PROCURING INFRASTRUCTURE PPPs

Assessing government capability to prepare, procure and manage PPPs

Tania Ghossein
Mikel Tejada Ibanez
December 6, 2017
Genesis and timeline

2014
PPP CSSA request and Kick-off

2015
Pilot data collection in 10 economies

2016
Scale up to 82 economies

2017/2018
Scale up to 135 economies
Geographical coverage

Currently scaling up to cover 135 economies worldwide in the 2018 edition

East Asia and Pacific
(11 economies)
Cambodia
China
Indonesia
Malaysia
Mongolia
Myanmar
Papua New Guinea
Philippines
Thailand
Timor-Leste
Vietnam

Latin America and Caribbean
(14 economies)
Argentina
Brazil
Colombia
Costa Rica
Dominican Republic
Ecuador
Guatemala
Honduras
Jamaica
Mexico
Nicaragua
Panama
Peru
Uruguay

Sub-Saharan Africa
(20 economies)
Angola
Benin
Cameroon
Congo, D.R.
Congo, Rep.
Côte d'Ivoire
Gabon
Ghana
Kenya
Madagascar
Malawi
Mauritius
Mozambique
Nigeria
Senegal
South Africa
Tanzania
Togo
Uganda
Zambia

OECD High-income
(12 economies)
Australia *
Canada
Chile
France
Germany
Italy
Korea, Rep.
Mexico
Netherlands
Norway
Singapore
Sweden

Europe and Central Asia
(12 economies)
Albania
Armenia
Austria
Belgium
Bulgaria
Czech Republic
Denmark
Estonia
Finland
France
Germany
Hungary

Middle East and North Africa
(7 economies)
Algeria
Egypt, Arab Republic of
Iraq
Jordan
Lebanon
Morocco
Tunisia

South Asia
(6 economies)
Afghanistan
Bangladesh
India
Nepal
Pakistan
Sri Lanka

* State of New South Wales
** Commonwealth of Virginia
Bolded: Pilot economies
Scope of the benchmarking exercise

Case study assumptions

Specific definition of PPP

Broad definition of regulatory framework
PPP vs. traditional procurement

**Differences between PPP and traditional procurement**

- Single/multiple contractors
- Bearing of the project’s risk
- Length and complexity of procurement processes and Contract
- Remuneration linked to performance

**Motivations and Caveats of PPP vs. traditional procurement**

**Advantages**

- Completion on schedule and on budget
- Best allocation of tasks and risks
- New technologies and innovative solutions
- Long term planning

**Potential pitfalls**

- Complexity and need for more expertise
- Fiscal implications / excessive budget commitments
- Higher transaction costs, higher cost to monitor the contract performance
PPP's are a complex approach to deliver infrastructure
- PPPs can help delivering infrastructure more efficiently
- Strong regulatory framework is key to avoid pitfalls.

Sound regulatory frameworks are good for all parties
- Governments build and preserve capabilities to deal with PPP's.
- Private sector involvement is encouraged by public sector commitment.
- Helps reduce strategic behavior and corrupt practices.

Mature regulatory frameworks support successful PPP's
- Successful PPP's happen with mature and well developed regulatory frameworks.
- Sound regulatory frameworks attract more investors
Relevance of the initiative

Despite its relevance, lack of systematic data available
- Data comparing good practices on PPPs with regulatory frameworks is scarce
- Reliable data required to factually ground PPP policy choices in the future

Good reception, enthusiastic contributors and high demand
- In general, contributors show support and willingness to participate
- Greatly received by WB management and the international PPP community
- Several donors are supporting the continuation of the effort this year

Ongoing and potential applications
- Fits perfectly with the PPP CSSA toolkit of products to leverage the use of PPPs
- Used by PPIAF to monitor and evaluate its activities. GIH uses it on InfraCompass
- Considered useful by external parties: academia, governments, MDBs.
Experts Consulted

More than 30 globally-recognized PPP experts have provided guidance

• PPP experts from MDBs and other IOs:
  • World Bank Group: Annand Kumar, Daniel Benitez, Javier Calvo, Jeffrey Delmon, Victoria Delmon, Felipe Goya, Enzo de Laurentiis, Michel Ongangi etc.
  • Other MDBs: Rocio Medina (IaDB), Isabel Rial (IMF), Walid Abdelwahab (IsDB), etc.
  • Other International Organizations: Joao Riberio, Caroline Nicholas (UNCITRAL); Ian Hawkesworth (OECD), Ed Farquharson (European PPP Expertise Centre), etc.

• Recognized PPP experts in academia:
  • David Van Slyke (Syracuse University), Jacques Gansler (University of Maryland), Lawrence Martin (University of Central Florida), John Forrer (George Washington University), Johnathan Halpern (Georgetown University).

• Recognized PPP experts in the private sector:
  • J S (KPMG), Rihd Abdi (PWC)
Contributors

**Private Sector**

- Law Firms
- Consulting Firms
- Private sector PPP operators
- Financial Institutions

**Public Sector**

- PPP Units
- Ministry of Economy and Finance / Central Budgetary Authorities
- Relevant Line Ministries (Ministry of Transportation, Ministry of Public Works, etc.)
- Public Procurement Offices, Supreme Audit Office, Anti-corruption offices

**Others**

- Academia
- Chambers of commerce
Thematic Coverage

- Regulatory Framework and Institutional Arrangements for PPPs
- Preparation
- Procurement
- Unsolicited Proposals
- Contract Management
By adopting good practices already in place in other economies:

- Conducting key assessments before launching the procurement of a PPPs:
  +0.50 point
  +0.50 if a specific methodology has been adopted.

- Regulatory requirement to publish the contract:
  +1 point
  +1 point if published online

- If competitive procedure required after accepting an unsolicited proposal:
  + 1 point

- If dispute resolution mechanism for PPPs addressed in the law:
  + 1 point
  + 1 point if specific resolution mechanisms detailed
### Preparation of PPPs

- Central Budgetary Authority’s approval is required both before tendering and before the contract signature
- Economic analysis assessment with specific methodology developed
- PPP vs. Public Procurement comparative assessment with specific methodology developed
- Inclusion of Draft PPP contract in the request for proposal required

### Procurement of PPPs

- Evaluation committee members required to meet specific qualifications, and detailed membership regulated
- Public procurement notice of the PPP issued by procuring authority and available online
- Minimum period of time to submit the bids (90 days)
- Tender documents detail the stages of the procurement process
- Clarification questions for procurement notice and/or the request for proposals allowed and answers publicly disclosed
- Submission of financial model with proposal required
- Proposals strictly and solely evaluated in accordance with published evaluation criteria
- Notification of the result of the PPP procurement process, including grounds for selection

### PPP Contract Management

- System to manage the implementation of the PPP contract: Contract management team and consultation with PPP procurement experts
- Monitoring ad evaluation system: The private partner provides periodic info; and the procuring authority gathers info
- Regulation of a change in the structure (i.e. stakeholder composition) of the private partner: the same qualifications are legally required for the replacing entity
- Regulation of modification/renegotiation of the PPP contract (once the contract is signed): Limitation to change the scope and/or object of the contract
- Regulation of circumstances that may occur during the life of the PPP contract: Force majeure; Material adverse government action
- Dispute resolution mechanisms: recourse to arbitration
- Lenders step-in right expressly regulated
- Grounds for termination of a PPP contract as well as consequences of termination expressly regulated

### Preparation of PPPs

- PPP’s prioritization consistent with public investment prioritization but no detailed procedure regulated
- Fiscal affordability assessment required but no specific methodology developed
- Risk identification and allocation required but no specific methodology developed
- Financial viability assessment required but no specific methodology developed

### Procurement of PPPs

- Standardized PPP model contracts and/or transaction documents not developed

### PPP Contract Management

- System to manage the implementation of the PPP contract: Establish additional tools for example PPP implementation manual
- Monitoring ad evaluation system: Make performance information publically available and available online
- Regulation of modification/renegotiation of the PPP contract (once the contract is signed): Establish additional limitations for example that prevent changing the risk allocation of the contract
- Regulation of circumstances that may occur during the life of the PPP contract: Change in law and refinancing
- Dispute resolution mechanism: Establish a specific PPP dispute resolution mechanism besides the recourse to arbitration
Main Challenges

Regulatory provisions versus actual practice

- Regulatory based indicator not fully capturing implementation
  - Right provisions in place is a necessary starting point and signal good practices

Sector limitation

- Focus on physical infrastructure (transportation) leaving out other sectors.
  - Experts agree that transportation is the best alternative for a benchmarking exercise

PPPs at the subnational level

- Scope restricted to the national/federal level
  - National/federal level offers a good proxy, ensures global coverage.
Main Findings
Benchmarking PPP Procurement 2017
The lower the income level of the group, the lower the performance in the four scored areas.

Note: PPP = public-private partnership; USP = unsolicited proposal.
49% of the economies regulate PPPs with a specific PPP law. Also, only 15% do not have a PPP unit.
### Preparation of PPPs

- Approval by the ministry of finance or central budgetary authority
- Integration of PPP within the broader context of public investment
- Assessment of PPP feasibility:
- Obtaining of required permits and authorization
- Standardization of PPP contracts and procedural documents

### Procurement of PPPs

- Composition of the PPP evaluation committee
- Publication of the PPP procurement notice/tender documents
- Legal minimum period to prepare PPP bids
- Available procurement procedures
- Prequalification and evaluation criteria
- Treatment of sole proposals
- Publication and notification of the PPP award
- Standstill period after the contract award
- Regulation/restriction of negotiations between award and signature of the PPP contract
- Publication of the PPP contract
Only 23% of economies have detailed procedures to ensure PPPs are strategically prioritized.

PPP = public-private partnership.
Source: Benchmarking PPP Procurement 2017
Less than one-third have adopted specific methodologies for conducting assessments.

PPP = public-private partnership.
Source: Benchmarking PPP Procurement 2017
Standardization varies widely among regions and income levels

<table>
<thead>
<tr>
<th>Region</th>
<th>Percentage of Economies</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-income OECD</td>
<td>83%</td>
</tr>
<tr>
<td>ECA</td>
<td>[VALUE]%</td>
</tr>
<tr>
<td>SSA</td>
<td>[VALUE]%</td>
</tr>
<tr>
<td>EAP</td>
<td>17%</td>
</tr>
<tr>
<td>MENA</td>
<td>14%</td>
</tr>
<tr>
<td>LAC</td>
<td>7%</td>
</tr>
<tr>
<td>High-income OECD</td>
<td>69%</td>
</tr>
<tr>
<td>Lower-middle income</td>
<td>37%</td>
</tr>
<tr>
<td>Low income</td>
<td>27%</td>
</tr>
<tr>
<td>Upper-middle income</td>
<td>21%</td>
</tr>
</tbody>
</table>

Global average

Source: Benchmarking PPP Procurement 2017
Breakdown by region and income level (Percentage, N=82)
40% either do not specify a minimum period for bid preparation or require fewer than 30 days.

- At least 60 calendar days: 16%
- No legal requirement: 7%
- No specific time established in the regulatory framework: 23%
- Between 30 and 60 calendar days: 44%
- Less than 30 calendar days: 10%

Source: Benchmarking PPP Procurement 2017
51% do not address cases when only one proposal is received and only 15% detail a specific process.

Source: Benchmarking PPP Procurement 2017
23% of the economies publish the PPP contract, and very few publish it online.

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

- Evaluation and vetting of Unsolicited Proposals (USPs)
- Consistency of USPs with other government priorities
- Requirement for competitive procedure to award USPs
- Incentives mechanism to reward/compensate the presentation of unsolicited proposals

Contract management and termination of PPPs

- PPP contract management system
- System for tracking progress and completion of construction works
- PPP contract monitoring and evaluation system
- Prohibition to repatriate the income resulting from the operation of a PPP project
- Change in the structure of the SPV
- Modification or renegotiation of PPPs
- Regulation of force majeure, refinancing, subcontracting
- Dispute resolution mechanisms
- Lender’s step-in rights
- Grounds for and consequences of PPP contract termination
68% regulate USPs. Only 21% have detailed procedures to evaluate consistency of USPs.

**Evaluation of USP**

- **Evaluation not required**: 2%
- **Evaluation conducted in practice**: 32%
- **Consistency evaluated in practice**: 22%
- **Evaluation conducted, including assessment of consistency with government priorities**: 66%
- **Consistency required with a detailed framework**: 21%
- **Consistency required as a principle**: 57%

Note: USP = unsolicited proposal. Source: Benchmarking PPP Procurement 2017
13% guarantee at least 90 days for proposal submission.

**Diagram:**
- Competitive procurement not required: 4%
- No minimum time granted: 34%
- Minimum time granted but not specified: 7%
- Less than 30 days: 7%
- 30 to 59 days: 29%
- 60 to 89 days: 7%
- At least 90 days: 13%

*Note: USP = unsolicited proposal.
Source: Benchmarking PPP Procurement 2017*
16% require operational and financial data to be made publicly available.

Note: PPP = public-private partnership.
Source: Benchmarking PPP Procurement 2017
Renegotiation is restricted: in 33% for changes in scope; in 21% for changes in risk allocation.

Note: PPP = public-private partnership. Source: Benchmarking PPP Procurement 2017
Lenders step-in rights are not mentioned in more than half (54%) of the economies.

Source: Benchmarking PPP Procurement 2017 (Percentage, N=78)
The level of detail on regulating termination varies widely across regions and income levels.
Thank you!

Website: www.bpp.worldbank.org

Email: procuringinfrastructureppps@worldbank.org