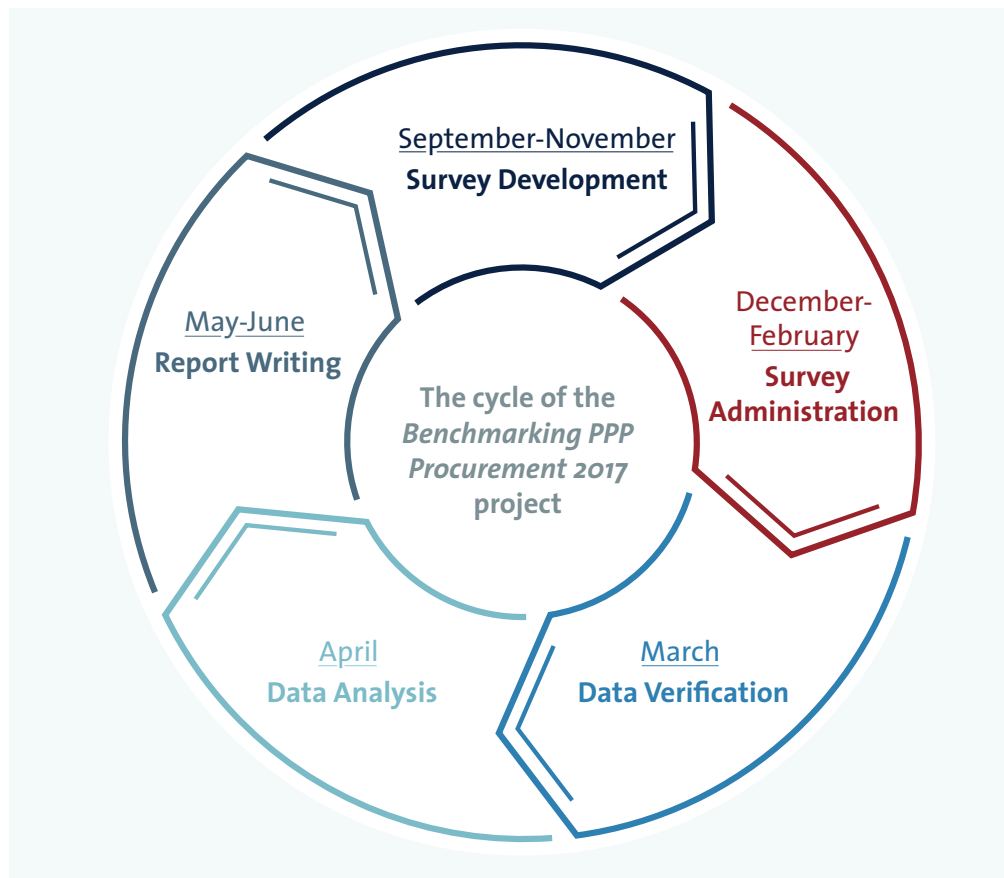
Source: Benchmarking PPP Procurement 2017

## Geographic Coverage

The pilot exercise conducted in 2015 covered 10 economies: Cameroon, Ghana, Kenya, Nigeria, South Africa, and Tanzania; the Arab Republic of Egypt and Tunisia; and Colombia and Peru. For *Benchmarking PPP Procurement 2017*, the geographic coverage has been scaled up to cover 82 economies spanning seven World Bank Group Regions: 12 in East Asia and Pacific (EAP), 20 in Sub-Saharan Africa (SSA), 7 in Middle East and North Africa (MENA), 13 in Europe and Central Asia (ECA); 14 in Latin America and the Caribbean (LAC), 6 in South Asia (SAR), and 10 in OECD high income (Organisation for Economic Co-operation and Development) economies (figure 1).

The *Benchmarking PPP Procurement* assessment is based on primary data collected using a standard questionnaire, which was administered to approximately 8,400 contributors in the 82 economies included in this year's edition. Data collection was conducted until the end of April 2016. Consequently, any legal or regulatory reforms that have taken place after March 31, 2016, are not taken into account in this year's report. Once the preliminary analysis is completed, a follow-up round is conducted, through conference calls and written correspondence, to address and rectify any discrepancies in the responses provided by the contributors. The preliminary data are then finalized and shared with governments or the World Bank Group's Country Management Units (CMUs) for validation (figure 2).

**Figure 2**



Note: PPP = public-private partnership.  
Source: Benchmarking PPP Procurement 2017

## How Are the Data Collected?

### Selection of Expert Contributors

The questionnaire was completed by practitioners who have a wealth of knowledge related to PPP systems. The main contributors were law firms that have extensive experience advising clients on PPP transactions, laws, and regulations; public officials involved with PPP transactions; chambers of commerce, consultants, and academics familiar with PPPs; and private operators and other PPP experts.

Respondents were selected on the basis of their expertise with PPP transactions, as well as their willingness and availability to contribute. The following sources were used to identify the expert contributors:

- > International guides identifying leading providers of legal services, including their specialization, in each economy. The guides include Chambers and Partners guides, the International Financial Law Review (IFLR), The Legal 500, Martindale-Hubbell, HG Lawyers' Global Directory, Who's Who Legal Directory, Lexadin, and country-specific legal directories.
- > Large international law and accounting or consulting firms that have extensive global networks, whether through offices or local partner groups.
- > Members of the American Bar Association, country bar associations, chambers of commerce, and other membership organizations.
- > Government entities that undertake PPPs, such as ministries of finance, PPP units, and PPP procuring authorities.
- > Professional service providers identified through embassy websites, business chambers, and other sources and recommended by World Bank Group staff.

Lawyers and professional services providers are in an ideal position to complete the survey and provide the most up-to-date information on the basis of their experience advising clients and working on PPP transactions. Involving PPP experts and practitioners from different sectors increases the accuracy of the data by normalizing potential biases held by different stakeholders. Furthermore, reaching out to both the public and the private sectors helps reveal the views and insights of the various stakeholders involved in the PPP procurement process.

### Standardized Data and Comparability

Standardized and comparable data are indispensable for valid cross-economy analysis; this is the core principle of *Benchmarking PPP Procurement*. The set of questions selected for the questionnaire is sent to all of the economies covered. Furthermore, comparability is achieved through use of standard case-study assumptions, which provide a hypothetical scenario that guides local respondents in completing the questionnaire. Use of a standard case study makes data collection easily replicable and can compensate for deep structural differences that could jeopardize cross-economy comparisons. In addition, the case study can easily be applied to a larger set of economies in cost-efficient manner.

### Box 1 Case-study assumptions for *Benchmarking PPP Procurement*

- The private partner (the project company) is an SPV<sup>a</sup> established by a consortium of *privately* owned firms, which operate in the surveyed economy.
- The procuring authority is a *national or federal authority<sup>b</sup> in the economy* that is planning to procure the design, building, financing, operation, and maintenance of, for example, an infrastructure project in the *transportation* sector (a highway) with an estimated investment value of *\$150 million (or the equivalent in the relevant economy's local currency)*.
- To this end, the procuring authority initiates a public call for tenders, following a *competitive PPP procurement procedure*. The call for tender attracts six bids, including the private partner's bid. The private partner's offer is complete and includes all required documents. It is unambiguous and provides a price quotation free from errors on the part of the private partner.
- For section D on unsolicited proposals (USPs), *before initiating any procurement activities*, the procuring authority receives a USP from the consortium of companies to be integrated in the private partner.
  - a. The special purpose vehicle (SPV)—also known as a special purpose company (SPC) or special purpose entity (SPE), is a company specifically formed to undertake a specific project—in this case, the public-private partnership (PPP) project.
  - b. Except for the cases of Australia and United States, where most of the PPPs are done at the subnational level. There, the study focuses on measuring only the State of New South Wales and the Commonwealth of Virginia, respectively.

### *Aggregating the Data*

The *Benchmarking PPP Procurement 2017* data are aggregated by thematic area, with the aim of assisting policymakers in evaluating their economies' PPP frameworks in thematic areas: PPP preparation, PPP procurement, USPs, and PPP contract management. The PPP practices and regulations that are recognized and considered as good practices are the only areas that are scored and aggregated at the thematic area level.<sup>13</sup> Other data are collected and included in the report for contextual purposes. The scoring methodology (annex 2) allocates an identical weight to all of the benchmarks addressed in the survey. The scores are presented on a range from 0 to 100.

The economies at the top of the range (score approaching 100) are considered to have a PPP regulatory framework that closely aligns with internationally recognized good practices. The economies at the bottom of the range (scores closer to 0) have significant room for improvement as they do not adhere closely to international good practices and principles as measured by *Benchmarking PPP Procurement*. Each economy's scores for the four thematic areas appear in the "Economy Data Tables" section at the end of this report and should be assessed individually. All of the data points used in aggregating *Benchmarking PPP Procurement* are identified and made publicly available, along with the other data points, on the project's website (<http://bpp.worldbank.org>).

## **A Word of Caution**

Understanding the data's scope of coverage is fundamental to its interpretation. In fact, when using this report, readers need to keep in mind both its strengths and its limitations. The project has the major advantage of the comparability of its data across the world's economies covered by the assessment, thanks to the use of standardized case scenarios with well-specified assumptions. By compiling more than 50 data points in a comparative manner, the report highlights relevant regulatory aspects for governments and firms engaging in PPP projects and helps governments identify well-defined areas of action and design reform agendas. The majority of the data points covered are based on the regulatory framework, which makes them "actionable"—as the law is well within the sphere of influence of policy makers and thus amenable to change.

Although this method has the advantage of transparency, it has one inevitable shortcoming: it is not feasible to design a case-study assumption that covers all possible PPP projects across the world's economies. Moreover, the data used to conduct this exercise were gathered during a specific time frame. This method reflects only the regulatory framework in force and general practice at that point. Data collection for *Benchmarking PPP Procurement 2017* closed on March 31, 2016. Consequently, any regulatory reforms enacted and any practice adopted since that date are not taken into account in this year's edition.

*Benchmarking PPP Procurement* does not cover all the regulatory issues related to PPP procurement. The report does not measure some aspects of PPP frameworks that matter to firms, policy makers, and the overall development of the projects. For example, it does not attempt to capture a number of dimensions, such as macroeconomic stability or the prevalence and perception of corruption in an economy, despite their importance. It is complementary to other activities developed by the multilateral development banks (for example, Infrascopes, which provides a broader assessment of the enabling framework for PPPs).

## **What's Next?**

Improving the methodology is an ongoing process that is highly dependent on continuous consultations, and the team welcomes feedback on the methodology and the results shown in this report.

Future expansions of themes covered in the *Benchmarking PPP Procurement* project may take place. Consideration could be given to including subnational data and collecting data from more than one sector, which is the example reflected in the current case-study assumption.

Subject to resource availability, in the next phase the geographic scope of the project could be expanded. This expansion would enhance the illustration of more global experiences from different regions and consequently add value to the dataset and serve a broader audience.