

What Does *Procuring Infrastructure PPPs 2018* Measure?

Since launching the report in 2015, the *Procuring Infrastructure PPPs* team has relied on cutting-edge research on the latest PPP practices around the world, as well as frequent consultations with PPP experts in various economies. As an initial step, the team conducted an extensive literature review to firmly document internationally accepted good practices, as well as understand challenges that governments and private companies face when entering into a PPP project (see Bibliography). The team also consulted with the project's Expert Consultative Group (ECG), which includes seasoned PPP specialists, academics, and individuals from the private sector. By supplementing the extensive literature with the consultations, the team was able to refine the 2018 survey, ultimately producing a set of questions that comprehensively measure global PPP good practices and enable robust cross-economy analysis.

Thematic Coverage

Procuring Infrastructure PPPs provides an analysis of 135 economies with questions pertaining to the procurement of PPPs. The survey instrument includes 55 major questions organized in four thematic areas: preparation, procurement, contract management, and a special module on unsolicited proposals (USP). The questions in the survey were selected and developed taking into account the most recent developments in academic literature and with the guidance of the ECG.

The report, reflecting the content of the survey instrument, is organized in five areas:

- › *Regulatory and institutional framework for PPPs*: This section introduces the report and seeks to identify the extent to which regulations in various economies address PPPs. It presents the various approaches adopted around the world to regulate PPPs. It also attempts to understand the general components of the institutional framework for PPPs, such as who the procuring authorities are or if a specific PPP unit or other government agency exists with similar functions.


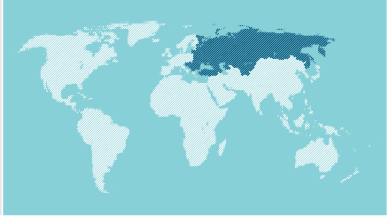

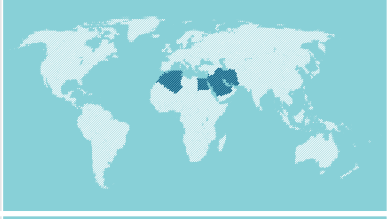
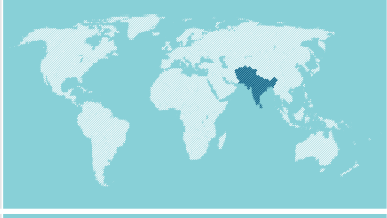
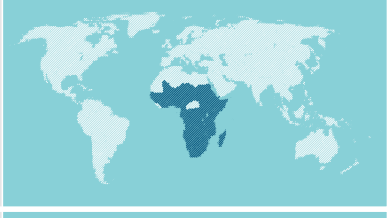
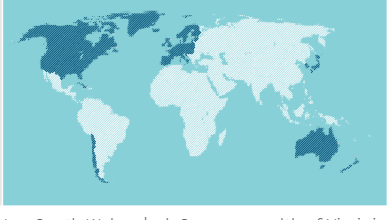


- › *Preparation of PPPs*: This section covers the period and activities that inform the decision of whether to launch a PPP procurement process. This portion of the survey explores whether the identification of a prospective PPP project happens within the broader context of public investments, consistent with other government priorities. It also examines the different types of assessments and the methodologies used to set the rules for these assessments. Furthermore, it considers other activities undertaken before publishing the public tender notice, such as preparing the draft contract and tender documents and obtaining land and permits, that lead to the procurement of the PPP project.
- › *Procurement of PPPs*: This section concentrates on the process for selecting a private partner to take on the responsibility of developing the PPP project. While this section covers a range of topics, it focuses on whether distinct legal and regulatory frameworks around the globe adhere to recognized good practices in terms of choosing the private partner. The major themes covered in this section include the fairness, neutrality, and transparency of the process, as well as specific requirements regarding matters related to lack of competition.
- › *PPP contract management*: This section assesses the contract management framework in place to facilitate the implementation of PPP projects, as well as the existing monitoring and evaluation systems. It also examines the regulatory provisions regarding PPP contract modification and renegotiation, dispute resolution, lender step-in rights, and termination of contracts.
- › *Unsolicited proposals (USPs) for PPPs*: This section begins by defining whether the legal and regulatory framework specifically allows or prohibits the submission of USPs and whether they take place in practice. If pertinent, it also delves into whether a specific process is in place to evaluate the feasibility of the USP and its alignment with other government priorities. This section also inquires about the specific compensation mechanisms in place for USPs, as well as whether a competitive process is required to select the private partner for the PPP project.

Geographic Coverage

Procuring Infrastructure PPPs 2018 covers 135 economies. In addition to the 82 countries assessed during *Benchmarking PPP Procurement 2017*, this year's edition includes all emerging markets and developing economies that have had at least one infrastructure PPP project in the last five years. In addition, 18 OECD (Organization for Economic Cooperation and Development) high-income economies were included to have a better representation worldwide. The 135 economies cover seven World Bank Group regions: 15 in East Asia and Pacific (EAP); 21 in Europe and Central Asia (ECA); 18 in Latin America and the Caribbean (LAC); 12 in Middle East and Africa (MENA); 6 in South Asia (SAR); 34 in Sub-Saharan Africa (SSA); and 29 in OECD high-income economies (Figure 1).

Figure 1 Economies covered in *Procuring Infrastructure PPPs 2018*

East Asia and Pacific 15 economies	Cambodia China Indonesia Lao PDR Malaysia Mongolia	Myanmar Papua New Guinea Philippines Singapore Solomon Islands Thailand	Timor-Leste Tonga Vietnam		
Europe and Central Asia 21 economies	Albania Armenia Azerbaijan Belarus Bosnia and Herzegovina ^a Bulgaria Croatia Georgia	Kazakhstan Kosovo Kyrgyz Republic Lithuania Macedonia, FYR Moldova Montenegro Romania	Russian Federation Serbia Tajikistan Turkey Ukraine		
Latin America and Caribbean 18 economies	Argentina Brazil Colombia Costa Rica Dominican Rep. Ecuador	El Salvador Guatemala Haiti Honduras Jamaica Mexico	Nicaragua Panama Paraguay Peru Trinidad & Tobago Uruguay		
Middle East and North Africa 12 economies	Algeria Djibouti Egypt, Arab Rep. Iraq Jordan Kuwait	Lebanon Morocco Qatar Saudi Arabia Tunisia United Arab Emirates ^b			
South Asia 6 economies	Afghanistan Bangladesh India Nepal Pakistan Sri Lanka				
Sub-Saharan Africa 34 economies	Angola Benin Botswana Burkina Faso Burundi Cameroon Chad Congo, Dem. Rep. Congo, Rep.	Côte d'Ivoire Eritrea Ethiopia Gabon Ghana Guinea Kenya Madagascar Malawi	Mali Mauritius Mozambique Niger Nigeria Rwanda Senegal Sierra Leone	Somalia South Africa Sudan Tanzania Togo Uganda Zambia Zimbabwe	
OECD high-income 29 economies	Australia ^c Austria Belgium Canada Chile Czech Rep. Denmark Estonia	Finland France Germany Greece Hungary Ireland Italy Japan	Korea, Rep. Latvia Netherlands New Zealand Poland Portugal Slovak Republic Slovenia	Spain Sweden Switzerland United Kingdom United States ^d	

a. Sarajevo Canton | b. Emirate of Dubai | c. State of New South Wales | d. Commonwealth of Virginia

Note: *Procuring Infrastructure PPPs 2018* 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 *Procuring Infrastructure PPPs 2018* 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. 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, Bosnia and Herzegovina, United Arab Emirates, and the United States, the focus is on subnational units (the State of New South Wales, the Sarajevo Canton within the Federation of Bosnia and Herzegovina, the Emirate of Dubai, and the Commonwealth of Virginia, respectively). PPP = public-private partnership.

How Are the Data Collected?

Survey Contributors

The standardized questionnaire that generated the data for *Procuring Infrastructure PPPs* was distributed to approximately 13,000 contributors in the 135 economies included in the report. Data collection, analysis, and validation spanned six months, and ended in November 2017. Once the initial data collection was done, the team conducted a follow-up round of questions via conference calls and written correspondence to address and resolve any contradictions or discrepancies in the data provided by various contributors. The preliminary data were finalized and then shared with the economy's respective governments or the World Bank Group's Country Management Unit (CMUs) for final validation.

The standardized questionnaire was distributed to practitioners who have a wealth of knowledge related to PPP systems. Respondents were selected on the basis of their experience and their availability to contribute meaningfully to the questionnaire. The report's main contributors were law firms that have experience advising clients on PPP transactions, laws, and regulations; public officials involved with PPP processes and transactions; chambers of commerce; consultants; and academics knowledgeable about PPPs.

The following sources were utilized to identify the appropriate pool of contributors:

- › International guides, such as Chambers and Partners guides, the International Financial Law Review (IFLR), The Legal 500, Martindale-Hubbell, HG Lawyers' Global Directory, Who's Who Legal Directory, and Lexadin, as well as country-specific legal directories. The guides allowed the team to identify leading providers of legal services, including their specialization, in each economy.
- › Major international law and accounting or consulting firms that have large, well-connected global networks through partner groups or foreign offices.
- › Members of the American Bar Association, country bar association, and chambers of commerce, as well as other legal membership organizations.
- › Government organizations that undertake PPPs, such as Ministries of Finance, PPP procuring authorities, and specific PPP units.
- › Secondary resources and professional service providers recommended by World Bank staff, as suggested by embassy websites and business chambers.

Lawyers and professional service providers are in an ideal position to provide input for the questionnaire because they can draw upon their extensive experience advising clients, as well as their exposure to recent PPP transactions. Including PPP experts from various sectors of the economy helps ensure the accuracy of the survey's data by decreasing the chance of potential biases held by various contributors. Furthermore, including both the public and private sectors helps shed light on the views and insights of the various contributors involved in the PPP procurement process.

Standardized Data and Comparability

Standardized and comparable data are invaluable for valid cross-economy analysis, which is the central principle of *Procuring Infrastructure PPPs 2018*. The unique pool of questions used in the questionnaire was sent to each contributor in every economy covered. Moreover, the contributors were referred to a case study for the transportation sector (highways) with standard assumptions to ensure comparability across surveys (Box 1). The use of a standard case study makes data collection easily replicable across economies and can make up for deep structural gaps between economies, which could jeopardize cross-economy contrasts. In addition, the hypothetical case study can be easily applied to an extended set of economies in a seamless manner.

Box 1. Case study assumptions

- › The private partner (the project company) is a special purpose vehicle (SPV) established by a consortium of privately owned firms that operate in the surveyed economy.
- › The procuring authority is a national/federal authority^a in the surveyed economy that is planning to procure the design, building, financing, operation, and maintenance of, for example, a national/federal infrastructure project in the transportation sector (such as a highway) with an estimated investment value of US\$150 million (or the equivalent in your local currency) funded with availability payments and/or user fees.
- › To this end, the procuring authority initiates a public call for tenders, following a competitive PPP procurement procedure.

a. Except for Australia, Bosnia and Herzegovina, United Arab Emirates, and the United States, where the focus is on subnational units (the State of New South Wales, the Sarajevo Canton within the Federation of Bosnia and Herzegovina, the Emirate of Dubai, and the Commonwealth of Virginia, respectively).

Aggregating the Data and Scoring

The *Procuring Infrastructure PPPs 2018* data are aggregated by the following four thematic areas: PPP preparation, PPP procurement, PPP contract management, and USPs. The PPP practices and regulatory frameworks currently recognized as international good practice and in place in the respective economy are the sole areas that are scored and aggregated on the thematic level. Other data collected are used in the report for their value in providing context. The scoring methodology, accessible in Appendix 1, assigns identical weights to all the benchmarks reviewed in the survey.

The possible scores range from 0 to 100. The economies with the highest scores, nearing 100, are considered to have a PPP framework that is closely aligned with international PPP good practices. By contrast, the economies with scores at the bottom (nearing 0) have considerable room for improvement because they do not adhere to international PPP good practices as recognized by this report. While each economy's scores for the four thematic areas appear in the "Economy Data Tables" section in the end of this report, each of them should be assessed individually. Finally, while only the data points scored are presented in the country data tables, all the information collected during the implementation of the survey is publicly available on the project's website: <http://bpp.worldbank.org>.

It is important to note that a significant number of changes were made in the survey instrument between the *Benchmarking PPP Procurement 2017* and *Procuring Infrastructure PPPs 2018* exercises. The 2017 edition was a pilot; thus, comments were received during data gathering and assessment and after the release of the report. Those comments were incorporated to clarify the formulation of questions, as well as to cover areas that were overlooked in the report. Those changes had consequences in the scoring. Some questions that were scored in the *Benchmarking PPP Procurement 2017* were reformulated, and additional questions were included that are scored in the 2018 edition. This implies that the scores of these two editions are not comparable and changes in the scoring are in most cases due to methodological changes and unrelated to regulatory changes. Additional questions introduced and reformulated questions scored in this edition are identified in Appendix 2.¹¹

The Scope and Limitations of the Assessment

Understanding the scope of the data utilized in this report is important to interpreting the report's content. The data have both strong and weak points, which readers should keep in mind.

The procurement of PPPs can be carried out at different levels of governments within each economy and is sometimes carried out along sectoral lines. While the report recognizes the complexity of the process, because of limited resources, it examines only those PPPs in which the procuring authority is either national or federal. However, in Australia, Bosnia and Herzegovina, United Arab Emirates, and the United States, the study focuses on the subnational level, measuring the State of New South Wales, the Sarajevo Canton within the Federation of Bosnia and Herzegovina, the Emirate of Dubai, and the Commonwealth of Virginia, respectively. This approach was adopted to address the fact that federal governments in these economies have limited authority regarding infrastructure; this limitation, along with particular constitutional arrangements, make it unfeasible to evaluate the development of PPPs at the national or federal level. The specifics of each of these four cases are discussed in the description of the corresponding regulatory framework available in the project website: <http://bpp.worldbank.org>.

The regulatory framework to procure PPPs may also differ across sectors, but it is not possible to design a survey that spans all possible types of PPP projects. While most of the answers to the questionnaire may apply to all sectors, the contributors are referred to a case study for the transportation sector (highways) to ensure comparability across surveys (Box 1).



Procuring Infrastructure PPPs 2018 follows the World Bank definition of PPPs¹² and applies that definition irrespective of the terminology used in the particular economy or jurisdiction (whether PPPs or concessions). In economies where generally applicable and separate regimes exist for concessions (most often defined as user-pay systems) and PPPs (most often defined as government-pays projects), both regimes were evaluated and scored separately to ensure accuracy. The following dual-regime economies were scrutinized for the purposes of this report: Argentina, Brazil, Costa Rica, France, Mauritius, Niger, Senegal, Togo, and Russian Federation. The specifics of each of these cases are further discussed in the description of the corresponding regulatory framework available in the project website: <http://bpp.worldbank.org>.

The assessment of *Procuring Infrastructure PPPs 2018* is based mostly on the regulatory framework in place for the procurement of PPPs. Most questions included in the survey capture the characteristics of laws and regulations that govern PPP procurement. The report, however, adopts a broad understanding of what constitutes the PPP regulatory framework to include any applicable legal texts and other binding documents (PPP policies and PPP standardized transaction documents and contracts), as well as judicial decisions and administrative precedents regarding the process of procuring PPPs.¹³ This broad understanding of the PPP regulatory framework helps prevent, to the extent possible, any bias toward a particular legal system (civil law versus common law) or formal configuration of the regulatory framework for PPPs.

To complement the information that is referenced in legal documents, *Procuring Infrastructure PPPs 2018* also captures instances in which economies adhere to recognized good practices on a regular basis, in the contributors' opinion, even if those practices are not based on regulations. The assessment thus differentiates between those economies adhering to internationally recognized good practices with and without a regulatory basis. In addition, for a selected set of questions, the survey aims to capture the extent to which the regulatory framework in place for PPPs in each economy is respected in practice. This type of questions covers contributors' perceptions, based on their exposure to and experience with similar PPP projects. For most economies, however, given the already limited number of expert contributors, the pool of contributors that provided information fell short of constituting a representative sample. Consequently, the assessment, particularly when referring to contributors' perceptions, must be understood in the context of this limitation.

It is important to note that *Procuring Infrastructure PPPs 2018* does not assess individual PPP projects and contracts on a regular basis or treat them as a source of information. The assessment relies mostly on the input provided by the expert contributors. For answers based on regulatory references, the team also crosschecked the information provided with the referenced regulations and followed up with contributors whenever contradictions were identified.



In an effort to keep the report concise, this report does not cover all the regulatory challenges related to PPP procurement and does not consider the capacity of implementing agencies as demonstrated by staffing numbers and other related factors. Moreover, some issues that matter greatly to firms and policy makers, such as macroeconomic stability and the prevalence of corruption in an economy, are not captured in the survey, despite their importance. While *Procuring Infrastructure PPPs 2018* provides an overview of the way regulatory frameworks in different economies address issues that are important to develop PPPs adequately, some relevant factors are not captured. Consequently, *Procuring Infrastructure PPPs 2018* cannot be considered a complete and full assessment that provides a straightforward classification of economies based on their capability to procure PPPs.

Furthermore, since the data were compiled in a rather short time frame, the relevant legal and regulatory provisions noted in the report reflect a particular moment in time. Thus, readers should note that the legal situations may have changed. Specifically, data were collected for *Procuring Infrastructure PPPs 2018* with June 1, 2017 as the cutoff date. Thus, any regulatory reforms enacted and any practice adopted since this date are not taken into consideration in this year's report.

Finally, the report and the data points are meant to be “actionable” to lawmakers and governments because the respective economy's body of law and regulations is well within the sphere of influence of policy makers and able to be amended. Consequently, the report highlights relevant regulatory aspects of PPP legal frameworks in the hope that the governments of the respective economies will seize the opportunity to design reform agendas. However, given the limitations discussed, the report does not attempt to “rank” economies by their capability to procure PPPs.

