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Info Card ELANBiz: Public Procurement in Peru¹

Updated by the expert in Peru on Jun 12, 2017

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This Card is aimed to inform about the main opportunities and disposals related to public procurement in Peru, as well as the main mechanisms that the Multiparty Association Agreement contains related to this topic.

Introduction

The Government of Peru and regional governments are the main buyers of goods and services in the country; The Peruvian market offers great opportunities for European Union (EU) companies to participate in public tenders, especially in infrastructure projects, thanks to the provisions contained in the Trade Agreement. However, winning public contracts in Peru can be difficult for foreign companies, even if they have a significant presence in the country. The Multiparty Trade Agreement between Peru, Colombia and the EU improves the access of European companies to the public purchases of Peru, reaffirming a series of general principles that guarantee the non-discrimination of any foreign company against the national companies

The Applicable Regulatory Framework in Perú

The State Procurement Supervisory Agency (OSCE) [Organismo Supervisor de las Contrataciones del Estado](#) is the specialized technical agency in charge of promoting the compliance of contracting regulations with the Peruvian State. It exercises competence at the national level and promotes best practices in the processes of contracting goods, services and construction works. Likewise, it enjoys technical, functional, administrative, economic and financial autonomy.

¹ “The information contained in this Card is only general. For detailed, events and trade promotion as well as business contacts, please contact Commercial Offices of the Member States, European trade organizations and bilateral Chambers or Commercial offices in Peru”.



Law No. 30225, [Ley N° 30225.](#), Dated July 11, 2014, Law on State Contracting, establishes the provisions and guidelines that must be observed by Public Sector Entities in the processes of contracting goods, services, consulting and construction Works. The Regulations of Law No. 30225, Law on contracting of the State - Approved by D. S. No. 350-2015-EF, [D. S. N° 350-2015-EF](#) on December 10, 2015, establishes specific provisions.

Chapter III of the Law establishes methods of contracting:

- Public tender (used for contracting goods and construction works).
- Public tender (for the contracting of services),
- Simplified award (procurement of goods and services, except for services to be provided by individual consultants, as well as for the execution of works, whose estimated value or reference value, is within the margins established by law Of public sector budget.),
- Selection of individual consultants (for the recruitment of consulting services in which no staffing equipment or additional professional support is needed, and while the experience and qualifications of the natural person providing the service are the primary requirements, provided; as long as its estimated value or reference value, is within the margins established by the public sector budget law),
- Price comparison (for the contracting of goods and services of immediate availability, other than consulting services, that are not manufactured or supplied according to the specifications or indications of the contractor, provided they are easy to obtain or have a standard established in the Market, in accordance with the regulations),
- Electronic reverse auction (contracting of common goods and services that have a technical file and are included in the Common Goods and Services Listing),
- Direct contracting (exceptionally, in the cases expressly provided for by the Law) and
- Other selection procedures of general application covered by the regulations.

¿Where is it possible to find relevant information?

General information on public tenders in Peru is available on the public procurement portal at the following addresses:

- How to sell to the State (in 4 steps)
<http://portal.osce.gob.pe/osce/content/guia-de-com-vender-al-estado>
- Electronic system of state contracting
http://www2.seace.gob.pe/?_pageid_=3&_contentid_=ca.contentid



- State Suppliers Business Guide
<http://www.osce.gob.pe/consultasenlinea/catalogoConsultas/home.asp>
- National Registry of Suppliers
<http://portal.osce.gob.pe/rnp/>
- Guidance documents: formats, tools and instructions
<http://portal.osce.gob.pe/osce/content/documentos-no-normativos-estandar>

For specific information on public procurement in Peru, it is recommended to consult the Directory "EU Business Service Providers in Peru" "EU Business Service Providers in Peru" on the ELANbiz Platform where you can access to contact details of the representative offices of the EU Member States, some have binational chambers of commerce or Commercial Promotion offices. ["Proveedores de Servicios de Negocios de la UE en el Perú"](#)

It is also recommended to contact your national organizations or other agencies of the Member States and binational chambers present in Peru in order to have access to lawyers specialized in of public procurement subject.

Shall European companies submit proposals in Peruvian public tenders? Perú?

To be a bidder in the selection processes carried out under the State Contracting Law (legal or natural persons wishing to contract with the Peruvian Government), it is required to be registered in the National Registry of Suppliers, called RNP [Registro Nacional de Proveedores](#), and not be sanctioned or prevented from Contract with the State. The RNP which development, administration and operation is in charge of the OSCE, consists of the following records::

- Registration of Suppliers of Goods,
- Registration of Service Providers,
- Registration of construction works Consultants,
- Registration of construction works Executors,

The RNP is valid for one year. Public tenders could be submit by:

- (i) (I) national or foreign natural persons with or without domicile in Peru,
- (ii) (Ii) national or foreign legal entities with or without domicile in the country, and
- (iii) (Iii) Consortia and / or temporary alliances, which may be made up of natural and legal persons, national or foreign, with or without domicile in Peru.

All foreign bidders without domicile in Peru must prove a proxy/attorney domiciled in Peru duly empowered to present the proposal and sign the contract, as well as to represent the foreign bidders judicially and extrajudicial.

How does the agreement with the EU improve opportunities for each of the parties to participate in public tenders organized by the other party?

The EU is an open market for public procurement. Therefore, with the negotiation of the Multiparty Trade Agreement between Peru, Colombia and the EU, it has been sought to guarantee a better access of each of the parties to the public bidding processes organized by the other party.

Likewise, the Multiparty Trade Agreement between Peru, Colombia and the EU establishes that public procurement in Peru must follow open and transparent procedures and ensure that European companies can compete on an equal terms with local companies. In this regard, the Agreement includes general principles such as tender procedures, the use of electronic means, rules of origin, specifications, cases where direct contracting or contract execution are allowed.

The subject of public contracting is governed by Title VI, Annex XII, Public Procurement of the Agreement. The main text sets out the general principles and the scope of the Agreement while the Annex details the list of contracting entities referred (entities whose procurement must comply with the requirements of the Agreement), the threshold for the value of the contracts to which they apply, the provisions and any contracting that is excluded. It also establishes the main characteristics of the process for the award of public contracts: where bids, documentary requirements, contract awards and deadlines have to be published. In the same way, Annex XII details the list of entities whose contracts must comply with the requirements of the Agreement:

Annex XII - Public procurement:

- - Appendix 1 - Public Procurement Coverage
 - o Section A - Colombia ([Spanish](#)) ([English](#))
 - o Section B - European Union ([Spanish](#)) ([English](#))
 - o Section C - Peru ([Spanish](#)) ([English](#)) (see list of entities and institutions, as well as the thresholds for the application of Title VI of the Agreement)
- - Appendix 2 - Means for the publication of information on public procurement ([Spanish](#)) ([English](#))
- - Appendix 3 - Means for publication of notices ([Spanish](#)) ([English](#))
- - Appendix 4 - Notice of planned procurement ([Spanish](#)) ([English](#))



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- - Appendix 5 - Notice inviting interested suppliers to apply for inclusion in the multipurpose list ([Spanish](#)) ([English](#))
- - Appendix 6 - Deadlines ([Spanish](#)) ([English](#))
- - Appendix 7 - Award Notices ([Spanish](#)) ([English](#))
- - Appendix 8 - Specifications ([Spanish](#)) ([English](#))

The principle of National Treatment in public procurement, set out in Article 175 of the Agreement has special relevance. It applies to goods, services and suppliers and regulates the practice of preferring domestic products and suppliers over foreigners. Article 175 on "Offset compensations" stipulates that "in respect of covered procurement, no Party, including its contracting entities, shall request, take into account, impose or require any compensation."

Likewise, it expressly provides the prohibition to establish a condition in an invitation to tender like that the supplier has been previously awarded a tender in Peru or that only the tenderer's experience in the country can be considered. (Art 178 numeral 2 of the Agreement).

In general terms, the Agreement enable public procurement to European companies by granting national treatment. However, this "liberalization" applies only to procurement entities covered by the country programs that exceed the thresholds of contractual value that apply to each type of public procurement. For example, at central government level, the applicable thresholds are 130,000 SDRs² for goods or services and services, SDR 5 million for construction services. ³

On the other hand, in the case of entities of the sub central level of government, such as Regional Governments, provincial and district municipalities, the applicable thresholds are 200,000 SDRs for goods or merchandise and services, 5 million SDRs for construction services.

It is suggested to review in detail the list of entities within the scope of the Agreement, as well as the respective thresholds in Annex XII. - Procurement, Appendix 1 - Public Procurement Coverage, Section C – Peru. [Anexo XII. - Contratación pública, Apéndice 1 - Cobertura sobre Contratación Pública, Sección C – Perú](#)

² The Special Drawing Right (SDR) was created in 1969 by the International Monetary Fund (IMF). Its value is based on a basket of four fundamental international currencies. 1.00 EUR = 0,805619DEG approx. <https://www.imf.org/external/np/exr/facts/spa/sdrs.htm>.

³Fuente:

http://eeas.europa.eu/delegations/peru/eu_peru/trade_relation/trade_related_tech_assistance/in dex_es.htm



It should be noted that the new Regulation No. 30225, Law on State Contracting, DS No. 350-2015-EF [D. S. Nº 350-2015-EF](#), in its Fourth Complementary and Final Disposition provides that in contracts that are under the scope of treaties or other international commitments, involving the application of the principles of National Treatment and Non-Discrimination, the Entities must grant unconditionally to the goods, services and suppliers of the other party, treatment similar to or no less favourable than that granted by Peruvian legislation to goods, Services and suppliers, in accordance with the rules, requirements and procedures established in the Law and the regulations of the matter.

Links of interest

- **Text of the EU-Peru Agreement**
http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=52&Itemid=75
- **Text of the Agreement Annex XII, Public Procurement**
http://www.acuerdoscomerciales.gob.pe/images/stories/union_europea/espanol_2012_06/anexo_XII_AP1_SecC.pdf
- **State Procurement Supervisory Entity (OSCE)**
<http://portal.osce.gob.pe/osce/content/vision-mision-y-principios>
- **How to sell to the State (in 4 steps)**
<http://portal.osce.gob.pe/osce/content/guia-de-como-venderle-al-estado>
- **Electronic system of state contracting**
Http://www2.seace.gob.pe/?_pageid_=3&_contenid_=ca.contentid
- **State Suppliers Business Guide**
<Http://www.osce.gob.pe/consultasenlinea/catalogoConsultas/home.asp>
- **National Registry of Suppliers**
<Http://portal.osce.gob.pe/rnp/>
- **Legislative Decree. No. 1017, Law on State Contracting**
Http://portal.osce.gob.pe/osce/sites/default/files/Documentos/Arbitraje/leyes/DL_%20N%201017%20-%20LEY%20DE%20CONTRATACIONES%20DEL%20ESTADO.pdf
- **Law on State Contracting and Regulation (English)**
<Http://portal.osce.gob.pe/osce/node/50>
- **Law on State Contracting and its Regulations - English version**
<Http://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/Decreto%20Legislativo%20N%C2%B0%201017%20versi%C3%B3n%20en%20ingl%C3%A9s.pdf>



- **State Contracting Portal**
[Http://www.perucontrata.com.pe/](http://www.perucontrata.com.pe/)
- **The State at the Service of the citizen**
[Http://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/Decreto%20Legislativo%20N%C2%B0%201017%20versi%C3%B3n%20in%20ingl%C3%A9s.pdf](http://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/Decreto%20Legislativo%20N%C2%B0%201017%20versi%C3%B3n%20in%20ingl%C3%A9s.pdf)
- **Inter-American Government Procurement Network (IGRN)**
[Http://www.ricg.org/](http://www.ricg.org/)
- **Peruvian State Portal**
[Http://www.peru.gob.pe/](http://www.peru.gob.pe/)
- **WTO Agreement on Government Procurement (GPA)**
[Https://www.wto.org/spanish/tratop_s/gproc_s/gp_gpa_s.htm](https://www.wto.org/spanish/tratop_s/gproc_s/gp_gpa_s.htm)
- **Comparative table of Legislative Decree No. 1017 (former Law on State Contracting and Law No. 30225, New Law on State Contracting.**
[Http://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/Comparativo_Ley_con_Ley%2030225-Julio-2014.pdf](http://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/Comparativo_Ley_con_Ley%2030225-Julio-2014.pdf)
http://www2.seace.gob.pe/?_pageid=3&_contentid=ca.contentid

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