



## INFOCARD ELANBiz

### Public Procurement in Peru<sup>1</sup>

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**The purpose of this infocard is providing information on some important considerations concerning the Public Procurement regime in Peru.**

The Government of Peru and regional governments are **the main buyers of goods and services** in the country<sup>2</sup>. The Peruvian market offers great opportunities for companies in the European Union (EU) to participate in public tenders, especially in infrastructure projects. However, winning public procurement tenders in Peru can be difficult for foreign companies, mainly due to lack of information regarding local requirements. Nonetheless, the Multiparty Trade Agreement between Ecuador, Colombia, Peru and the EU (the "Agreement") **improves the access of European companies to public procurements in Peru**, reaffirming principles that guarantee non-discrimination of foreign companies in favor of local investors. Despite the aforementioned, we should note that Peru is not part of the plurilateral Agreement on Government Procurement (AGP) of the WTO. In order to facilitate the understanding of this legal framework, certain aspects of it will be explained and, likewise, practical recommendations will be made through a process of questions and answers.

#### 1. What is the applicable legal framework in Peru?

The [Single Organized Text of Law N° 30225, Law of Public Procurement](#), passed by Supreme Decree N° 082-2019 (published on 13 **March 2019**), establishes the provisions and guidelines that public sector entities must observe during public tenders for the **procurement of goods, services, consultancies and public works**. Furthermore, other applicable texts are: The [Regulation of Law N° 30225](#), which is the Regulation of the Law of Public Procurement (passed by Supreme Decree N° 344-2018-EF published 31 December, 2018), and its partial amendment (passed by [Supreme Decree N° 377-2019-EF](#) published 14 **December, 2019**). The above regulation and amendment establish specific provisions, as well as the current [Directives](#) drafted and passed by the **Supervisory Authority of Public Procurement** (OSCE).

<sup>1</sup> *The information provided in this document is of a general nature only. For more detailed information, events and commercial trade offers as well as commercial business contacts, please contact the Commercial Offices of the Member States and the bilateral chambers of commerce in Lima.*

<sup>2</sup> According to the Trade Policy Review, Peru 2019, WTO, Peruvian public entities made procurement totaling PEN 45,009.3 million (USD 13,460.7 million) in 2018.



Lastly, [Legislative Decree Nº 1018](#) – the Legislative Decree that creates the Public Purchasing Entity – *Perú Compras*, and [Supreme Decree Nº 052-2019-EF](#) – Regulations on the Organization and Functioning of *Perú Compras*, complete the applicable Peruvian public procurement legal framework.

All the laws and legal instruments mentioned above are hereinafter referred to as the "State Procurement Regulations". In general, the constant amendments to the State Procurement Regulations have been aimed at: combating corruption<sup>3</sup>, the protection of free competition amongst corporate entities, the simplification of procurement processes, and the realisation of compliance with OECD principles.

## 2. To what type of contracts do the State Procurement Regulations apply?

State Procurement Regulations apply to **all contracts involving Public Entities** which use public funds to provide goods, services or public works; mainly:

- Ministries; their public bodies, programs and affiliated projects.
- The Legislative Power, the Judiciary and Constitutionally Autonomous Agencies.
- Regional Governments, Local Governments, and
- Public Universities, Peruvian State Companies.

Contracts **excluded from the application of the state procurement regulations** are: banking and financial contracts, procurements by the bodies of the Peruvian State's external services, procurement by the **Peruvian State with another State**, the procurement of public services provided that there is no possibility of contracting with more than one supplier, procurement processes overseen by international organizations, as well as the **Private-Public Partnerships** ("PPPs").

## 3. What are the Supervisory Authority of Public Procurement, the Public Procurement Tribunal and the Electronic System of Public Procurement (SEACE)?

The [Supervisory Authority of Public Procurement](#) (OSCE) is the specialized technical body responsible

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<sup>3</sup> According to the Trade Policy Review, Peru 2019, WTO, during 2018 the main amendments to State Procurements Regulations in the **fight against corruption** were intended to: (i) forbid natural or legal persons involved in corruption practices to contract with the State, (ii) require the inclusion of an anti-corruption clause in Public Procurement contracts (the contract will be void without this clause), whose content is established by the Law, and finally (iii) empowering the State Entity to declare of its own accord that a contract is void, in the event of evidence of corruption in the selection procedure or during the execution of the contract. In addition, to exclude companies convicted of corruption offences, an affidavit of no impediment to contracting with the State was included in the selection process.



for promoting **compliance with State Procurement Regulations**. It exercises competence at the national level and promotes best practices in the procurement processes of goods, services and public works. It also exercises technical, functional, administrative, economic and financial autonomy.

The **Public Procurement Tribunal** is the ultimate dispute resolution authority for disputes arising between public entities on the one hand and natural or legal persons acting as state suppliers on the other hand. They also have the mandate to apply sanctions, issue fines and forbid natural or legal persons from contracting with the Peruvian State.

The **SEACE**, is an electronic system for the **dissemination of information regarding public procurements**, as well as the exchange of information between public entities and natural or legal persons involved in public procurements.

#### 4. What are the methods of contracting with the Peruvian State?

Peruvian law establishes procurement methods<sup>4</sup>:

- **Public tender - *licitación pública***: for the procurement of **goods**, for an amount greater than or equal to PEN 400,000 (approx. EUR 108,000) and for the procurement of **public works** for an amount greater than or equal to PEN 1, 800,000 (approx. EUR 486, 000).
- **Public bid – *concurso público***: for the procurement of **services**, for an amount greater than or equal to PEN 400,000 (approx. EUR 108,000).
- **Simplified award – *adjudicación simplificada***: for the procurement of goods, services, and construction consultancies with the exception of services to be provided by individual consultants, for an amount greater than PEN 34,400 (approx. EUR 9,300) and up to PEN 400,000 (approx. EUR 108,000), as well as for the execution of public works, for an amount greater than PEN 34,400 (approx. EUR 9,300) and up to PEN 1,800,000 (approx. EUR 486,000).
- **Selection of individual consultants – *selección de consultores individuales***: for the procurement of services and public work consultancies in which **no personnel equipment or additional professional support is needed**, for an amount greater than PEN 34,400 (approx. EUR 9,300) up to PEN 400,000 (approx. EUR 108,000), so long as the experience and qualifications of the natural person providing the service are the primary requirements.
- **Price comparison – *comparación de precios***: for the procurement of **goods and services of immediate availability**, other than consultancies, which are not manufactured or provided according to the specifications or indications of the contractor, provided that they are easy to

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<sup>4</sup> Chapter III of Title II of the Law of Public Procurement.



obtain or that have a **market standard**, as indicated by regulations.

- **Electronic reverse auction – *subsata inversa electrónica***: for the procurement of common goods and services that have a **data sheet** and are included in the **List of Common Goods and Services**.
- **Direct contracting – *contratación directa***: to directly, and exceptionally, contract a particular supplier, mainly in an **emergency** situation, a situation of **shortage**, when goods or services can be obtained from a single supplier, or by very personal services; so long as evidence for their necessity is properly provided.

In addition, Peruvian law<sup>5</sup> allows states to procure from each other. This is in relation to the acquisition of goods, services contracts, execution of public works, management, development or operation, **which can be executed by another State** through its **entities, agencies, national or foreign public or private enterprises**. State-to-State procurement is **regulated under international trade and by the rules and principles of international law - not by national public procurement laws**. For example, State-to-State procurement was used for the organization of the Pan American and Parapan American Games which took place in Lima in 2019.

## 5. Where to find more information?

For general information on Public Procurements in Peru, we suggest checking the following sources:

- **A guide on 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 Public Procurement**  
<https://portal.osce.gob.pe/osce/content/accesos-al-seace>
- **Opportunities to Contract with the Peruvian State (Search for Outstanding Procurement Calls)**  
<https://opnegocio.seace.gob.pe:8443/opnegocio-0.0.1-SNAPSHOT/ui/oportunidadNegocioBusquedaGeo.xhtml>
- **National Registry of Providers (RNP)**  
<http://portal.osce.gob.pe/rnp/>
- **Guidance documents: formats, tools and instructions**  
<http://portal.osce.gob.pe/osce/content/documentos-no-normativos-estandar>

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<sup>5</sup> Twenty First Final and Complementary Provision of the Law of Public Procurement.



## 6. Can European companies participate in public tenders in Peru?

The following can conclude contracts with the Peruvian State:

- (i) Natural persons, whether national or **foreign**, with or without a domicile in Peru;
- (ii) Legal persons, whether national or **foreign**, with or without a domicile in Peru; and,
- (iii) Consortiums and/or temporary unions, which may be made up of natural and legal persons, whether national or **foreign**, with or without a domicile in Peru.

It should be noted that, to be a bidder in selection processes **carried out under the Law of Public Procurement** (legal or natural persons who wish to contract with the State), applicants must register with the [National Registry of Suppliers](#), hereinafter the "**RNP**"<sup>6</sup>, and be free from sanction or forbiddance from contracting with the State. The RNP, whose development, management and operation are in charge of the OSCE, consists of the following registries:

- Registry of Suppliers of Goods;
- Registry of Providers of Services;
- Registry of Public Works Consultants;
- Registry of Public Works Contractors;
- Registry of Persons Forbidden to Contract with the State.

The tenure of the Registries of **Goods and Services** lasts for an indefinite term, while that of the Registries of **Public Works Consultancies and Contractors** is for one year (renewable)<sup>7</sup>.

All foreign bidders **without domicile in Peru** must prove the appointment of an **attorney** domiciled in Peru, identified by the Peruvian National Identity Document (DNI) or Foreign Card issued by the National Superintendence of Immigration. The attorney must be duly empowered to submit the bid and conclude the contract, as well as to represent the bidder(s) judicially and extrajudicially.

In addition, several suppliers may form a **consortium** in order to pool and complement their qualifications (regardless of the percentage of participation of each member) to jointly execute the contract, in accordance with the requirements of the selection process for the public procurement.

Notably, participation in a consortium does not imply an obligation to create a different legal entity. Members of the consortium are jointly and severally liable to the public entity for consequences arising

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<sup>6</sup> <https://portal.osce.gob.pe/rnp/>

<sup>7</sup> For the requisites to register with the RNP you may visit <https://www.rnp.gob.pe/WebTupaRNP/consultastupa.asp>



from their participation in the execution of the contract.

Furthermore, notably, the Multiparty Trade Agreement between Ecuador, Colombia, Peru and the EU directs that public procurements in Peru must follow **open and transparent procedures and ensure that European companies can compete on an equal footing with local companies**. To this end, the Agreement includes general principles such as tendering procedures, the use of electronic means, rules of origin, specifications, and cases where direct procurement or execution of contracts are permitted<sup>8</sup>. Public procurement is regulated under Title VI and [Annex XII, Public Procurement of the Agreement](#). The main text sets out the **general principles and scope** of the Agreement while the Annex details the list of the procurement entities concerned (entities whose procurements must meet the requirements of the Agreement), the threshold for the value of the contracts to which the provisions apply and the types of contracting excluded. The main elements in the process for the award of public contracts are also laid down, namely: where tenders are to be published, documentary requirements, contract awards and deadlines. Similarly, Annex XII details the list of entities whose procurements must comply with the requirements of the Agreement.

## 7. Some practical recommendations

- During a selection procedure convened by a public entity, it is important to involve a natural or legal person in the **questions and answers** stage, taking into account that during this stage, an applicant may request public entities for certain clarifications, make inquiries, or highlight acts that contravene the State Procurement Regulations (observations).
- It should be noted that in the Terms of Reference drafted by the public entity, a **draft of the Contract** is included, including the main contractual terms which the supplier and public entity are subject to. In addition, the contract may subsequently be amended in the following cases: (i) provision of additional services, (ii) reduction of services, (iii) authorization of term extensions, or (iv) others referred to in the State Procurement Regulations.
- In accordance with State Procurement Regulations, to ensure the fulfillment of the contract, the winning bidder must grant the public entity a **performance bond** for 10% of the amount of the contract, through a letter bond issued by a bank, which should be unconditional, subject to joint liability, irrevocable, of automatic execution in Peru and enforceable at the request of the public

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<sup>8</sup> The Law of Public Procurement establishes that in procurements which fall under the scope of treaties or other international commitments, involving the application of the principles of National Treatment and Non-Discrimination, the Entities must unconditionally grant similar or no less favourable treatment to goods, services and suppliers of the other party, than those granted by Peruvian law to domestic goods, services and suppliers.



entity.

- It is possible that a contractor may **subcontract** up to 40% of the provisions of a Contract, subject to authorization from the public entity. It is not possible to outsource the **essential** provisions of a contract linked to aspects that determined the selection of the contractor. It should be borne in mind that the contractor retains responsibility for the full performance of their obligations before the entity.
- According to State Procurement Regulations, contracts with public entities entail the application of penalties for each day of an unjustified delay in the execution of contractual provisions, up to a maximum of **10%** of the contract's value, and subject to the termination of the contract. In addition, the public entity may establish additional penalties, provided that they are objective, reasonable, consistent and proportionate with the purpose of the procurement.
- Disputes arising between contractors and public entities concerning the performance, interpretation, resolution, non-existence, ineffectiveness or invalidity of the contract are resolved by **conciliation or arbitration**. Appointed arbitrators must be registered with the National Registry of Arbitrators managed by the OSCE.
- It should be noted that not all the requirements of public entities have been homologated, however the Peruvian state is in the process of homologating such requirements, under the efforts of the Public Purchasing Entity (*Perú Compras*) in order to elaborate national and / or sectoral policies, to standardize the technical characteristics and / or qualifications of its requirements.

## 8. Useful links

- **Text of the Agreement between the EU and Peru**  
[http://www.acuerdoscomerciales.gob.pe/index.php?option=com\\_content&view=category&layout=blog&id=52&Itemid=75](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](http://www.acuerdoscomerciales.gob.pe/images/stories/union_europea/espanol_2012_06/anexo_XII_AP1_SecC.pdf)
- **Supervisory Authority of Public Procurement (OSCE)**  
<http://portal.osce.gob.pe/osce/content/vision-mision-y-principios>
- **A guide on 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 Public Procurement**  
<http://www2.seace.gob.pe/?pageid=3&contenid=ca.contentid>
- **Commercial Guide for State Suppliers**  
<http://www.osce.gob.pe/consultasenlinea/catalogoConsultas/home.asp>



- **National Registry of Suppliers**  
<http://portal.osce.gob.pe/rnp/>
- **Legislative Decree N° 082-2019-EF, Single Organized Text of the Law of Public Procurement**  
[https://cdn.www.gob.pe/uploads/document/file/298343/DS082\\_2019EF.pdf](https://cdn.www.gob.pe/uploads/document/file/298343/DS082_2019EF.pdf)
- **Supreme Decree N° 344-2018-EF, Regulation of the Law of Public Procurement and its partial amendment, passed by Supreme Decree N° 377-2019--EF**  
[https://cdn.www.gob.pe/uploads/document/file/264496/DS344\\_2018EF.pdf](https://cdn.www.gob.pe/uploads/document/file/264496/DS344_2018EF.pdf)  
[https://cdn.www.gob.pe/uploads/document/file/442338/DS377\\_2019EF.pdf](https://cdn.www.gob.pe/uploads/document/file/442338/DS377_2019EF.pdf)
- **Online portal of public procurements**  
<http://www.perucontrata.com.pe/>
- **Inter-American Government Procurement Network (RICG)**  
<http://www.ricg.org/>
- **Online portal of the Peruvian government**  
<http://www.peru.gob.pe/>
- **Agreement on Public Procurement (APP) of the WTO**  
[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)

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