

GOVERNMENT PROCUREMENT REGIME IN PERU

THIS INFOCARD PROVIDES A CONCISE OVERVIEW OF THE **MAIN CHARACTERISTICS OF THE GOVERNMENT PROCUREMENT REGIME IN PERU**, HIGHLIGHTING THE TOPICS OF PRIMARY INTEREST FOR FOREIGN COMPANIES.¹

Credit: Scott Graham/Unsplash

GOVERNMENT PROCUREMENT IN PERU

The central, regional, and local governments are significant participants as demanders of goods and services, as well as executors of public works in Peru. On average, over the past years, both public procurement of goods and services and public investment contracts have each accounted for approximately 5 percent of the Gross Domestic Product (GDP).² In terms of euros, all acquisitions by public entities and public investment projects amount to approximately €20 billion annually.

LEGAL FRAMEWORK: GENERAL ASPECTS

Government procurement in Peru is regulated by Article 76 of the Constitution which establishes that:

“Works and the acquisition of supplies using public funds are compulsorily executed by contract and public tender, as well as the acquisition or disposal of goods. The contracting of services and projects whose importance and whose amount is indicated in the Budget Law is done by public competition. The law establishes the procedure, the exceptions, and the respective responsibilities”.

On this basis, the public procurement system in Peru is regulated by Law No. 30225 dated July 8, 2014, and its regulation approved by Supreme Decree No. 344-2018-EF dated December 31, 2018.³

Regarding government procurement policy, the functional authority lies with the Ministry of Economy and Finance (MEF), while the oversight of these regulations is the responsibility of the Supervisory Body for State Procurement (OSCE).

¹ The information contained in this Infocard is of a general nature only. For more detailed information, trade promotion events and actions, as well as possible commercial contacts, please contact the Trade Offices of the Member States and the bilateral Chambers in Lima.

² Data from the Ministry of Economy and Finance (MEF).

³ The Single Harmonised Text of the Law and the Regulations can be found at: diariooficial.elperuano.pe/pdf/0022/tuo-ley-30225.pdf

There is also the Central Public Procurement Agency, called PERU COMPRAS, which is responsible for reverse auctions, framework agreements and mandatory corporate purchases.

Since its enactment, there have been different modifications to the regulations of Law 30225 with the aim of facilitating the execution of public spending, promoting the completion of works and simplifying decision-making.⁴

The procurement regime applies universally to all procurement of goods and services and the execution of works to be carried out by public entities and organisations that assume payment with public funds. Among others, ministries, the legislature and judiciary, regional and local governments, public universities, and state enterprises must apply the legislation in force for all their procurement.

However, not all government procurement is subject to the government procurement regime. For example, concessions, works for taxes, and contracts made by the Peruvian State with another State, have their own regulation. *Government-to-Government Agreements (G2Gs)* are primarily used for large-scale investments where the Peruvian State contracts the supply of goods and services, including construction, through a direct agreement with another government. The latter government can implement the agreement through its own agencies, state-owned enterprises and/or foreign private companies. Projects carried out under this framework fall outside the scope of the Public Procurement Law, and the contracted government may apply its own procedures.

Through the *Works for Taxes* mechanism, private companies advance the payment of their income tax to finance and execute directly, quickly, and efficiently, following their own procedures, public investment projects that subnational governments and national government entities prioritise. Private companies also have the initiative in proposing projects to be executed under this modality.

Likewise, other public procurement is excluded from the legal framework, but is carried out under OSCE supervision. This includes procurement by *Petróleos del Perú (PETROPERÚ)*, which has its own legal regime independent of the general

regime, and contracts whose amounts are equal to or less than 8 Tax Units (ITU S/4950). Another entity is the Private Investment Promotion Agency (PROINVERSION), which handles consulting services for public-private partnership projects.

Certain transactions are also excluded from the general government procurement regime.⁵

The regime established by the Law on State Procurement is fundamentally based on the principles of free competition, equal treatment, transparency, publicity, competition, effectiveness and efficiency, technological validity, environmental and social sustainability, and equity and integrity.⁶ In general terms, Peru's government procurement is open to participation by all potential suppliers, both domestic and foreign, in a non-discriminatory manner, and there is no limitation on access to the Peruvian public market. In government procurement, there is also no discrimination based on the origin of the goods or services to be offered, or on the origin or nationality of the supplier.⁷



In general terms, Peru's government procurement is open to participation by all potential suppliers, both domestic and foreign, in a non-discriminatory manner.

4 The evolution of public procurement law can be found in www.gob.pe/institucion/osce/colecciones/135-legislacion-del-osce. On June 26, 2021, Supreme Decree 162-2021-EF was published in the official newspaper *El Peruano*, amending the Regulation of the State Contracting Law approved by Supreme Decree 344-2018-EF and amended by Supreme Decree 377-2019-EF and Supreme Decree 168-2021-EF. On October 7, 2022, Supreme Decree 234-2022-EF was published, which modifies the Regulation of the State Contracting Law (approved by Supreme Decree 334-2018-EF) in order to adapt it to the rules of the National Supply System. An important change has been the elimination of the qualification requirements referring to economic solvency, which was foreseen for public tenders called for the contracting of execution of works. This implied the modification of the standard bases approved by the OSCE. For more information refer to: www.garrigues.com/es_ES/noticia/peru-cambios-normativos-reglamento-ley-contra-taciones-estado-orientados-enfoque-gestion

5 The following are excluded from the application of the public procurement regime: 1. The procurement of public services (provided that there is no possibility of contracting with more than one supplier); 2. Collaboration agreements or others of a similar nature concluded between public entities, provided that the goods, services or public works of the function that by law correspond to them are provided and do not seek profit; 3. Procurement carried out in accordance with the specific requirements and procedures of an international organisation, States or cooperating entities resulting from donations made by them; 4. Banking and financial contracts that come from a financial service; 5. Contracts made by embassies and other representations of the country abroad; 6. The hiring of notaries public; 7. The purchase of goods made by the entities through public auction.

6 Article 2 Law 30225.

7 National treatment is a principle enshrined in Article X of the Political Constitution of Peru.

As a general rule, Peru does not use any system of preferences, incentives or promotion of domestic industry applicable in government procurement processes carried out within the national territory. However, the current legal framework includes some measures to facilitate the participation of micro and small enterprises (MSEs) in public procurement.⁸ Including:

- State contracting institutions must schedule no less than forty percent (40%) of their contracts to be serviced by MSEs in goods and services that they can provide.⁹
- In case of a tie in the procedures for the simplified award of goods, services, and the execution of works, preference will be given to offers from MSEs, as long as they comply with required technical specifications.¹⁰
- MSEs may opt for a withholding of 10% of the contract value for periodic supply of goods, provision of periodic performance services, execution, and consultancy of public works as an alternative to the requirement of providing a performance guarantee.
- In Simplified Adjudication processes, bidders who have the status of micro and small enterprises, or consortia formed entirely by them, and at their request, are assigned a bonus equivalent to five percent (5%) on the total score obtained, if they prove to have such status.
- Finally, purchases from the Purchasing Executing Nuclei (NEC), established in the textile- clothing, furniture, wood goods, non-timber raw material goods and/or plastic, leather and footwear goods, and metalworking (created by Legislative Decree 1414 of 2018 and its regulations), a special contracting procedure applies. Therefore, the procedures established in the Law on State Contracting are not applied.¹¹

In accordance with Article 47 of Law No. 30225, the Electronic System for State Procurement (SEACE) is an electronic platform that enables the exchange of information and dissemination on government procurement, as well as the execution of electronic transactions.¹² SEACE records, among others, all documents related to the contracting process, including those related to preparatory acts, selection procedures, and contract execution, including contractual modifications, arbitration awards, conciliations, information on purchase and service orders, and on the Annual Contracting Plan of public entities. The information is in the public domain, however, to access the entire SEACE it is necessary to request the OSCE to issue the SEACE Certificate (username and password), according to formats established in Directive No. 003-2020-OSCE/CD. For suppliers that register with RNP, the certificate is obtained upon registration. However, public domain infor-

mation can be accessed through the portal Public Search Engines of the Electronic System of State Procurement (Seace).¹³

SEACE uses the Single Catalogue of Goods, Services and Works (CUBSO). The CUBSO, based on international standards, is the list of codes through which the goods, services, works and consultancy of works required by the contracting public entities are systematically classified.¹⁴ The CUBSO is used by public entities to register their Annual Procurement Plan (PAC) and calls for selection procedures, and by suppliers for registration in the National Registry of Suppliers (RNP). To carry out detailed and tiered searches, the module called "CUBSO Consultations" has been implemented on the SEACE web portal, through which contracting entities, suppliers and the general public can find more information.

8 It should be noted that, according to current regulations, a business is considered to be a Microenterprise when it has up to 150 UIT in annual sales, and is considered a Small Company when it has up to 1700 UIT in annual sales.

9 Article 22 Law to Promote Productive Development and Business Growth (MYPE) (Supreme Decree 013-2013-Produce), updated in 2022.

10 In the case of tenders and public tenders, the tie-breaker is made by drawing lots.

11 Additionally, the Single Text of the Law on the Promotion of Productive Development and Business Growth (Supreme Decree No. 013-2013-PRODUCE), states that tenders can be carried out in stages, package tranches or lots, and they can be awarded to different MSEs and not economically linked to each other, which does not mean at any time a change in the modality of the corresponding bidding process.

12 All manuals for the use of SEACE can be found at: www.gob.pe/institucion/osce/colecciones/3406-manuales-y-guias-de-usuario-para-proveedores y www.gob.pe/institucion/osce/colecciones/3406-manuales-y-guias-de-usuario-para-proveedores

13 Alternatively: Public access to SEACE www.gob.pe/7505-acceder-al-sistema-electronico-de-contrataciones-del-estado-seace-acceso-publico

14 CUBSO is based on the *United Nations Standard Product and Services Code* (UNSPSC). The CUBSO is divided into 5 levels. The first 4 levels correspond to UNSPSC code information, having a hierarchical classification, while the fifth level is generated by the OSCE and corresponds to identification codes that describe in greater detail the good, service or work.

NATIONAL REGISTRY OF SUPPLIERS (RNP)

Registration in the National Register of Suppliers¹⁵ is an essential prerequisite for any natural or legal person to participate in contracting with any entity subject to the scope of the public procurement regime. All natural or legal persons, national or foreign - the latter domiciled or non-domiciled, with or without a legal representative -, who wish to participate in selection procedures and/or contract with the State for the provision of goods, services, consultancy of works and the execution of works, whether they are presented individually or in consortium, must be registered with the RNP.

Suppliers are obliged to have updated information registered in the RNP for their intervention in the contracting processes. The lack of updating affects the validity of the registration in the RNP.¹⁶ Those suppliers whose contracts are for amounts equal to or less than one (1) ITU do not require registration.

The RNP does not constitute a prequalification of suppliers, it is only for the accreditation of general information of the natural or legal person and of the goods or services that it can offer to the State. Since March 2017, registration in the RNP has been valid indefinitely, subject to updating information.

RNP operates four types of registries in which registration can be requested: (i) supplier of goods, (ii) service provider, (iii) executor of works, and (iv) consultant of works. In the case of the contracting of executors of works, the RNP assigns a maximum contracting capacity (CMC), which is the amount up to which an executor of works is authorised to contract the execution of public works simultaneously.¹⁷ At the time of registration, in the case of construction consultants, RNP assigns a specialty and a category according to that specialty.¹⁸

The requirements for registration vary according to type of registration, whether it is for natural or legal entities, and nationality, whether it is national or foreign. Among the latter, there is a requirement of having a domicile or not. In order to register, one must have an active RUC, not be subject to disqualification or suspension, and legal entities must be registered with the National Superintendence

of Public Registries (SUNARP). Non-domiciled foreigners must complete the procedure through the OSCE digital parts desk. The requirements for all cases can be found in the portal Search for procedures for RNP. The virtual leaflet How to register in the RNP, also presents a guide on registration costs and the registration process.

In all cases, for registration in the RNP the payment receipt number and the application to the OSCE must be submitted, according to the approved form for each type of registration. In the case of works registration, both national and foreign companies, whether domiciled or not, must submit certified information of economic capacity and experience in executing works to determine the maximum contracting capacity (CMC).

Once registered, the **Certificate of National Registration of Suppliers**, which is not necessarily a physical document, is automatically obtained. This certifies the supplier as authorised to contract with the State. The certificate must be presented at the time of receiving the award from the contracting entity and is a necessary requirement to sign the contract.



In all cases, for registration in the RNP the payment receipt number and the application to the OSCE must be submitted, according to the approved form for each type of registration.

¹⁵ For more information, refer to: www.gob.pe/institucion/osce/colecciones/1227-guias-manuales-y-folleto-sobre-el-registro-nacional-de-proveedores-rnp

¹⁶ Refer to Article 11 of the Regulation of Law 30225. The updating of the legal information of suppliers of goods, services, consultancies of works and execution of works includes the variation of the following information: domicile, name, denomination or corporate name, corporate transformation, corporate purpose, the condition of domiciled or non-domiciled of the foreign supplier, date of designation of the legal representative of the branch, date of the acquisition of the status of partners, shareholders or holder, date of appointment of the members of the administrative bodies, the subscribed and paid-up share capital, equity, total number of shares, participations or contributions, nominal value, which are communicated in accordance with the requirements established in the corresponding Directive.

¹⁷ The CMC is determined by the weighting of the capital and the works registered in the experience module whose required seniority will be the same as that established for the evaluation factors in the public tender selection processes (Article 243 of the Regulation of Law 30225). For foreign legal entities not domiciled (parent), and domiciled (branches), the capital refers to the subscribed and paid share capital or equivalent, registered with the competent authority, in accordance with the formalities required in their country of origin (Article 17.5 Law 30225).

¹⁸ Article 9.3 Law 30225. To register as a works consultant (natural person), you must have one of the following professions: architect, civil engineer, sanitary engineer, agronomist, agricultural engineer, electromechanical engineer, mechanical engineer, electrical mechanical engineer, fluid mechanical engineer, electrical engineer, electronic engineer, electrical technical engineer, mining engineer, petroleum engineer or energy engineer.

CONTRACTING MODALITIES

There are several types of government procurement procedures in Peru, which differ mainly in their purpose and amount. The amount for each procedure is established in accordance with the provisions of the Annual Budget Law of each year. In all cases, the principles and requirements set out in the Regulation and international treaties or commitments that include provisions on public procurement must be respected.¹⁹

As a general rule, a procurement process is carried out through a public or open tender or competition, where any interested supplier can participate in the bidding process or contest and submit a bid without any limitation and regardless of the value of the contract to be concluded. The different procedures are presented in Table 1.

TABLE 1: MODALITIES OF PUBLIC PROCUREMENT

1. Public Bidding	This applies to the procurement of goods and works within the margins established in the Public Sector Budget Law.
2. Public Tender	This applies to the contracting of services and mixed modalities, within the margins established in the Public Sector Budget Law.
3. Simplified Adjudication	The simplified award is used for the contracting of goods and services, except for services to be provided by individual consultants, as well as for the execution of works, whose estimated or referential value, as appropriate, is within the margins established by the public sector budget law.
4. Selection of Individual Consultants	This process is used for the contracting of consulting services in which no personnel teams or additional professional support are needed, provided that their referential value is within the margins established by the Public Sector Budget Law. The experience and qualifications of the natural person providing the service are the primary requirements to meet the need.
5. Price Comparison	The price comparison can be used for the contracting of goods and services of immediate availability, other than those of consultancy that are not manufactured or provided according to the specifications or indications of the contractor, if they are easy to obtain, or that they have an established standard in the market.
6. Electronic Reverse Auction	This is used for the contracting of common goods and services that have a technical sheet and are included in the List of Common Goods and Services, and where the bid with the lowest price will win.
7. Direct Contracting	Exceptionally, entities may contract directly with a specific supplier in the cases established in Article 27 of Law 30225. Among others: when it is more cost-effective and technically feasible due to opportunity cost, in cases of emergency or shortages, when there is only one possible supplier, for secret purchases, and for personal services.
8. Framework Agreements	This is a special method of public procurement through electronic catalogues by which public procurement is carried out without a bidding procedure, as long as the goods or services in general are part of these. Access to these catalogues is carried out electronically through SEASE.
9. Corporate Procurement	This procedure applies when several entities can consolidate the procurement of goods and services to meet their common needs. Corporate purchases may be mandatory or optional. In the first case, the bidding process is carried out by PERU COMPRAS, while, in the second, the intervening entities enter into an inter-institutional agreement establishing which agency will carry out the centralised purchasing process.

Source: Law 30225.

¹⁹ Article 21 Law 30225.

Table 2 presents the thresholds for each type of selection process for the contracting of goods, services and works of the general regime, indicating the procedure to be followed according to the contract amount, applicable for 2023 according to the Public Budget Law. The Sol/EURO exchange rate to date is 4 soles per euro. Given the level of the different thresholds for each procedure, in practice, the bulk of the processes in terms of contract values are carried out under the public tendering modality.

TABLE 2: CEILINGS FOR EACH SELECTION PROCEDURE IN PUBLIC PROCUREMENT FISCAL YEAR 2023 (in Soles)²⁰

Type	Goods	Services			Works ²¹
		Services in General	Works Consultancy	Consultancy in General	
Public Bidding	≥ de 480,000				≥ de 2,800,000
Public Tender			≥ = a 480,000		
Simplified Adjudication	≤ a 480,000 ≥ a 39,600		≤ a 480,000 ≥ a 39,600		≤ 2,800,000 ≥ a 39,600
Electronic Reverse Auction	≥ de 39,600	≥ de 39,600			
Selection of Individual Consultants				≤ a 60,000 ≥ a 39,600	
Price Comparison	≤ a 74,250 ≥ de 39,600	≤ a 74,250 ≥ de 39,600			
Direct Contracting	≥ de 39,600	≥ de 39,600		≥ de 39,600	≥ de 39,600
Competition for architectural projects			≥ de 480,000		

Source: Directorate of the SEACE.

²⁰ Blank boxes indicate that it is not applicable.

²¹ For legal purposes, any construction, reconstruction, remodelling, improvement, extension and fitting out of real estate, such as buildings, structures, excavations, drilling, roads, bridges, among others, provided that they require technical direction, technical dossier, labour, materials and/or equipment.

CONTRACTING PROCESS

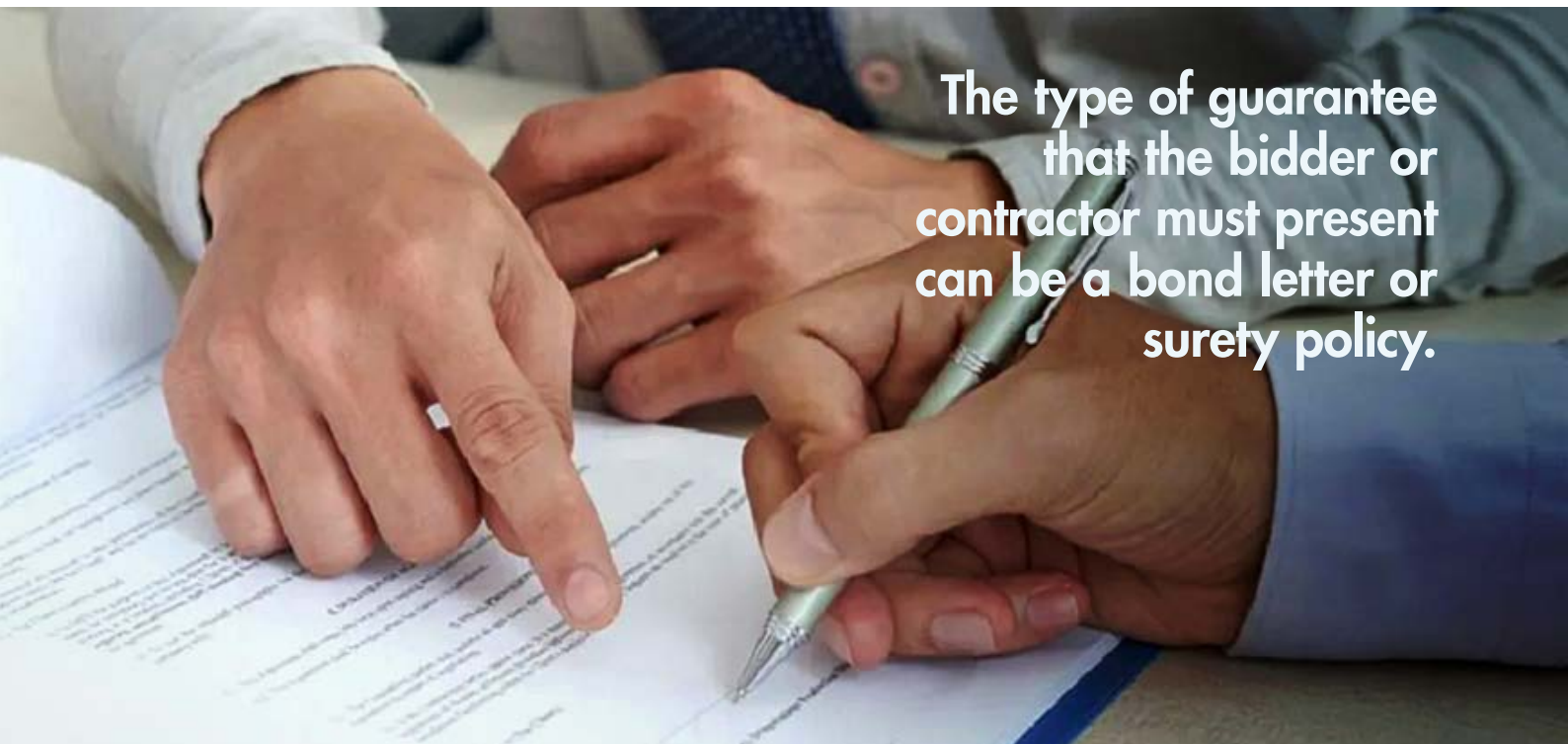
Procurement procedures generally consist of two stages. In the preparatory stage, the need and the budget to cover the requirement are identified. The requirement constitutes a request for a good, service in general or consultancy, or execution of work. The application includes the technical specifications, the terms of reference or the technical work file, and also the qualification requirements that correspond according to the object of the contract. The referential value of the contract is formulated, and once the budget has been assigned, the contracting file must be approved including the identification of the type of procedure and its modality. Once the application is approved, the Special Committee is established within the contracting entity, which will approve the terms of reference and publish the call for proposals on SEACE.

Once the notice has been published, the procedure is open to anyone interested in participating, initiating the **selection stage**. Generally, this stage consists of 7 steps: (i) call, (ii) registration of participants, (iii) formulation and absolution of consultations and observations, (iv) integration of bases, (v) presentation of proposals, (vi) qualification and evaluation of proposals, and (vii) awarding of the contract. The order of these steps varies depending on the type of procurement procedure applied. Once the contract has been awarded, the execution of the contract begins.

GUARANTEES

The bidding documents establish the type of guarantee that the bidder or contractor must present. This can be a bond letter or surety policy, and must be unconditional, solidary, irrevocable, and automatically enforceable in the country upon the sole request of the contracting entity, under the responsibility of the companies issuing them.²² The **guarantee of faithful performance** is necessary as a requirement for the conclusion of the contract in any tendering procedure. The successful bidder must provide the entity with a guarantee equivalent to 10 per cent of the original contract amount. The guarantee must remain in force until the agreement of receipt of the service by the contractor.

There are two additional guarantees that can be requested during the tender procedure, depending on the circumstances: **Guarantee of faithful compliance for ancillary services: necessary in contracts that involve the execution of ancillary services** such as maintenance, repair, or related activities. The guarantee must be renewed periodically until full compliance with the guaranteed obligations, and its presentation may not be exempted in any case. If provision has been made for the delivery of advances in the specific section of the terms and conditions, the contractor shall present an advance guarantee issued in an amount identical to the advance. This guarantee cannot be exempted under any circumstances.



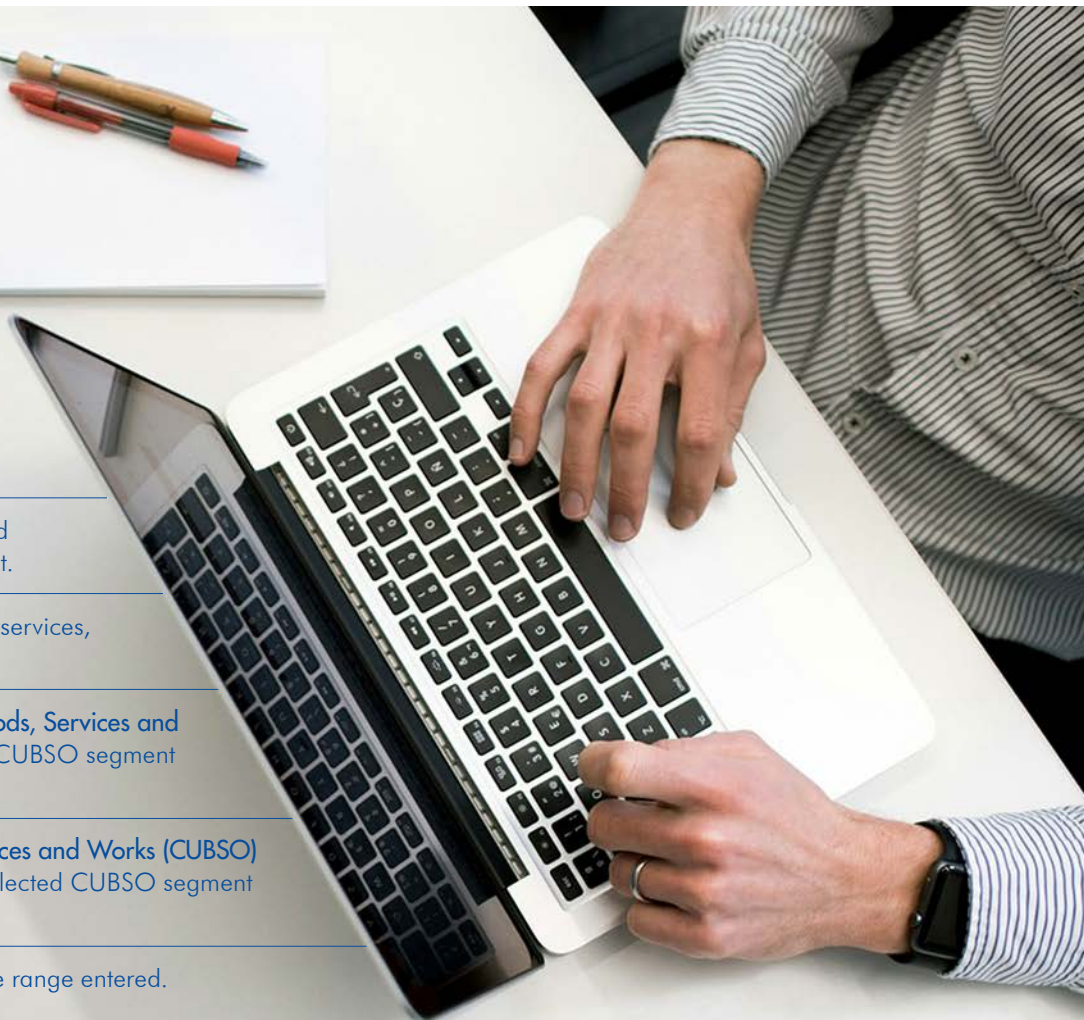
The type of guarantee that the bidder or contractor must present can be a bond letter or surety policy.

²² The company issuing guarantees must be under the direct supervision of the Superintendence of Banking and Insurance and Private Pension Fund Administrators, and must be authorised to issue guarantees, or be considered in the current list of first-class foreign banks periodically published by the Central Reserve Bank of Peru.

INFORMATION ON PUBLIC PROCUREMENT PROCESSES

All current contracting at the participant registration stage are published in the **OSCE Business Opportunities Module**. The website **Access to Business Opportunities with the State** offers information on this topic, which is in the public domain, and a search for contracting processes can be carried out by:

- **Georeferencing:** statistics by object (quantity and percentage), according to the selected department.
- **Description:** according to the word entered related to the search object.
- **Object:** can be filtered by goods, services, works and works consultancy.
- **Single Catalogue Segment of Goods, Services and Works (CUBSO):** according to the CUBSO segment entered.
- **Single Catalogue of Goods, Services and Works (CUBSO) segment summary:** according to selected CUBSO segment summary.
- **Date range:** according to the date range entered.



Credit: Tyler Franta/Unsplash

DISPUTE SETTLEMENT AND SANCTIONS

Disputes that arise during the supplier selection process may be aired both before the **State Procurement Tribunal**, the main organ of the OSCE with autonomy to resolve cases submitted before it, as well as before the convening entity, depending on the referential value of the call.

If the appeal filed during the selection process refers to a call with a reference value equal to or less than 50 UIT (S / 247,500), the appeal is made to the convening entity. If the amount is higher, it is appealed to the Tribunal. Through this appeal, the acts carried out during the procedure can be challenged until the conclusion of the contract. Appeals are only filed after the award is granted (Buena Pro). Regardless of the

reference value, the Tribunal is also competent to hear appeals filed against the Head of the Entity for acts that declare the nullity of the selection process or that affect its continuity.

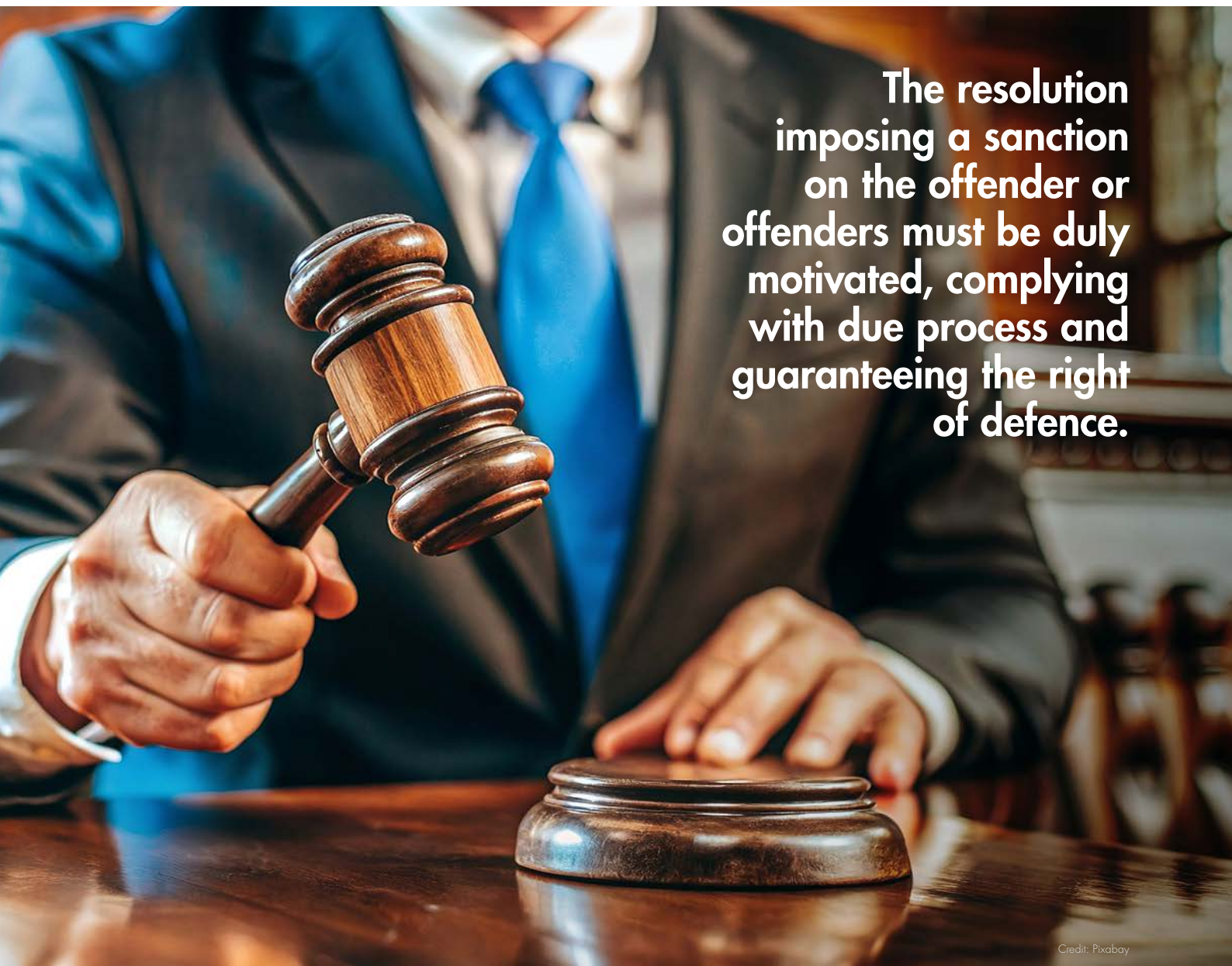
The Tribunal is the competent entity to sanction suppliers, participants, bidders, contractors, subcontractors, and professionals who work as residents or supervisors of work, in case they incur one of the offenses typified in Article 50 of Law 30225. The resolution imposing a sanction on the offender or offenders must be duly motivated, complying with due process and guaranteeing the right of defence. The possible penalties for the infractions presented in Annex 1 of this Infocard are as follows:

- **Temporary disqualification:** Through this measure, the offender is deprived for a certain period of his rights to participate in any type of procedure to contract with the State. The deprivation is not less than 3 months and not more than 36 months for the commission of infractions provided for in letters c), f), g), h) and i) and, if recidivist in the cases of letters m) and n) of Article 50 of the TUO of the Law.

- **Definitive disqualification:** This is the most severe measure that can be imposed on the offender as this sanction deprives the supplier of the right to participate in any type of procedure to contract with the State. This sanction applies to offenders who in the last 4 years have already received more than 2 sanctions of temporary disqualification which together add up to more than 36 months, or who repeat the presentation of false or adulterated documentation to the Tribunal or the RNP.

- **Fine:** The offender is required to pay an economic amount in favour of the OSCE, not less than 5% or greater than 15% of the economic offer or the contract, as appropriate, which must not be less than 1 UIT in cases of violations of *subparagraphs a), b), d), e), k), l), m) and n)* of Article 50 of the Law. If the payment is not made, the resolution establishes as a precautionary measure for a period of not less than 3 months and not exceeding 18 months, the suspension of the rights of the sanctioned party to participate in any type of procurement procedure with the State. This sanction also applies to entities when they act as suppliers.

The information on those sanctioned by the Tribunal is public and can be reviewed in List of suppliers sanctioned by the State Contracting Tribunal with current sanction.



The resolution imposing a sanction on the offender or offenders must be duly motivated, complying with due process and guaranteeing the right of defence.

Credit: Pixabay

INTERNATIONAL AGREEMENTS ON GOVERNMENT PROCUREMENT

Peru is not a member of the Plurilateral Agreement on Government Procurement (GPA) of the World Trade Organization (WTO). However, it has made similar commitments through free trade agreements signed with various countries. In the case of the European Union (EU), the **“Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part”**, Title VI includes commitments on government procurement. The main obligations under the agreement are national treatment, which forbids discrimination in favour of local suppliers, and the most-favoured-nation (MFN) clause, which prevents discrimination between foreign suppliers. The Agreement also sets out general principles of government procurement, including tendering procedures, the use of electronic means, procurement valuation, rules of origin and compensation. Article 181 of the Agreement incorporates provisions on technical specifications and conformity assessment procedures to be prepared, adopted, or applied for government procurement with the aim of preventing them from creating unnecessary obstacles to international trade, or having that effect.

The Agreement also sets out general principles of government procurement, including tendering procedures, the use of electronic means, procurement valuation, rules of origin and compensation.



Appendix 1 to Annex XII (Government Procurement) to the Agreement with the EU specifies the commitments undertaken by the country parties with respect to: (a) in Subsection 1, central government entities, whose procurement is covered by this Title; (b) in subsection 2, sub-central government entities whose procurement is covered by this Title; (c) in subsection 3, all other entities, the procurement of which is covered by this Title; (d) in Subsection 4, the goods covered by this Title; (e) in subsection 5, services covered by this Title, except construction services, and (f) in subsection 6, construction services covered by this Title.

Peru’s specific commitments are contained in Section C of Annex XII to the Agreement. In terms of coverage, both of central government entities, regional and local governments, fairly broad commitments have been assumed covering practically all possible convening entities. With regard to products and services, only a fairly small number have been excluded. In terms of exclusions, the most important is that Title VI of the Agreement does not apply to government procurement programmes to favour small and micro enterprises.

The thresholds established in the Agreement, which are expressed in Special Drawing Rights (SDRs), are significantly higher than the annual thresholds established in Peru’s Annual Budget Law for the various procurement procedures. It should be noted that commitments made on government procurement only apply to procurement with a value equal to or greater than those set out in the agreement. Thus, as far as central government entities are concerned, the commitments only apply to contracts for goods and services with a value of S/ 631,280, and in the case of works with a value equal to or greater than S/ 24,280,000. In the case of goods and services, the threshold is even higher for sub-central entities, reaching S/ 971,200 and for other entities S/ 1,942,400. The threshold for works of 5,000,000 SDRs – i.e., S/ 24,280,000 – is the same in all cases.²³

23 The thresholds set in SDRs have been converted to Soles, using the SDR to EURO exchange rate, and that of EURO to Soles in April 2023.



- **MINISTERIO DE ECONOMÍA Y FINANZAS (MEF)**
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- **SUPERINTENDENCIA NACIONAL DE ADUANAS Y DE ADMINISTRACIÓN TRIBUTARIA (SUNAT)**
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ANNEX 1

INFRINGEMENTS

- i. Unjustifiably withdrawing or withdrawing an offer.
- ii. Unjustifiably fail to comply with the obligation to perfect the contract or to formalize Framework Agreements.
- iii. Contracting with the State being prevented according to law.
- iv. Subcontract services without authorization from the Entity or in a percentage higher than that allowed by the Regulations or when the subcontractor does not have current registration in the National Registry of Suppliers (RNP), is prevented or disqualified or suspended.
- v. Failure to comply with the obligation to provide full-time services as a resident or construction supervisor, except in those cases in which the regulations allow it.
- vi. Cause the Entity to terminate the contract, including Framework Agreements, provided that said resolution has been consented to or signed in conciliation or arbitration.
- vii. Not to proceed with the remediation of the hidden defects in the provision at its expense, as required by the Entity, whose existence has been recognized by the contractor or declared in arbitration.
- viii. Unjustifiably refusing to fulfil the obligations arising from the contract that must be executed after payment.
- ix. Submit inaccurate information to the Entities, the State Procurement Tribunal, the National Registry of Suppliers (RNP), the Supervisory Body for State Procurement (OSCE) and the Public Procurement Centre-Peru Purchases. Whenever it is related to the fulfilment of a requirement, evaluation factor or requirements that represents an advantage or benefit in the selection procedure or in the contractual execution.
- x. Submit inaccurate information to the Entities, the State Procurement Tribunal, the National Registry of Suppliers (RNP), the Supervisory Body for State Procurement (OSCE) and the Public Procurement Centre-Peru Purchases.
- xi. Sign contracts or Framework Agreements without having current registration in the National Registry of Suppliers (RNP) or sign contracts for amounts greater than their contracting capacity, in specialties or categories other than those authorized by the National Registry of Suppliers (RNP).
- xii. Perfect the contract, after notification in the Electronic System of State Procurement (SEACE) of the suspension, recommendation of nullity or nullity of the contracting process ordered by the Supervisory Body of State Procurement (OSCE) in the exercise of its functions.
- xiii. Formulate technical sheets or pre-investment studies or technical files with omissions, deficiencies, or erroneous information, or supervise the execution of works lacking the duty to ensure the correct technical, economic, and administrative execution of the service, causing economic damage to the Entities.
- n. Present malicious or manifestly unfounded questions to the list of acquittal of consultations and / or observations.

Source: Law 30225.



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2023

GOVERNMENT PROCUREMENT REGIME IN PERU



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