

PROCURING INFRASTRUCTURE PPPs

Assessing government capability to prepare,
procure and manage PPPs



WORLD BANK GROUP

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Genesis and timeline

2014

PPP CSSA request and Kick -

2015

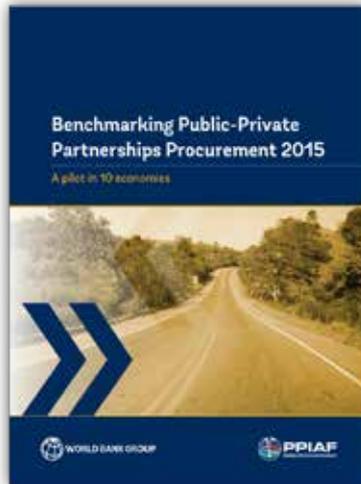
Pilot data collection in 10 economies

2016

Scale up to 82 economies

2017/2018

Scale up to 135 economies



Geographical coverage

Benchmarking PPP Procurement 2016
10 pilot economies

Benchmarking PPP Procurement 2017
82 economies

East Asia and Pacific (11 economies)

Cambodia	Papua New Guinea
China	Philippines
Indonesia	Thailand
Malaysia	Timor-Leste
Mongolia	Vietnam
Myanmar	

Latin America and Caribbean (14 economies)

Argentina	Ecuador	Nicaragua
Brazil	Guatemala	Panama
Colombia	Honduras	Peru
Costa Rica	Jamaica	Uruguay
Dominican Republic	Mexico	

Sub-Saharan Africa (20 economies)

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

OECD High-income (12 economies)

Australia *	Lithuania
Canada	Poland
Chile	Portugal
France	Singapore
Italy	United Kingdom
Korea, Rep.	United States **

* State of New South Wales

** Commonwealth of Virginia

Bolded: Pilot economies

Europe and Central Asia (12 economies)

Albania	Moldova
Armenia	Romania
Bosnia and Herzegovina	Russian Federation
Bulgaria	Tajikistan
Kazakhstan	Turkey
Kyrgyz Republic	Ukraine

Middle East and North Africa (7 economies)

Algeria	Lebanon
Egypt, Arab Republic of	Morocco
Iraq	Tunisia
Jordan	

South Asia (6 economies)

Afghanistan	Nepal
Bangladesh	Pakistan
India	Sri Lanka

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

Scope of the benchmarking exercise



Case study assumptions



Specific definition of PPP



Broad definition of regulatory framework

PPPs 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

Rationale

PPPs are a complex approach to deliver infrastructure

- ü PPPs can help delivering infrastructure more efficiently
- ü Strong regulatory framework is key to avoid pitfalls.

Sound regulatory frameworks are good for all parties

- ü Governments build and preserve capabilities to deal with PPPs.
- ü Private sector involvement is encouraged by public sector commitment.
- ü Helps reduce strategic behavior and corrupt practices.

Mature regulatory frameworks support successful PPPs

- ü Successful PPPs happen with mature and well developed regulatory frameworks.
- ü Sound regulatory frameworks attract more investors

Relevance of the initiative

Despite its relevance, lack of systematic data available

- ü Data comparing good practices on PPPs with regulatory frameworks is scarce
- ü Reliable data required to factually ground PPP policy choices in the future

Good reception, enthusiastic contributors and high demand

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

Ongoing and potential applications

- ü Fits perfectly with the PPP CSSA toolkit of products to leverage the use of PPPs
- ü Used by PPIAF to monitor and evaluate its activities. GIH uses it on InfraCompass
- ü 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 Opangi 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.**

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



Actionable indicators

Score 52 

Score 58

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

BENCHMARKING PPP PROCUREMENT 2017



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
Publication of award notice, available online
Notification of the result of the PPP procurement process, including grounds for selection
Regulation of negotiations with the selected bidder before contract signing
PPP Contract Management
System to manage the implementation of the PPP contract: Contract management team and consultation with PPP procurement experts
Monitoring and 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
Market assessment not legally required
Standardized PPP model contracts and/or transaction documents not developed
Procurement of PPPs
Procedure when only one proposal is received not regulated
No requirement to publish the PPP contract
PPP Contract Management
System to manage the implementation of the PPP contract: Establish additional tools for example PPP implementation manual
Monitoring and evaluation system: Make performance information publicly 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

Room for improvement

Main Challenges

Regulatory provisions versus actual practice

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

Sector limitation

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

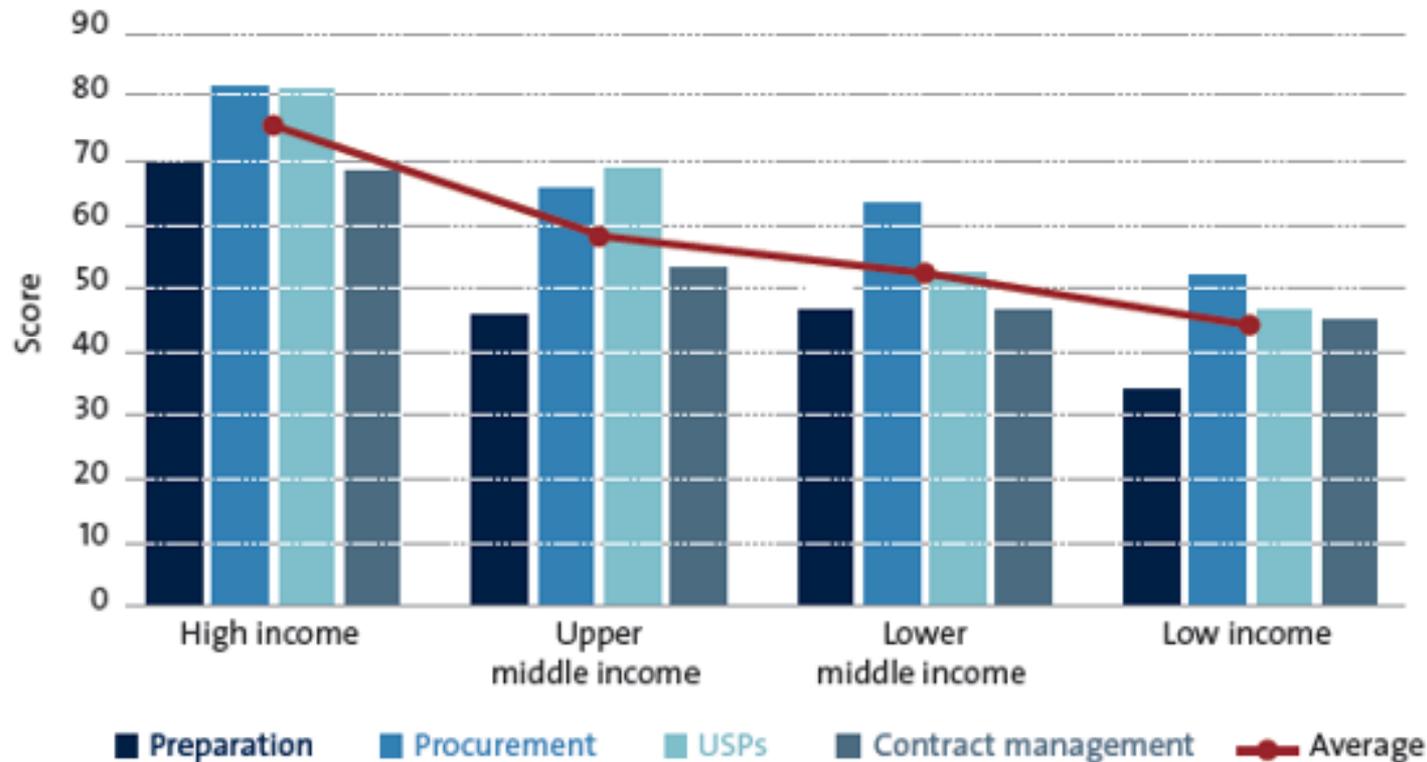
PPPs at the subnational level

- ✓ Scope restricted to the national/federal level
- ü National/federal level offers a good proxy, ensures global coverage.

Main Findings

Benchmarking PPP Procurement 2017

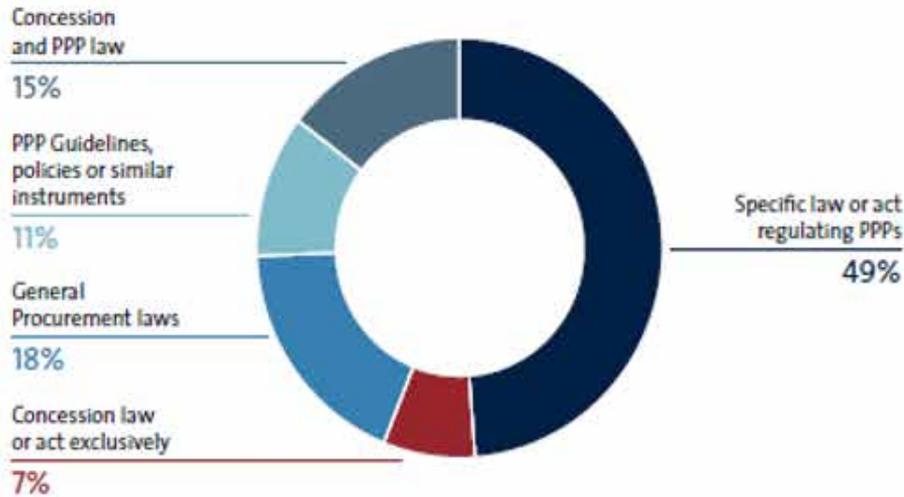
The lower the income level of the group, the lower the performance in the four scored areas.



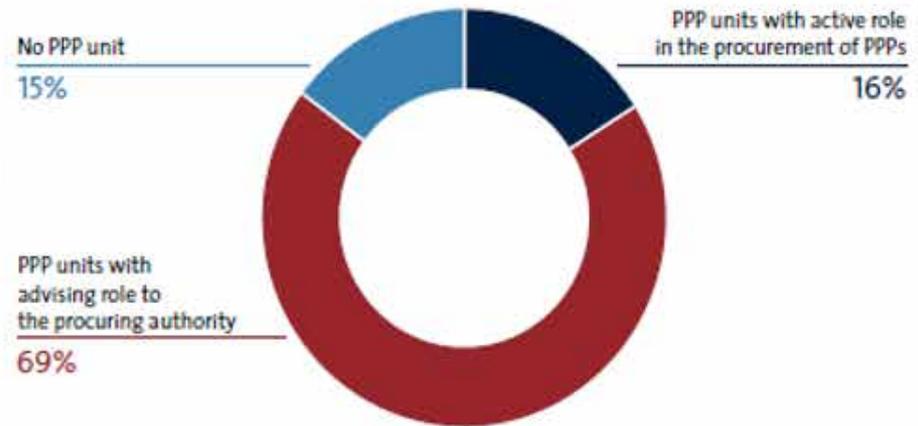
Source: *Benchmarking PPP Procurement 2017*.

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



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



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

Preparation of PPPs

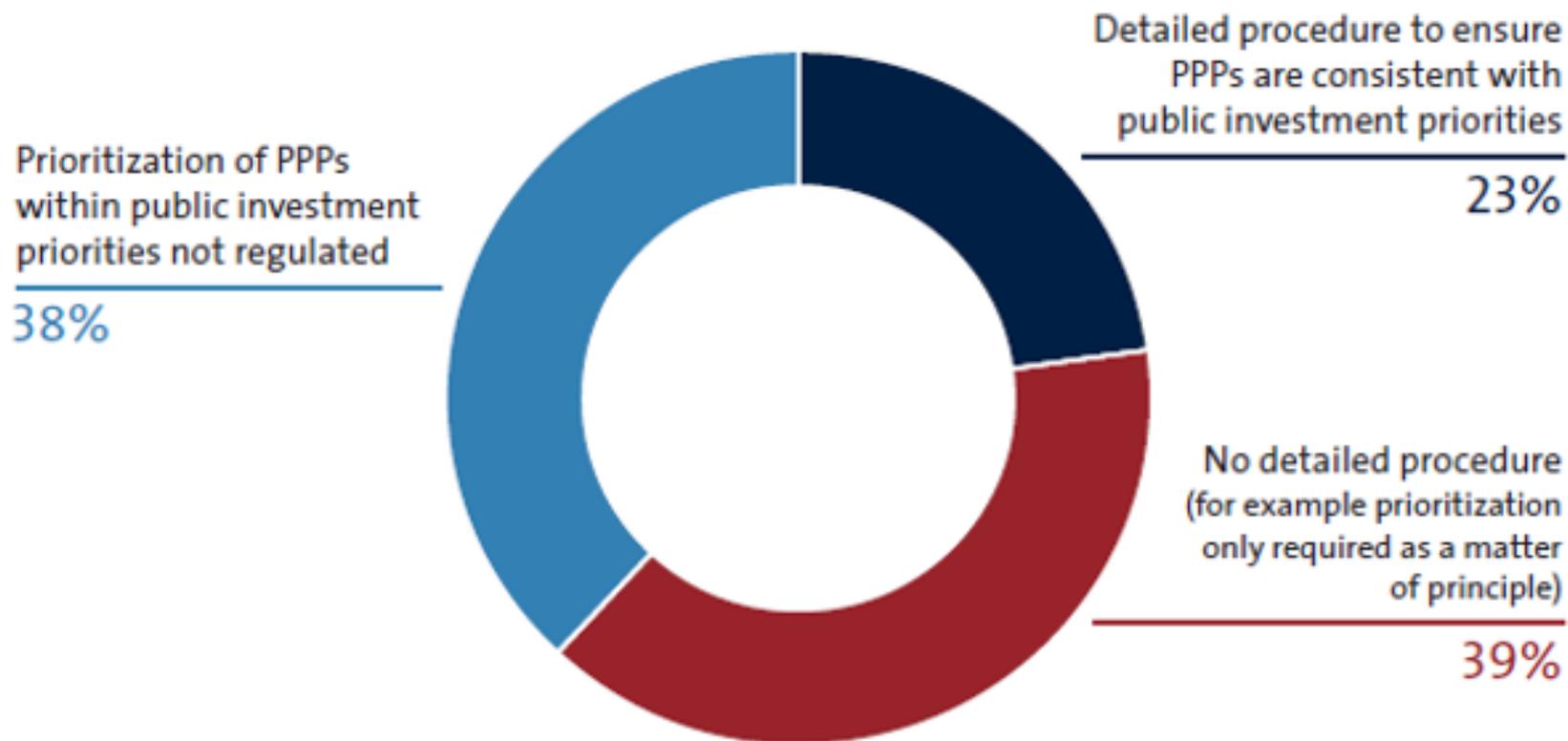
- § Approval by the ministry of finance or central budgetary authority
- § Integration of PPP within the broader context of public investment
- § Assessment of PPP feasibility:
- § Obtaining of required permits and authorization
- § Standardization of PPP contracts and procedural documents

Procurement of PPPs

16

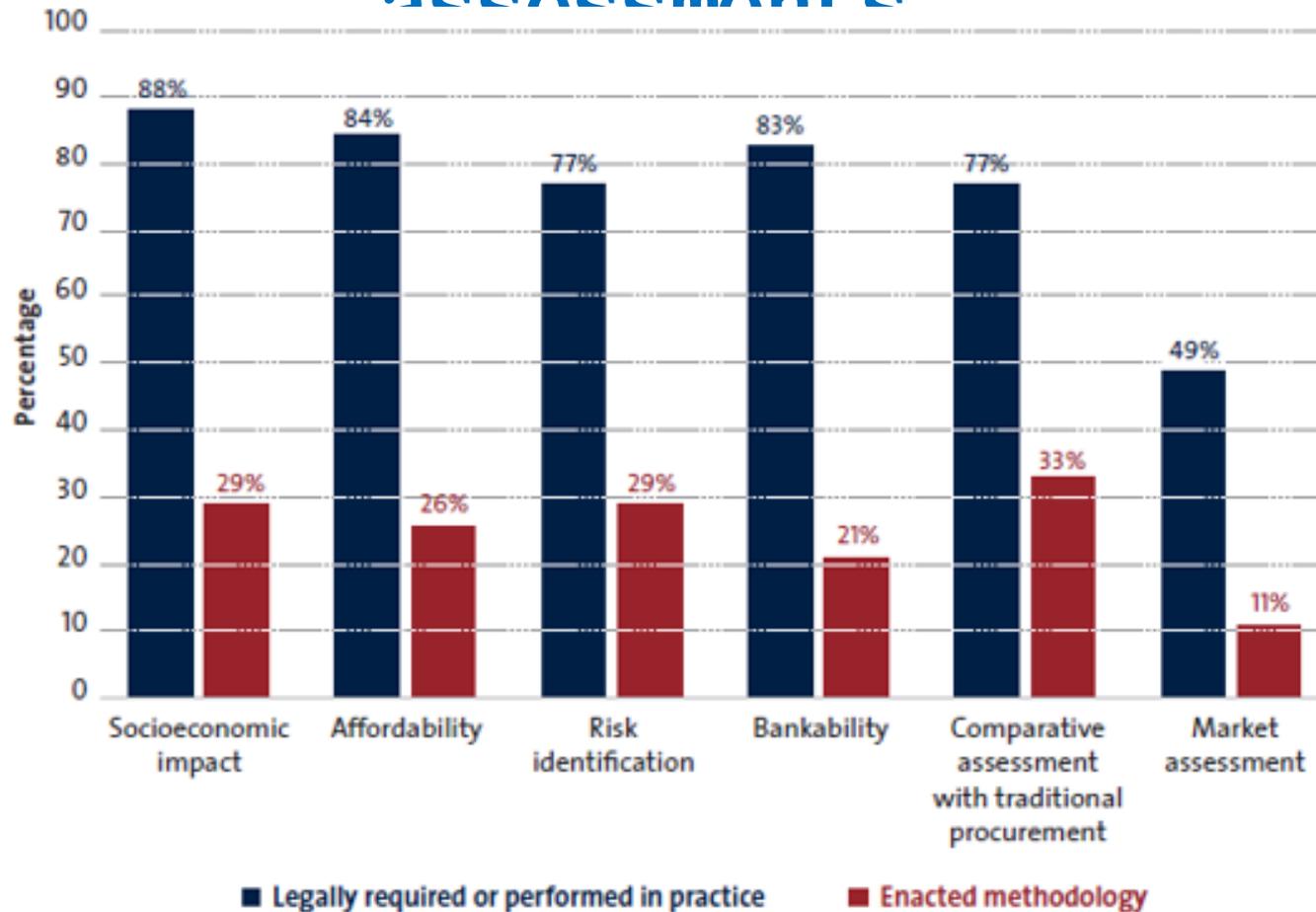
- § Composition of the PPP evaluation committee
- § Publication of the PPP procurement notice/tender documents
- § Legal minimum period to prepare PPP bids
- § Available procurement procedures
- § Prequalification and evaluation criteria
- § Treatment of sole proposals
- § Publication and notification 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

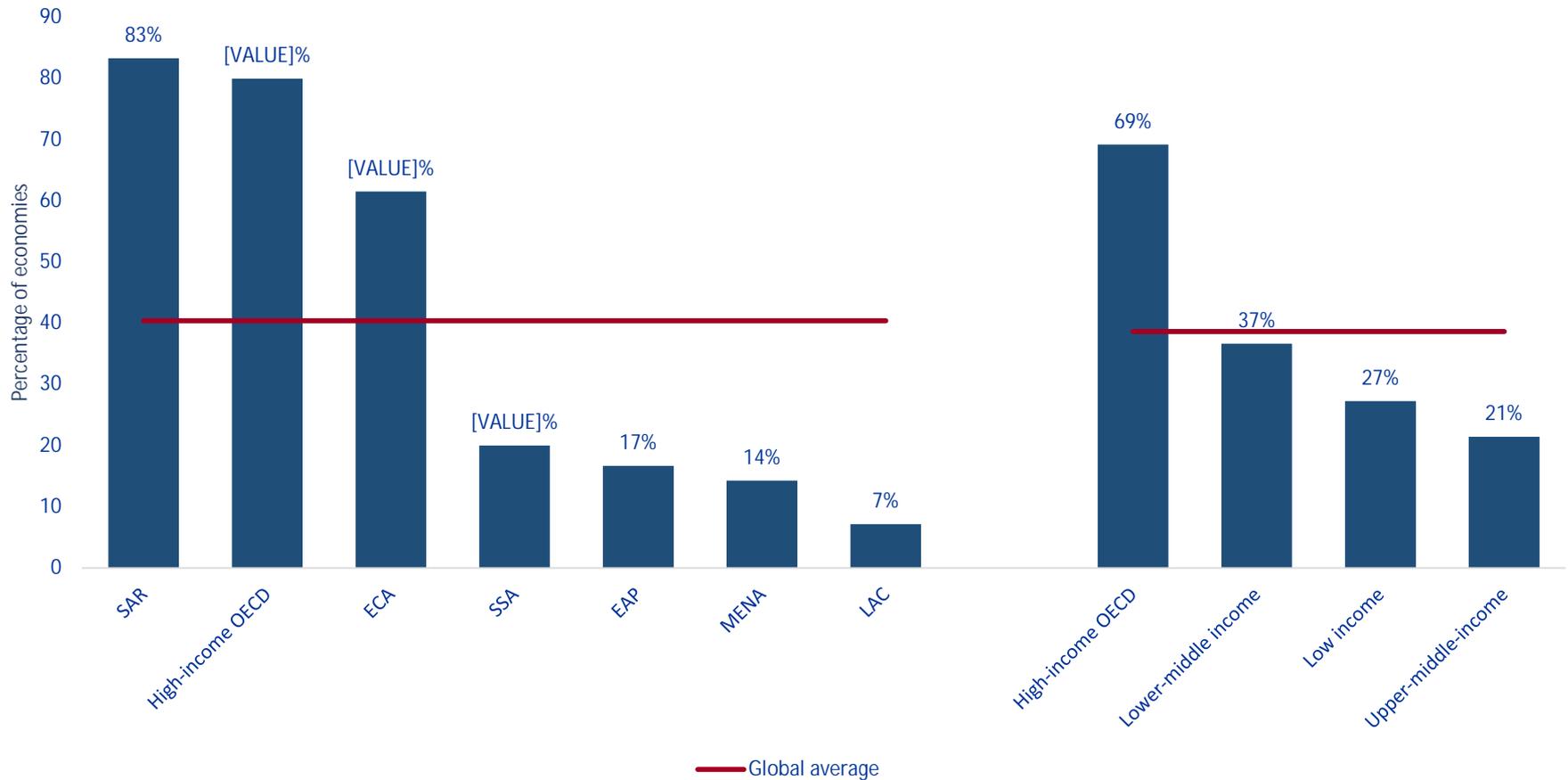
Less than one-third have adopted specific methodologies for conducting assessments



PPP = public-private partnership.

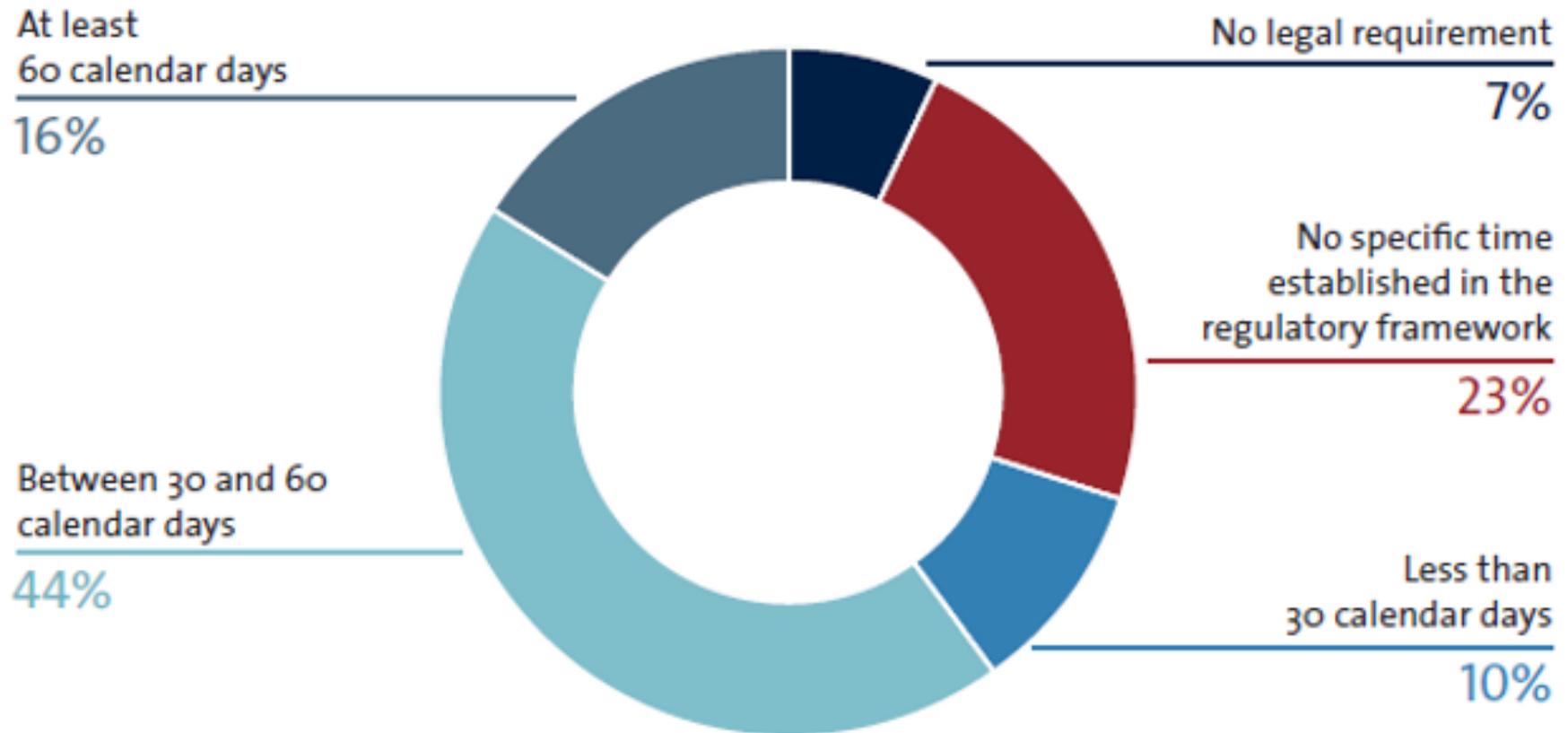
Source: Benchmarking PPP Procurement 2017

Standardization varies widely among regions and income levels



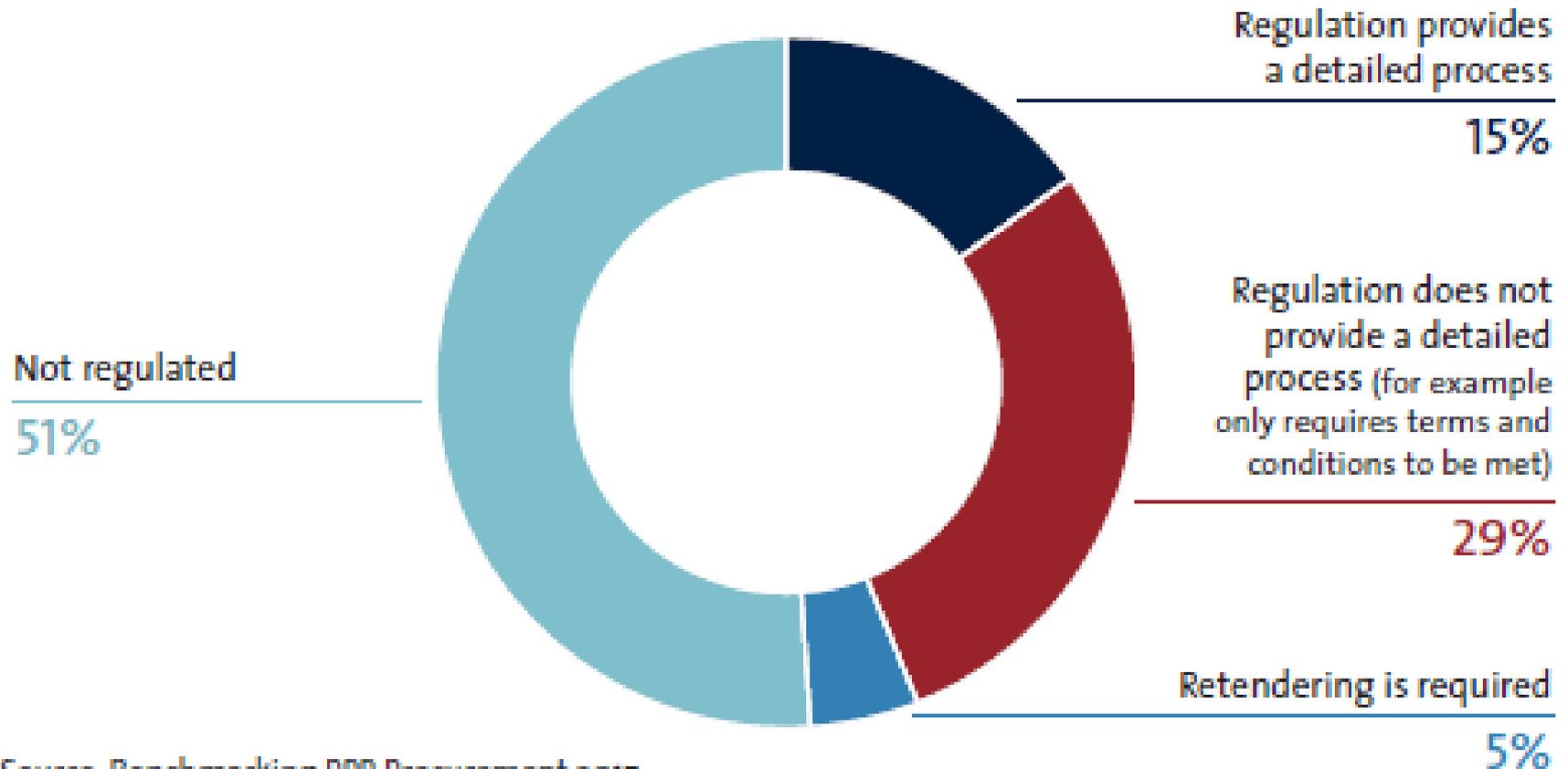
Source: Benchmarking PPP Procurement 2017
Breakdown by region and income level (Percentage, N=82)

40 % either do not specify a minimum period for bid preparation or require fewer than 30 days



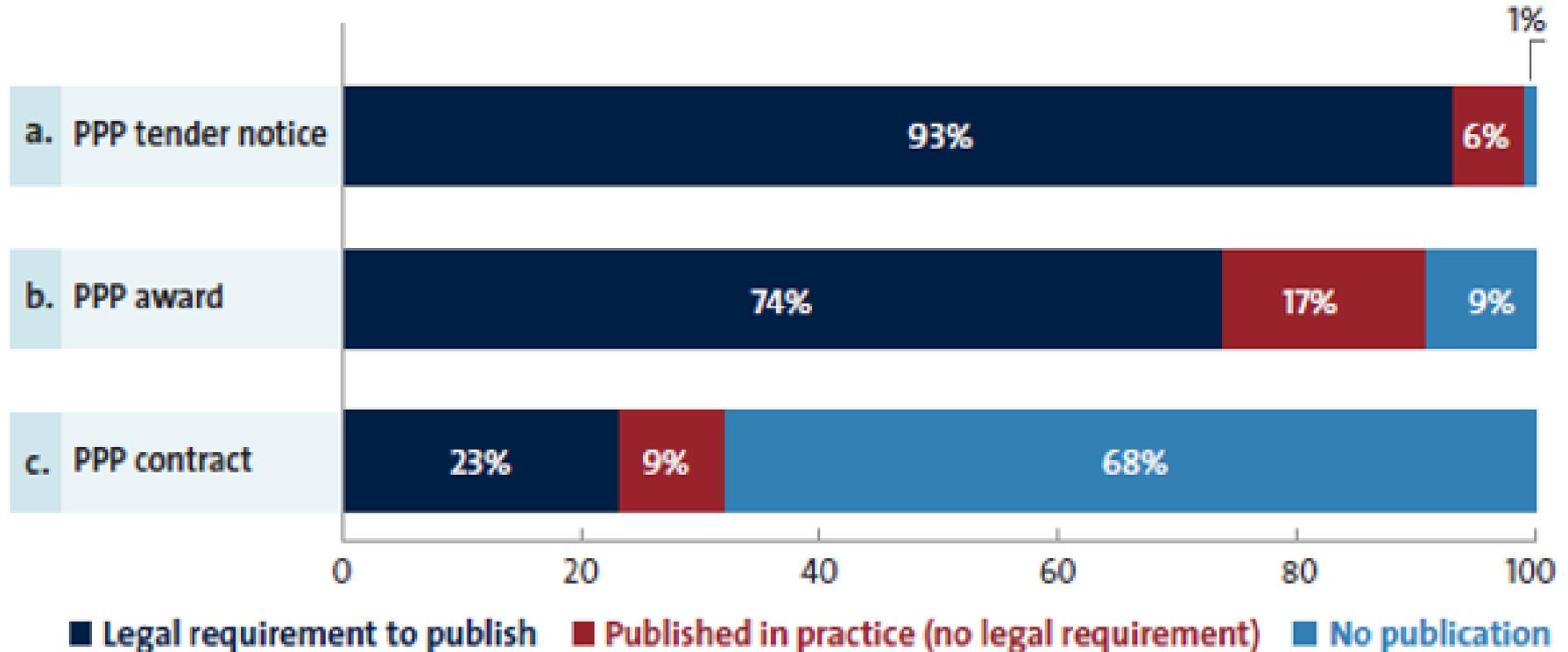
Source: Benchmarking PPP Procurement 2017

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

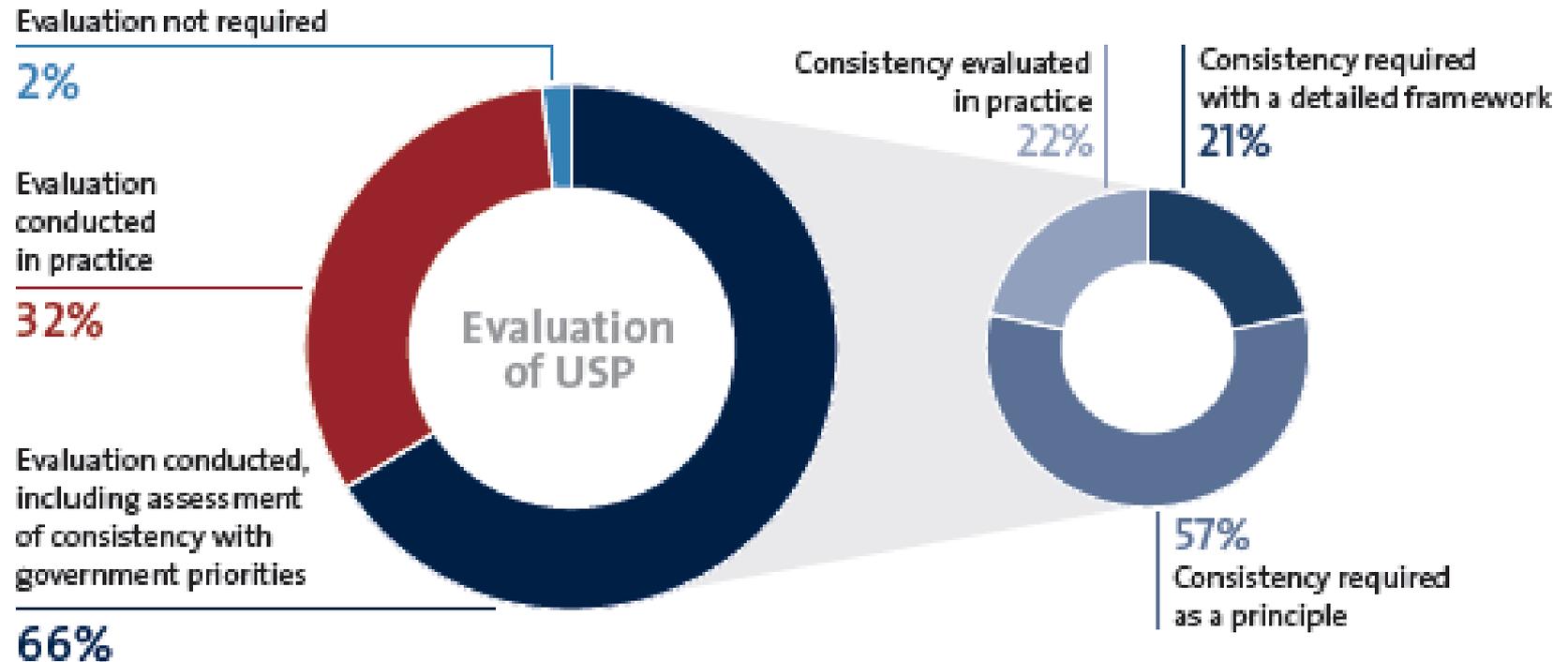
Unsolicited proposals

- § 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 ²³

- § 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

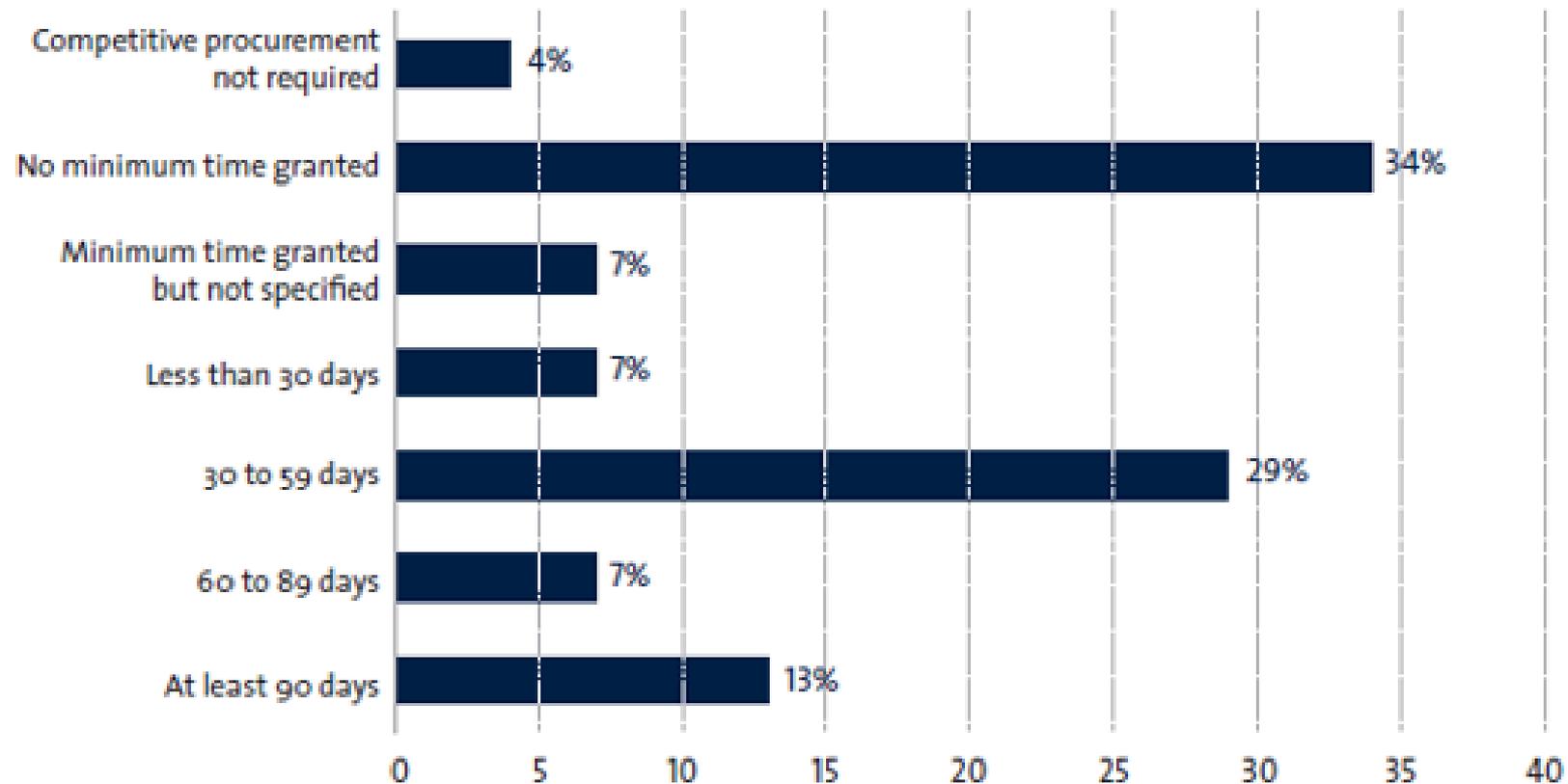
68 % regulate USPs. Only 21 % have detailed procedures to evaluate consistency of USPs



Note: USP = unsolicited proposal.

Source: Benchmarking PPP Procurement 2017

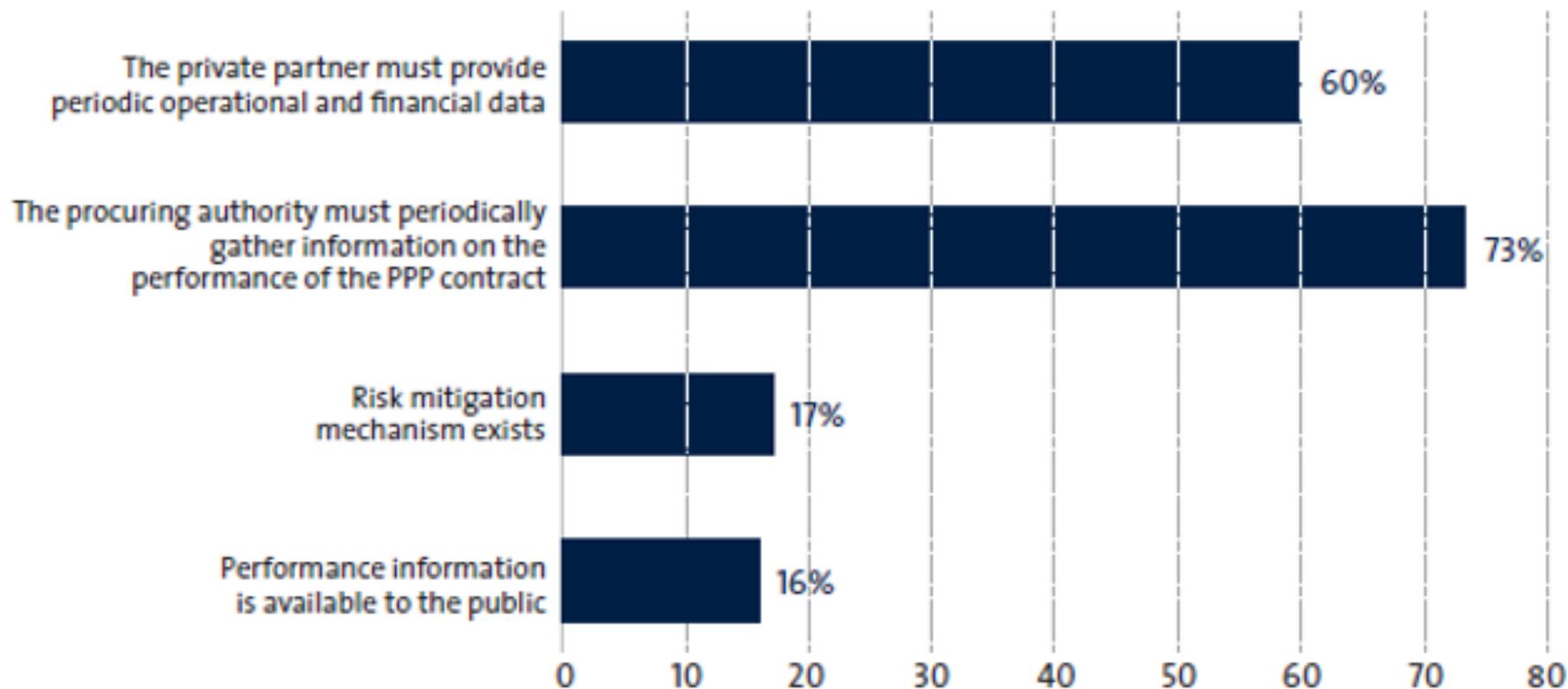
13 % guarantee at least 90 days for proposal submission



Note: USP = unsolicited proposal.

Source: Benchmarking PPP Procurement 2017

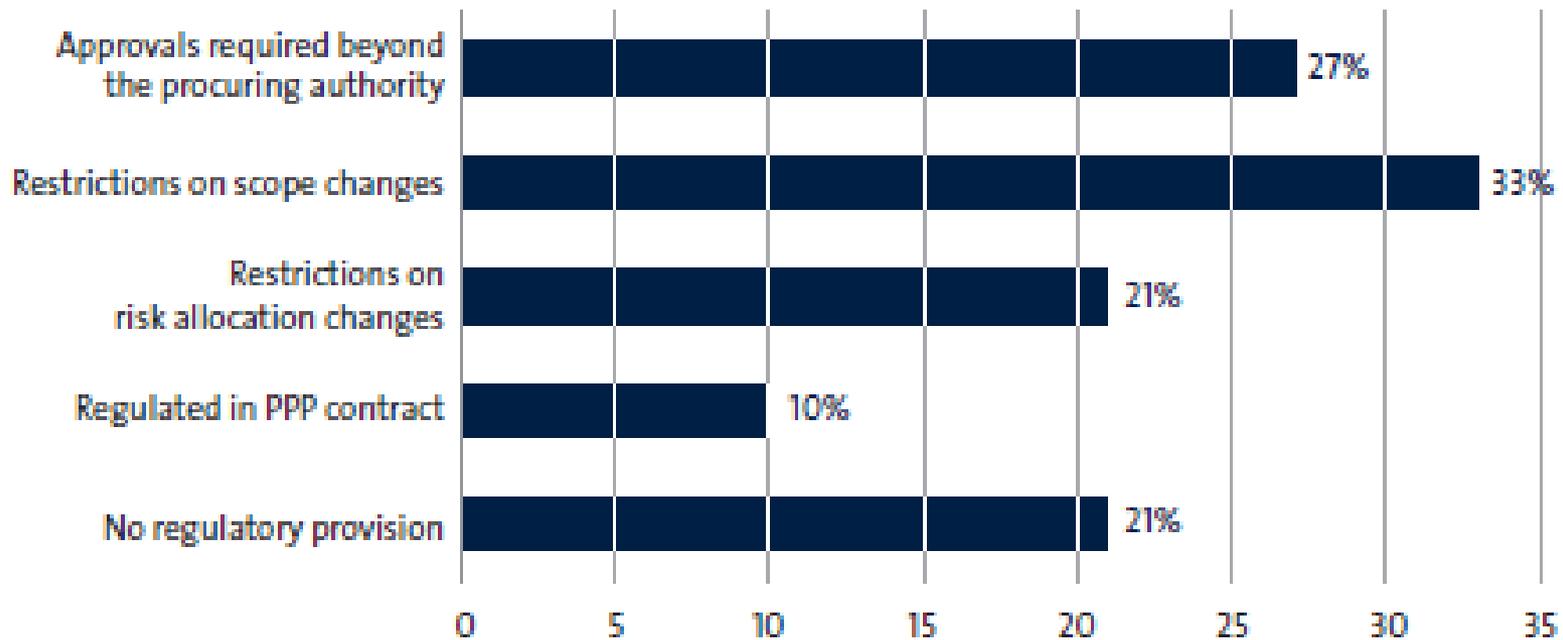
16 % require operational and financial data to be made publicly available.



Note: PPP = public-private partnership.

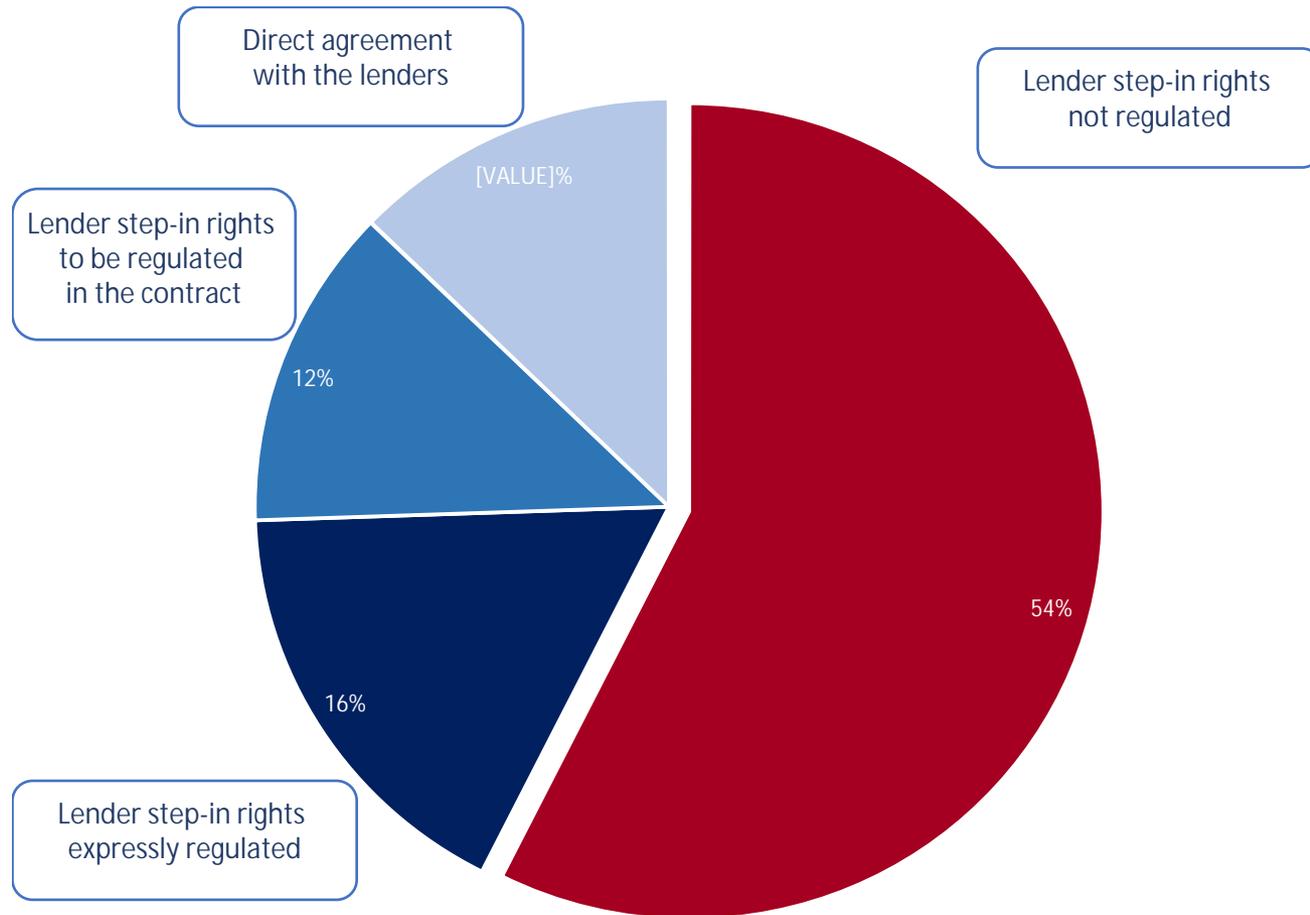
Source: Benchmarking PPP Procurement 2017

Renegotiation is restricted: in 33 % for changes in scope; in 21 % for changes in risk allocation



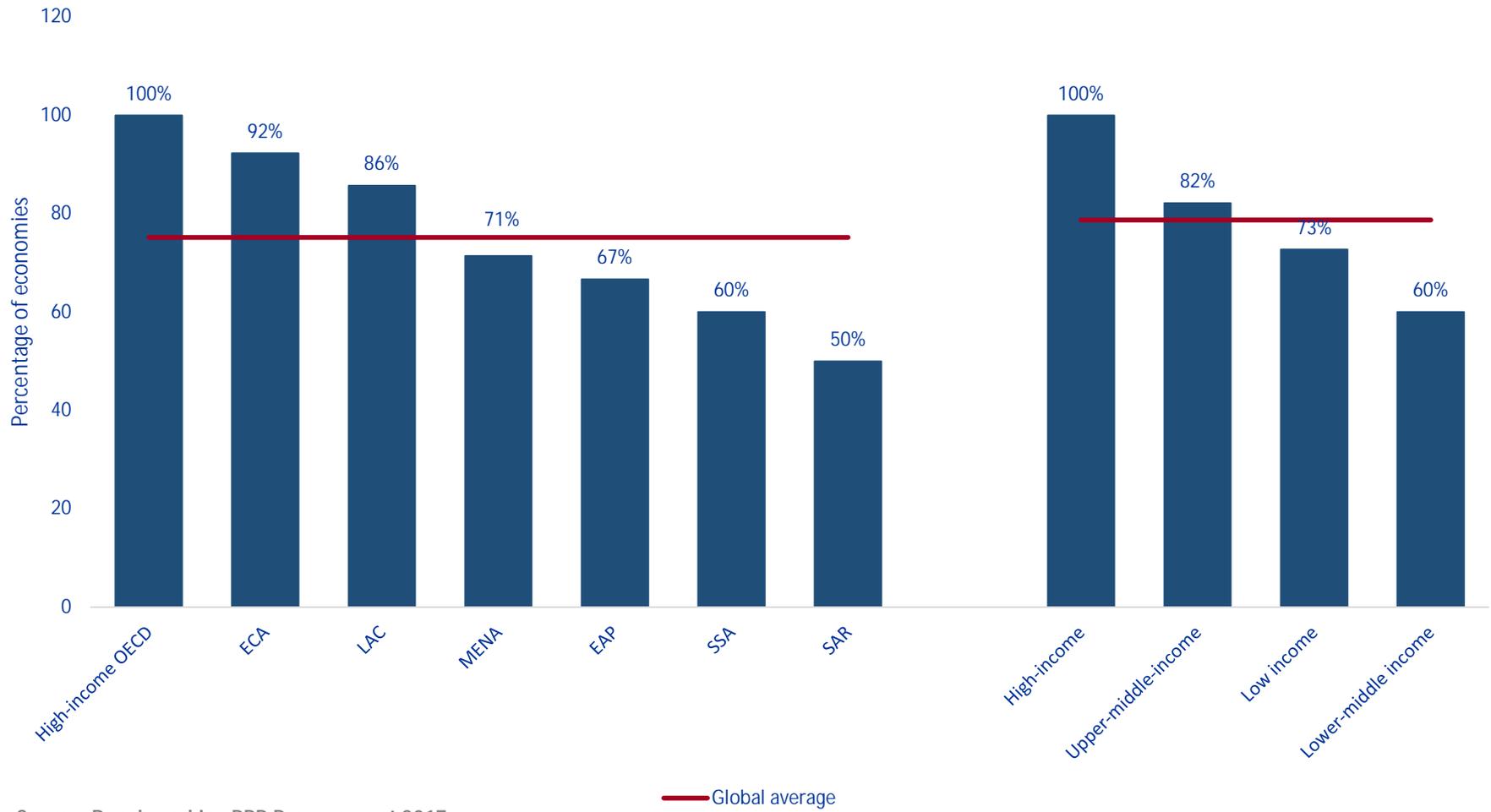
Note: PPP = public-private partnership.
Source: Benchmarking PPP Procurement 2017

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



Source: Benchmarking PPP Procurement 2017
Breakdown by region and income level (Percentage, N=82)

MEET THE TEAM



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Thank you!

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