

## *Chapter 3*

### **Involving Peruvian suppliers more in the procurement process**

*This chapter provides an overview of the main procurement methods that public entities have been applying in recent years, and examines how the government of Peru is encouraging public entities to drive efficiency throughout the public procurement cycle. This includes properly assessing the needs of public entities by conducting market analysis and applying the right tools to achieve value for money. It also describes how Peru can engage more fully in a transparent and regular dialogue with suppliers and business associations, given the importance of stakeholder participation.*

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

## Introduction

The government of Peru reorganised the country's public procurement system with the introduction of Law No. 30225, discussed previously in the first two chapters. With the 2016 regulatory reforms, steps were taken towards enhancing transparency in the procurement process, which should increase opportunities and facilitate access for suppliers to do business with public entities. To enhance competition, public entities should determine a procurement strategy that best serves administrative efficiency and ensures suppliers of a level playing field. A comprehensive strategy with the aforementioned goals often includes a mechanism for facilitating bids from all over the country and abroad in public procurement procedures, encouraging the participation of small and medium-sized enterprises (SMEs).

Using the 2015 OECD Recommendation of the Council on Public Procurement as a benchmark, this chapter looks at how the Peruvian authorities are encouraging public entities to drive efficiency throughout the public procurement cycle (see Box 3.1). This includes properly assessing the needs of public entities, conducting market analysis, and applying adequate tools to improve procurement procedures, such as aggregation or e-procurement platforms. Furthermore, it describes how Peru can engage more fully in a transparent and regular dialogue with suppliers and business associations, given the importance of stakeholder participation. The chapter asks whether clarification meetings and debriefings are being implemented, as both methods can contribute to a more efficient and fair solicitation and contracting process. It also addresses issues such as the level of competition and the use of exceptions to public tendering and the extent to which they are applied. Finally, it expands on the importance of evaluating existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste (Box 3.1).

### Box 3.1. The OECD Recommendation on Public Procurement

VII. **RECOMMENDS** that Adherents develop processes to drive **efficiency** throughout the public procurement cycle in satisfying the needs of the government and its citizens.

To this end, Adherents should:

- i) *Streamline the public procurement system and its institutional frameworks* – Adherents should evaluate existing processes and institutions to identify functional overlap, inefficient silos and other causes of waste. Where possible, a more service-oriented public procurement system should then be built around efficient and effective procurement processes and workflows to reduce administrative red tape and costs, for example through shared services.
- ii) *Implement sound technical processes to satisfy customer needs efficiently* – Adherents should take steps to ensure that procurement outcomes meet the needs of customers, for instance by developing appropriate technical specifications, identifying appropriate award criteria, ensuring adequate technical expertise among proposal evaluators, and ensuring adequate resources and expertise are available for contract management following the award of a contract.
- iii) *Develop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money*, including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.

### Box 3.1. The OECD Recommendation on Public Procurement *(continued)*

X. **RECOMMENDS** that Adherents drive performance improvements through evaluation of the effectiveness of the public procurement system from individual procurements to the system as a whole, at all levels of government where feasible and appropriate.

To this end, Adherents should:

- i) Assess periodically and consistently the results of the procurement process – Public procurement systems should collect consistent, up-to-date and reliable information and use data on prior procurements, particularly regarding price and overall costs, in structuring new needs assessments, as they provide a valuable source of insight and could guide future procurement decisions.
- ii) Develop indicators to measure performance, effectiveness and savings of the public procurement system for benchmarking and to support strategic policy making on public procurement.

*Source:* OECD (2015), “Recommendation of the Council on Public Procurement”, [www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf](http://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf) (accessed 11 May 2017).

## 3.1. Framework for public procurement procedures

With the regulatory reforms (Law No. 30225), new procurement methods were introduced such as simplified tendering, selection of individual consultants and price comparison. In addition, framework agreements were specified as a special method of purchasing (Table 3.1). Besides the new methods, the new law does not mention selection modalities; however, the mechanisms regulated as modalities in the Legislative Decree 1017 are now included as tendering methods. The more significant changes to procurement methods include public direct tender (Adjudicación Directa Pública, or ADP) and selective direct tender (Adjudicación Directa Selectiva, or ADS), being merged with awarding for lesser amounts (Adjudicación de Menor Cuantía, or AMC) to become a simplified tender (Adjudicación Simplificada, or AS) with law No. 30225, listed in Table 3.1. Under Legislative Decree 1017, ADP and ADS methods were used for the procurement of goods, services and works, in accordance with amounts. The ADS method was used for lower amounts, between PEN 40 000 and PEN 200 000 for goods and services, while ADP was used for purchases between PEN 200 000 and PEN 400 000. The main difference between ADP and ADS lies in the different tender submission methods; whether tenders had to be public or not; and whether there was need for technical evaluation, or in the case of works, if only price was evaluated. The new method of simplified tender was created to reduce time and stages in the tender process: now the procurement can be carried out within eight working days, from the time the call for tender is published until the awarding of the contract. The new simplified tendering method is being used for the procurement of goods, services and works, with a reference value within the margins set by law for the public sector budget.

Table 3.1. **The number of applicable methods under Legislative Decree No. 1017 and Law No. 30225**

Nr.	Legislative Decree No. 1017(*)	Law No. 30225 (New)
1	Public Tender (LP)	Public tender (LP)
2	Public bidding (CP)	Public bidding (CP)
3	Public direct tender (ADP)	Simplified tender (AS)
4	Selective direct tender (ADS)	Selection of individual consultants
5	Awarding for lesser amounts (AMC)	Price comparison
6		Reverse auction (electronic)
7		Direct awarding
8		Framework agreements

*Note:* With Legislative Decree No. 1017 the tendering procedure could be carried out in a corporate way or with any of the selection modalities: reverse auctions (physically or electronic) and framework agreements.  
*Source:* Legislative Decree No. 1017 and Law No. 30225.

AMC was applied by the public entities when the amount was less than one-tenth of the minimum limit established by the Public Sector Budget Law for the cases of public tender (Licitación Pública, or LP) and public bidding (Concurso Público, or CP). Disputes that arose between the public entity and the economic operators during the tendering procedure were appealed and decided upon by the public entity or with a final decision made by the Administrative Tribunal of the OSCE. CP and LP are the methods most commonly used in terms of value of contracts, over 50% of the total value but less than 3% of all processes conducted. Table 3.2 presents a breakdown of processes and contracts by method. LP is used mainly for the procurement of goods and works, while CP is used for procurement of services.

Table 3.2. **Distribution by procurement method for 2013-15 in accordance to Legislative Decree No. 1017**

Procurement procedures	2013		2014		2015	
	No. of processes	Value of contracts*	No. of processes	Value of contracts*	No. of processes	Value of contracts*
Public tender (LP)	3 413	4 258 197	2 768	3 318 389	2 400	2 589 308
Public bidding (CP)	1 701	1 217.669	1 723	1 455 626	1 609	2 076 107
Public direct tender (ADP)	4 991	689 667	4 669	664 043	4 218	521 962
Selective direct tender (ADS)	30 249	1 205 897	26 512	1 059 743	24 515	885 307
Awarding for lesser amounts (AMC)	67 565	1 649 298	58 097	1 551 576	51 172	1 194 490
Reverse auction (present)	3 383	399 637	2 436	298 659	2 095	157 122
Reverse auction (electronic)	3 172	151 753	2 717	130 009	2 232	96 036
Framework agreements**	55 732	228 575	70 527	311 285	90 001	414 246
Exonerations (exemptions)	1 222	490 210	1 095	688 658	1 953	668 350
<b>Total</b>	<b>171 428</b>	<b>10 290 903</b>	<b>170 544</b>	<b>9 477 988</b>	<b>180 195</b>	<b>8 602 928</b>

*Note:* \* Value of contract in USD millions.

*Source:* Information provided by OSCE.

\*\* The information submitted to the framework agreements case refers to the number of operations (transactions) and assessment amount, both obtained through the electronic catalogues.

The procurement regulations specify time frames for tender submissions, which depend primarily on the amount of the acquisition. Higher-value contracts are generally more complex and require a longer response time. Some of the main differences between CP/LP and ADP/ADS lie in the length of consultation and observations during tender documentation and the period for presenting bids. For CP/LP, the consultation and observations for the tender documentation period was at least 5 working days, and the time between the call for tender and the presentation of bids was 22 working days. The time required was much shorter for ADP/ADS: less than 3 days for consultation and observations and 10 working days between the call for tender and the presentation of bids.

The information provided by the Electronic System for Government Procurement and Contracting (Sistema Electrónico de Contrataciones del Estado, SEACE) shows that between the time the new legislation entered into force (9 January 2016) and March 2016, public entities published 8 222 calls for tender. However, during the same period in 2015, the number of call tendering procedures was 13 173. The most likely explanation for the striking difference is the increase in the lowest threshold from three Peruvian Taxation Units (Unidades Impositivas Tributarias, or UIT), which approximately corresponds to USD 3 450, to eight UIT (which approximately corresponds to USD 9 200). In Peru small purchases are common and during the interviews with governmental officials, there was a general understanding that close to 80% of all purchases could be below the amount of USD 9 000, although that is not confirmed. Despite a significant increase in the threshold it is still very low compared to other countries. For instance in Australia, under the Commonwealth Procurement Rules, entities can legitimately undertake a limited tender process (i.e. directly approach only one or a small number of suppliers) for goods and services valued at under AUD 80 000 as long as value for money is achieved. However, there are some scenarios where this may not be appropriate in Australia (DoF Australia, 2016), due to:

- the goods and services being part of a mandated whole-of-government panel arrangement
- the procuring entity internally “mandating” the use of a panel arrangement
- a panel arrangement including “exclusivity clauses” (not a common practice).

The situation is also different in Europe. Some EU Member States have a single national threshold for goods and services. A few of these countries have three or more bands below the level of the EU threshold. Most have two with a national threshold, below the lower of which there is direct procurement and above which the rules are more flexible than the full EU regime. The purpose of having thresholds is in many ways to frame award procedures to the subject matter of the contract, and particularly to the estimated value of the contract according to the principle of proportionality (OECD, 2010). The starting point for national thresholds below which direct procurement can take place tends to vary considerably among EU countries (Table 3.3).

Table 3.3. **Examples of starting points for national thresholds for direct awarding**

Less than USD 16 400	Ranges between USD 22 000 and USD 33 000	Less than USD 43 000	Less than USD 73 000	Less than USD 76 400
Bulgaria, Cyprus, Finland, France, Latvia, Poland, Romania and Slovenia	Italy, Hungary, Lithuania and the Slovak Republic	Austria and Estonia	Denmark	Czech Republic

*Note:*

1. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

2. Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

*Source:* OECD (2010), “Public procurement in EU Member States: The regulation of contract below the EU thresholds and in areas not covered by the detailed rules of the EU directives”, *Sigma Papers*, No. 45, <http://dx.doi.org/10.1787/5km91p7s1mxv-en>.

## 3.2. Increasing competition by improving market consultation

### 3.2.1. Opening procurement opportunities to competitors of all sizes

*Peru should consider developing a strategy that aims at broadening the pool of potential suppliers and increasing competition for public contracts*

All tendering procedures currently can be accessed by all interested suppliers who are registered under the National Registry of Suppliers (RNP, for its name in Spanish, Registro Nacional del Proveedores del Estado) to present their bids. Procurement notices are registered in SEACE with the purpose of encouraging the participation of suppliers. Yet despite a high number of public calls for tender (98.9% in number of procedures and 92.2% in terms of value), there is a serious issue with competition. The average number of tenders received is quite low – in fact, in 2015 below 2 bidders on average for goods and services and slightly above 2 for works (Table 3.4). The level of competition within these processes is inadequate, and buyers need to address this issue and stimulate more competition. Currently the number of suppliers taking part is unlikely to provide public entities with the best value. There are several probable explanations for this low level of competition: a) it can be an issue of market circumstances, with only 2-3 potential suppliers ruling certain markets; b) the regulatory framework has been too complex and rigid for suppliers to take part. Irrespective of the cause the low number is reason for concerns about the possible existence of bid rigging, and whether companies are agreeing not to submit tenders.

Table 3.4. **Average number of responses received in public tenders**

Categories	2011	2012	2013	2014	2015*
Goods	1.6	1.4	1.5	1.5	1.9
Services	1.5	1.4	1.5	1.6	1.8
Works	1.9	1.5	1.4	1.6	2.2

*Note:* \* Data for 2015 are preliminary.

*Source:* Information provided by OSCE.

The regulatory framework allows a number of exceptions that make it possible for a contract to be awarded directly to a specific supplier. Legislative Decree No. 1017 on state procurement, which was replaced by Law No. 30225, provided exceptions for the following procurements: a) those undertaken between public entities; b) in the case of an emergency situation derived from catastrophic events, or from situations that affect national defence and security; c) in a shortage situation that affects or prevents the public entity from fulfilling its activities; d) a procurement that is secret, a military secret or due to internal reasons; e) whenever there is a single supplier of goods or provider of services that does not allow for substitutes; and f) special services delivered by natural persons.

In addition to those previous cases, Law No. 30225 includes new cases such as: 1) advertising services provided by the media; 2) consulting services that are the continuation and/or update of a previous work performed by an individual consultant; 3) goods and services for research, testing or development of a scientific or technological nature; 4) the lease of real estate and the acquisition of existing real estate; 5) specialised legal services for the protection of officials, servants or members of the armed and police forces; 6) an urgent need to continue implementation of non-performed features from a determined contract or a contract declared void; and 7) training services that have a selection process for the acceptance of the persons interested.

It is unclear how extensive the 2016 changes to the regulatory framework will impact direct awarding in Peru. Under the previous legislation, exonerations allowed for direct awarding to take place, but only as an exception to the application of any of the aforementioned methods. Direct awarding can now be applied if any of the 13 cases and conditions established in article 27 of Law 30225 are configured and justified. Hence, the new framework for direct awarding has very clear procedures and implementation processes. Table 3.5 indicates how seldom the direct awarding procedure above the threshold has been applied in recent years. Overall the amount of direct awarding is relatively small in Peru compared to many countries in the region and elsewhere, but that does not imply a more competitive and open market. In Colombia, for instance, direct awarding is not subject to approval at a level higher than the contracting official, although it requires justification. Despite that required justification, the procedure is one of most commonly used in Colombia: approximately 3 out of 5 contracts in the country are awarded through direct awarding at the national and sub-national level. At the sub-national level direct awards are commonly used for personal professional services, i.e. hiring of staff (OECD, 2016a).

Table 3.5. Number of exceptions to public tenders and percentage of the total number awarded\*

Year	Number of exceptions	Number of tendering orders awarded	%
2011	1 441	103 807	1.4%
2012	1 323	132 231	1.0%
2013	1 222	171 428	0.7%
2014	1 095	170 544	0.6%
2015**	1 953	180 195	1.1%

*Note:* \* General Regime in Peru (classic processes, reverse auctions, framework agreements). Exceptions involve direct awarding.

*Source:* Information provided by OSCE.

\*\* Data for 2015 are preliminary.

Exemptions to public tender are strictly defined by the public procurement law and its regulations. The most commonly used grounds for applying exceptions in the selection process is when there is a unique supplier of goods or services that does not allow replacements and when there are shortages. However, in 2015 an emergency situation accounted for almost half of all exceptions (Table 3.6). Exemptions must be approved by means of a resolution from the head of the public entity, or by an agreement made by the Regional Council Board or the Municipal Council Board. That is why, independently of the nature or amount of the procurement, it is mandatory to have legal and technical reports issued by the relative areas of the entity that explain the reasons for exemption. Furthermore, the exemptions under secret, military secret or internal reasons require the prior approval of the General Comptroller of the Republic, which is based on verification of the inclusion of the goods or services in the list approved by the cabinet. With Legislative Decree No. 1017, the authorisation to approve the direct award was only given by the head of the entity. With Law No. 30225, this function can be delegated to other public officials in the situations enumerated above.

Table 3.6. List of grounds utilised to support exceptions in a selection process

Grounds for exceptions	2013	2014	2015
Unique supplier of goods and services	47.9%	54.8%	29.9%
Shortage	23.3%	20.4%	18.2%
Emergency	23.5%	19.5%	48.8%
Contracting between entities	1.4%	1.4%	0.4%
Non-transferable services	3.4%	3.9%	2.7%
Secret character, military secret or internal order	0.5%	0.0%	0.0%

Source: Information provided by OSCE.

The frequency of direct purchase supervision has changed over the years. During 2013 and 2014, the OSCE exercised extremely close supervision of evasion risk: on average, 262 direct contracts per year. With the regulatory reforms OSCE has decided to strengthen the supervision of evasion risk even further, creating a sub-directorate in charge of supervising direct awards. (There is more on this in Chapter 6 on risk management and control.)

### 3.2.2. Ensuring clarity and minimising procurement risks

*Peru must ensure that public officials have the necessary competencies to apply the new standardised tender documentations in order to safeguard a reasonable level of impartiality, competition and integrity*

Publication of contract notices on SEACE has been mandatory for all public entities at the national and the sub-national level since introduction of the system. Currently, about 3 000 entities publish their contract notices on SEACE and any person can search for information on the platform about public procurements for both levels of government, national and sub-national. Every month OSCE publishes reports on procurements conducted by local public entities. OSCE has developed a business intelligence tool (Indicadores Del Mercado Estatal, or CONOSCE), which is an electronic tool for public transparency that highlights procurement information in objective terms. This tool shows information about the behaviour of the public



procurement market nationwide, monitoring key performance indicators by region. The platform is always available and is constantly processing the information contained in it. With monthly reports from OSCE and CONOSCE, procurement officials should get a better overview of all procurements.

With the new regulatory framework, the requirement for revised tendering documents has placed added pressure on OSCE to deliver new standardised documents that public entities must use. These documents include guidelines for the setup of tender documents as well as model contracts. Standard tender documents are approved by the OSCE Board of Directors and include a pro forma contract. Public entities have to include the contract specification in the tender documents and the pro forma contract. During the process, suppliers may be informed about the contents of the pro forma contract; they can communicate their observations to the purchaser, which are then cleared by the selection committee.

In the framework of the Legislative Decree No. 1017, OSCE approved 20 standard tender documents for different selection processes according to the procurement categories (goods, supply of goods, services, consulting of works or works) and the type of selection process (public tender, public bidding, direct public award, selective public award and public award for lesser amounts). It also prepared two tender documents about categories frequently procured (procurement of services: security and surveillance, as well as clean-up service). OSCE moreover approved three standard tender documents referring to procurement through electronic processes of public awarding for lesser amounts. In January 2016, OSCE updated the standardised tender documentations in line with Law No. 30225, in order to avoid affecting implementation of the new public procurement regulation. Those documents were then modified by Resolution No. 304-2016-OSCE/PRE in order to improve content as a result of the feedback and comments received from the private sector that participates on technical boards set up by the Ministry of Economy and Finance. OSCE will need to ensure that public procurement officials at the central and sub-national are applying the new standardised documents correctly to avoid unnecessary cost and delay throughout the tendering process. Furthermore, application of the standardised documents can significantly impact the level of competition and impartiality of the process if it is not set up and applied in the correct manner.

### ***3.2.3. Introducing the estimated value and improving market analysis***

*Peru should reintroduce the estimated value and strengthen the capacities of the public procurement workforce to undertake market analysis, by developing specific guidelines or tools, in order to help identify the estimated value for goods and services.*

In recent years the application of referential prices has led to overvaluation of contracts as a result of incorrect market research with the market consultation being conducted by procurement officials with limited knowledge of the procedures. The method for establishing the referential price and then publishing it resulted in suppliers not performing the necessary analysis of costs to determine the price of the goods and services required by the procuring entity. The value determined by the public entity was then considered as the benchmark for suppliers and later resulted in their economic offer.

The introduction of estimated value with Law No, 30225 was a positive step to try to force the market to offer more realistic prices. It both required public entities in Peru to

carry out detailed market consultation, and it abolished the referential price in such a way that the value was kept secret until the award of the contract. Legislative decree No. 1341, which came into force in 2017, reverses the previous amendment and reinstates the referential price as the main indicator for the value of the contract. The amendment is not a full reversal back to the previous state; it includes clear requirements for public entities to conduct a market study in order to determine the type of selection procedure and to manage allocation of the necessary budgetary resources for goods and services. The referential value had remained unchanged with Law No. 30225 in the case of work consultancies (that cover highly qualified services, such as elaboration of the technical record or the supervision of the execution of the works) and works.

Despite returning to referential value, the Peruvian authorities realise the importance of in depth market consultation to arrive at a more precise referential price than previously. Public entities have to undertake market analysis by conducting analysis of the costs, taking into consideration their knowledge of the market to obtain a referential value for goods or services. For approval of the annual procurement plan (PAC), the office in charge of procurement must determine an estimated value based on market analysis. That means that the value of the goods and services to be purchased during the year is determined the year before. However, the value established in the PAC can be updated before the call for tender. For public entities to fully take advantage of these changes, a comprehensive methodology or guidance on how to conduct market research needs to be put in place that includes ways:

- To increase awareness of the characteristics of the market and of recent market developments or trends that may affect competition for the tender, or that may make collusion more likely (e.g. small number of suppliers, standardised or simple products, little or no entry, etc.).
- To collect information on suppliers and their products, prices and cost structures. If possible, a comparison of prices offered in business-to-business procurement is recommended.
- To collect information about recent price changes. This will help procurement practitioners to be informed about prices in neighbouring geographic areas and about prices of possible alternative products.
- To collect information about past tenders for the same or similar products.
- To co-ordinate with other public procuring authorities that have recently purchased similar goods, services or works, to improve understanding of the market and suppliers.

With the referential value, the public entity calls for tender by introducing the value of the purchase in SEACE. However, the public entities will have a ceiling that is the budgetary availability. This means that the public entity can reject a bid that exceeds the budgetary availability required for the tendering procedure, but only when it has carried out the necessary procedures for increasing the budgetary availability and has not been successful in obtaining additional funds.

The old problem of overvaluation of contracts is likely to remerge with these latest amendments allowing for the disclosure of the prices when issuing a contract notice. There is always the danger of suppliers working towards the value regardless of the scope, and if they win, entering into detailed and prolonged change of scope discussions afterwards, as seems to be the experience of many public entities. The market consultation should provide a better estimate than before, but there is no way for the Peruvian authorities to

ensure that economic operators will provide best prices when the estimation of the price is already disclosed. It was an improvement moving from referential value to estimated value for goods and services. If properly implemented, the methodology behind estimated value would have reduced the risks of mismanagement of prices and limit overvaluation of goods and services.

### 3.3. Improving procurement procedures and reducing duplication

There are no strategies in place aimed at increasing savings and efficiency. However, the new regulatory framework considers a series of tools that contributes to those purposes:

- *Homologation* – aims at standardising the requirements of goods and services. Homologation also aims at helping the public entity spend less time on the definition of the requirement, since it is already defined by a national government entity. Homologation is discussed in greater detail in Chapter 2.
- *Corporate purchase* – A group of entities can procure goods and services jointly by publishing only one public tender, in order to take advantage of the economy of scale and to contract goods/services in the best conditions for the state.
- *Reverse auction* – a process for pricing contracts where suppliers bid down, to drive prices downward. Suppliers/bidders are given the opportunity to continually revise their prices during the bidding process until the auction closes. The solicitation process applied is electronic.
- *Framework agreements* – These are agreements formalised by the Central Purchasing Body – Perú Compras – and the suppliers, enabling them to be part of Electronic Catalogues of Framework Agreements, through which goods and/or services will be offered and must then be hired/contracted by public entities nationwide to the extent that requirements are met.

The Peruvian authorities have developed a number of initiatives to reduce administrative red tape and costs throughout the procurement cycle. Steps have been taken to make the public procurement process more electronic with SEACE and free of charge. Offers can be submitted by anyone that is registered. It is not necessary for bidders to prove representation, as was required before Law No. 30225 came into force. This amendment gives public entities more flexibility in managing procurement, without undermining their responsibility. Furthermore, OSCE is developing a function in SEACE to make the formulation of queries and observations, as well as the responses to them, electronic.

It was stated previously in this review that one of the main aims of the regulatory reforms in Peru was to move away from a system characterised by excessive formal requirements and complex tendering processes, and toward a system that prioritises results, competition and efficiency. Efforts have been made to incorporate the aforementioned tools; however, there is a need to apply them more strategically to achieve better value for money. One of the challenges that Peru is facing is to be able to use the bargaining power of the state in a fairly decentralised procurement system. The government needs to utilise its full buying power to secure lower prices. There are examples of common purchases that could be better bundled, such as automobiles, ICT equipment and office supplies. Buyers are spread out, and procurement decisions are made on a need basis without a holistic assessment carried out by the central

authorities. The procurement system needs more central-led government purchasing: the government should be setting quantity and quality guidelines regarding procurement, and mandating public institutions and entities at the sub-regional level to use improved procurement frameworks, including standardised tools and corporate purchasing.

### ***3.3.1. Implementing new tools, including mandatory corporate purchases and reverse auctions***

*In order to better reap the benefits of economies of scale Peru needs to ensure better co-operation and commitment to corporate purchasing from public entities at the national-, and especially sub-national level. Also, strengthen the use of technical sheets and the supply conditions in the framework of reverse auction processes.*

The public procurement regulation recognises the existence of optional and mandatory corporate purchasing. Optional corporate purchasing includes the signing of an inter-institutional agreement between all the public entities that will participate in the tender process. Mandatory corporate purchasing is authorised by a supreme decree issued by the Ministry of Economy and Finance (MEF) with the approval of the Council of Ministers. The office in charge of the mandatory corporate purchasing is the Central Purchasing Body (CPB), Perú Compras (PC). The use of corporate purchasing was hindered for a long time by the delay in implementing Perú Compras. In fact, up until now only the Ministries of Health and of Defence, who created their own procurement bodies (CENARES and ACFFAA, respectively), could implement special corporate purchasing for the procurement of goods and services required by the institutions attached to those ministries. The National Fund for Financing the Corporate Activity of the Government (FONAFE), a public law corporation attached to the economy and finance sector, is also one of the main entities applying corporate purchasing for providing goods and services to the corporations under its framework.

Corporate purchasing is one of the most effective ways to achieve value for money, and a procedure where the government of Peru can really apply the weight of its purchasing power. To ensure better prices from suppliers, there is a need to create enough room for suppliers to go back into the supply chain. That would result in longer notification periods on specific products, with several public entities coming together to purchase a specific product or service. Corporate purchasing involves a well-developed planning process that the Peruvian authorities have in place and need to take advantage of more proactively. One way of fully taking advantage of this tool is to make it mandatory, an approach Peru is indeed planning to implement for specific categories. The benefits of conducting corporate purchasing will need to be showcased to encourage more public entities to take in part in the process. Furthermore, Peru could make it mandatory for public entities at both levels of government to take part in corporate purchasing but allow public entities to be exempt if they can demonstrate a better price than corporate purchasing can get.

Perú Compras is responsible for promoting reverse auctions, including management of the list that contains the technical description of the items to be purchased through electronic Reverse Auction (Subasta Inversa, or SI). The SI method involves standardising the requirements for goods and services and the use of a specific solicitation process for the procurement of standardised products. Since 2009 there have been more

than 38 000 reverse auctions both with physical presence and electronically. During the fact-finding mission the Peruvian authorities referred to a study that they carried out in 2010-12 on the use of reverse auctions. The study showed that over 50% of the participating suppliers were SMEs. On average, the use of SI as a process represents approximately 2-3% of the total number of procedures applied by public entities each year. In terms of value it is less than 5% of the total value of contracts made by the Peruvian Government each year. Whenever there is a technical sheet approved, all public entities must use the reverse auction, unless they are authorised by Perú Compras to apply another tendering procedure. With over 130 000 suppliers registered in the National Registry of Suppliers – predominately SME suppliers – the number of contractors participating in reverse auctions is rather low. The difference between methods used for reverse auctions, electronic or physical presence, is very little: on average, 2-3 suppliers respond to each auction (Table 3.7). The SI method should be more efficient for bigger purchases when leveraging items to focus mainly on price, but with so few suppliers participating in the auctions it is doubtful that public entities are realising the full potential of the method.

**Table 3.7. Average number of tenders received in electronic reverse auctions (SI) and in physical presence (PP) reverse auctions**

Categories	2011	2012	2013	2014	2015*
SI goods	3.6	3.7	4.1	3.7	4.2
SI services	3.1	2.2	2.3	2.3	2.3
PP SI goods	2.5	2.4	2.6	2.5	2.9
PP SI services	2.2	2.1	2.0	2.3	2.6

*Note:* \* Data for 2015 are preliminary.

*Source:* Information provided by OSCE

The development of technical sheets for reverse auction does make use of national or international standards for specific categories. The technical sheets have to be used by the purchasers for each SI, but purchasers can configure for each auction the supply conditions needed. During the fact-finding mission an OSCE official mentioned that the process of using technical sheets had caused some problems for public entities. Purchasers need to gain further knowledge from the OSCE and Perú Compras to manage the technical sheets and the SI operation. The use of technical sheets has definitely been a stumbling block for purchasers, and could undermine trust in the method if not used properly.

It will be one of the main functions of the newly established Perú Compras to promote reverse auctions and incorporate items in the List of Common Goods and Services. Directive No. 006 from 2016 issued by Perú Compras sets two main objectives: i) approve the new structure of the technical sheets, and ii) create an orientation document in order to help the public entities apply the standardised tendering documentation correctly. The implementation of the orientation documents is going ahead for each list of common goods and services, putting in order the information to simplify the electronic reverse auction procedures by using the standardised tendering documentation approved by OSCE. The system used to develop the electronic reverse auction processes is still managed by OSCE, which has been working towards improving the system to avoid operation problems and increase access and speed.

Reverse auctions are not generally appropriate for sourcing differentiated parts and components where suppliers may need to have specialised capabilities. Reverse auctions with only two participants are inherently more risky than auctions with more participants. Hence, public authorities in Peru will need to conduct solid market analysis for reverse auction. When assessing the market it is important to consider the supply base, how commercially attractive the purchase is, who is contractually available, how well defined are the requirements, and how compressible is the margin. There can be a significant difference between new products being introduced and retendering, which needs to be considered. Therefore it is important for the purchasers to have an idea about how the suppliers will interact in the online market. New products can be more competitive, since there is more margin to give early in the development process, and suppliers are interested in establishing themselves as the key source for the product early in its life cycle. Re-sourcing can be more difficult, depending on the perception of past negotiations by suppliers, how the last tender was awarded by public entities, how much margin is left in the product or service, etc.

### ***3.3.2. Simplifying the structure of framework agreements***

*In order to strengthen competition, Peru should reduce the number of economic operators in framework agreements in the interests of strengthening competition.*

The most significant savings are achieved when purchasing using framework agreements (Convenio Marco, or CM) combined with corporate procurement and e-procurement, since these reduce the time and cost of implementation. Framework agreements began to be drawn up in Peru in 2007-08. Following assessment of the procedure conducted by the Peruvian authorities, one framework agreement was implemented in 2011; that number grew to five in 2013, which in total consisted of eleven electronic catalogues (one framework agreement may be composed of one or more electronic catalogues). While improvements have been made to the existing framework agreements, no new framework agreements have been implemented due to technical limitations associated with the technology platform SEACE and other administrative factors. Until the transfer to Perú Compras, OSCE was managing the system for framework agreements and supervised 22 open procedures for the implementation and maintenance of the five framework agreements. With the activation of Perú Compras the responsibility for establishing, awarding and managing framework agreements was transferred to this CPB, which is similar to the functions exercised by other CPBs managing framework agreements in OECD member and non-member countries. (See Box 3.2 for the role of CPBs in Italy and Korea.) It will now be up to PC to boost and improve the catalogues and the system supporting the CM. During the fact-finding mission the transparency of the catalogues was questioned, as suppliers did not seem to know aware of purchases they are missing out on. It is important that suppliers know what is on offer and why they are missing out if the government is to achieve a more efficient procurement system.

### Box 3.2. Framework agreements – The role of the CPB in Italy and Korea

Most central purchasing bodies (CPBs), such as Consip in Italy and the Public Procurement Service (PPS) in Korea, design and carry out framework agreements – a procurement technique allowing purchasers to buy under a pre-established “umbrella” agreement.

Consip is the Italian CPB established in 2000 in the form of a state-owned company, in fact entirely owned by that country’s Ministry of Economy and Finance. Its main goal is to run framework agreements and bulk purchasing for standardised goods and services for all public administrations, especially central administrations, and to manage the public electronic marketplace for low-value and non-standardised purchases. Italy estimates that public administrations achieve cost savings of 27% through the use of framework agreements, i.e. receiving lower prices compared to market prices.

In Korea, the PPS undertook research of the arrangements for framework agreements in several countries with developed public procurement systems. On the basis of that research, implementation of Multiple Award Schedules (MAS) began in January of 2005. Korean framework agreements serve as a model that achieves the benefits of centralised purchasing while remaining open to encourage competition, avoiding a common pitfall of such arrangements.

As a centre of efficiency, PPS serves the role of a CPB, and implements many good practices. The success of PPS is demonstrated by the fact that use of its purchasing services continues to increase, despite the fact that mandatory use of these services by local and other entities has been phased out over time.

The range of items that are usually covered by framework agreements includes:

- i) ICT products and services (computers, photocopiers, printers, servers, software), generally the largest product area in terms of purchasing volume
- ii) telecommunications products (networks, mobile phones, landline phones, telephone exchanges)
- iii) office furniture
- iv) travel services
- v) office equipment and supplies
- vi) vehicle and transport services
- vii) fuel (for heating and transport) and electricity
- viii) food (foodstuffs, meal tickets)
- ix) organisational and human resources development services.

*Source:* OECD (2016b), *The Korean public procurement service: Innovating for effectiveness*, OECD Public Governance Reviews, <http://dx.doi.org/10.1787/9789264249431-en>; OECD (2014a), *Spain: From administrative reform to continuous improvement*, OECD Public Governance Reviews, <http://dx.doi.org/10.1787/9789264210592-en>.

There are 1 633 economic operators in the five available CMs, and on average 70% of suppliers under framework agreements carry out transactions with public entities (effective contracts). This does indicate that a substantial number of suppliers do not receive any orders. Having relatively many suppliers in a framework agreement would imply that the system could be made more efficient for a range of suppliers. However, it is important to consider the impact of the continuous dynamism of the catalogues on the turnover of suppliers, as it permits the exclusion

of suppliers in the agreement while new ones can be added to it on a yearly basis. The cost of suppliers to participate in the process has been limited since 2013 with the selection process being carried out in an electronic way, since no physical presence is required.

However, PC should carefully assess the market and their requirements and resources during the preparation stage, and decide on the appropriate number of economic operators for each framework agreement. In Italy and France there are conscious decisions to limit the number of suppliers for the majority of the framework agreements by taking into consideration the supply base, market concentration, the benefits of economies of scale etc. (see the case of Italy in Box 3.3). Another example is the framework agreement for paper in France, mandatory for all entities of the central government. The strategy adopted for that framework agreement is based on a rotation system where more than one supplier receives a share of the contract. The framework agreement has two lots, one on eco-responsible paper delivered with handling and the other without handling. The general rules allow for up to six suppliers under that specific framework agreement (OECD, 2017). Both in France and in Italy, an analysis of the market is conducted to set a target for the number of suppliers.

**Box 3.3. Limiting the number of suppliers for some framework agreements:  
Examples from Consip, Italy**

Consip is the Italian central purchasing body, 100% owned by the Ministry of Economy and Finance. Several studies have been carried out to determine the number of suppliers under the framework agreement using a flexible rule that depends on the number of valid tenders received, balancing competition and maximum participation.

**Table 3.8. Examples of rules in some framework agreements**

Framework agreements	Number of awarded suppliers
Desktop outsourcing	Valid tenders $\leq 6 \Rightarrow 3$ suppliers Valid tenders $> 6 \Rightarrow 4$ suppliers
Open source	Valid tenders $n \Rightarrow n-1$ suppliers (maximum 7)
Travel agency services	Valid tenders $\leq 5 \Rightarrow 3$ suppliers Valid tenders $6-7 \Rightarrow 4$ suppliers Valid tenders $\geq 8 \Rightarrow 5$ suppliers

This system enabled a significant increase of savings, since suppliers had strong incentives to be ranked first.

Source: OECD (2017), *Public Procurement in Chile: Policy Options for Efficient and Inclusive Framework Agreements*, <http://dx.doi.org/10.1787/9789264275188-en>.

Table 3.9 presents examples of three framework agreements in Peru, showing the number of suppliers under a specific agreement and the number of suppliers that have received orders from public entities. In Peru the design of the framework agreements' economic model allows for an increase and change to the supplier base every year; the tendency is normally to increase the number of suppliers every year. Also in some CMs (technological mainly) there is the possibility to introduce new products in order to diversify or maintain the technological validity and to respond to demand heterogeneity. The incorporation of new suppliers aims at engendering more dynamic competition



among suppliers. The method for adding or renewing new suppliers to CMs is based on technical and economic analysis, done through the following ways:

1. Suppliers who are already part of the catalogue can decide to stay during the new period of validity (usually a year). To obtain this renewal, the suppliers have to: i) accept the possibility of modifications to the conditions that were already established for the new period of validity because of the continuous improvement of processes (for example stock and delivery deadlines); and ii) keep their offers fixed (for example in terms of price, warranty) for each product included in the framework agreement.
2. Incorporate new suppliers for the renewal (usually for a year). In order for suppliers to become part of the catalogue, they must: i) fulfil the participation requirements established in each framework agreement (for example not be disqualified for contracting with the state); ii) accept the operation conditions already established; and iii) adhere to the rules for evaluation and acceptance for each framework agreement.

Table 3.9. **Comparative information for framework agreements**

Framework agreements	Type of suppliers	Year 1	Year 2	Year 3	Year 4	Year 5
Office equipment*	Supplier in Agreement	117	180	291	659	868
	Purchase from supplier	106	153	216	374	503
Humanitarian goods	Supplier in Agreement	24	172	373	640	
	Purchase from supplier	23	89	148	90	
Desktop computers, laptops, projectors and scanners	Supplier in Agreement	267	916	1163		
	Purchase from supplier	206	478	568		

*Note:* \* The Framework Agreement for Office Equipment entered into force 28 February 2011, so the first year goes from that date to 28 February 2012, etc.

*Source:* Information provided by OSCE.

There is no general rule for the number of economic operators allowed to be part of a framework agreement; it depends on the country, the market analysis, and the secondary policy objectives to implement, such as access of SMEs to the process. However, from a practical point of view, the pool of suppliers should be of manageable size for the award phase but also during contract execution. Frequent changes in the framework agreement offerings do not drive savings unless they are making suppliers more competitive. Framework agreements with large numbers of suppliers can discourage bidders from conducting supply chain planning – that is to say, they may be little inclined to co-ordinate assets so as to optimise the delivery of goods, services and information from supplier to customer, benefiting from economies of scale and sharing this benefit with contracting authorities. The actual mechanism does not encourage suppliers to present their best offer since they know they have a good chance to be part of the framework agreement. Moreover, contracting authorities can buy from any supplier without having complete information on the initial selection phase, such as ranking of suppliers. The Peruvian authorities should incorporate a ranking system of the suppliers, which would be made by PC on the basis of the evaluation criteria and points assigned to those criteria.

Framework agreements with many economic operators can be a disincentive for suppliers to participate, as the likely share of business from the framework agreement

may be rather small. However, in Peru the opposite seems to be occurring: the evidence suggests that there is sustainable growth in the number of suppliers in the electronic catalogues. Whether this trend will continue or whether it is because the introduction of framework agreements is relatively new remains to be seen. It is important for Peruvian authorities to have a clear objective when making changes to framework agreements. All framework agreements have advantages and disadvantages, and designing one involves careful balancing between enhancing competition and reducing the number of qualified suppliers.

Peru is not unique when it comes to allowing unlimited numbers of suppliers into a framework agreement. Chile has also a large number of suppliers (economic operators) under framework agreements (OECD, 2017). However, the purpose of CMs should extend beyond ensuring quality of suppliers, i.e. seeing that they fulfil certain obligations such as payment of taxes, labour conditions, etc. Where market research has identified a number of suppliers for a specific good or service, limiting the number of suppliers in the framework agreement can encourage more competition between the suppliers and push down prices, as it is of value to them to be in business with the state. Peru can incentivise suppliers to set more competitive prices by introducing a mechanism that gives a larger share to those ranked higher. This mechanism will reduce the information gap since the ranking is not solely based on the price criterion, and thus will enhance competition and lower prices.

Standardisation of products and services should go hand in hand with limiting the number of suppliers to maximise the benefits deriving from demand aggregation. The selection criteria for the evaluation and award of the framework agreement affect the intensity and effectiveness of competition in the tender process. Preliminary studies to generate the framework agreements are governed by a directive and follow a methodological process that i) enables assessment of the demand for a specific item by the public entity in general (not being based on specific requirements of one or more public entities), and ii) allows evaluation of the offer, which involves analysis of the industry and its peculiarities. Both analyses provide the necessary inputs to determine the feasibility of implementing the framework agreement in question. There is a need for a methodological approach to address how tender requirements can affect the number and type of suppliers, which in turn can affect the number of contracting authorities using the CM.

### ***3.3.3. Better value for money with second stage competition***

*Peru should further support contracting authorities to apply second stage competition, so as to increase efficiency within framework agreements.*

The second stage competition is a strategic milestone in procurement under framework agreements. It represents a more complex step which, in order to drive efficiencies, implies having recourse to strategic procurement skills going beyond a mere understanding of the operating environment of framework agreements. In Europe the second stage process has been commonly applied for years to get better value for money in public purchases. The process can be a repetition for those eligible to participate in a second stage competition when competing again with suppliers “on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement” (OECD, 2011).

If the second stage competition is arranged without any change of the specifications and general contract terms, but only to determine the lowest price or the criteria that are usually directly expressed in monetary terms, the call-off procedure is fairly simple and may also allow the use of reverse auctions. However, in contract situations where significant improvements are being made to the technical specifications and the evaluation criteria to meet the specific requirements of the individual procuring entity, the call-off process may be very similar to and as demanding as normal tendering in terms of preparing the final specifications, setting the contract terms and evaluation criteria, issuing the tender invitations, and carrying out the tender evaluation. Such demanding call-off procedures are not uncommon under framework agreements for complex IT systems (OECD, 2011).

In Peru a mini-competition or a second stage process between framework agreement participants can only be used to invite all of the economic operators on the framework agreement. However, that might not serve its purpose if the economic operators become disinclined to participate because of too many on the framework agreement. The second stage process in Peru is configured for showing first the lowest prices, but it also gives purchasers the opportunity to choose what they really need by considering the best value for money, using the total acquisition cost. The suppliers have the autonomy to make special offers and improvements in their commercial conditions in order to be more competitive. These constant changes being made after the start of a framework agreement allow for self-regulation of the electronic catalogue. However, the second stage competition is not often used in Peru, and there is a need to further develop that capacity given by the framework agreement process, which is an important factor for optimisation and efficiency.

### **3.4. Driving performance improvements through evaluation of the effectiveness of the public procurement system**

*Peru would benefit from assessing periodically and consistently the results of the procurement process and develop indicators to measure performance, effectiveness and savings of the public procurement system.*

The 2015 OECD Recommendation on Public Procurement encourages countries to drive performance improvements through evaluation of the effectiveness of the public procurement system – from individual procurements to the system as a whole, and at all levels of government where feasible and appropriate. This requires assessing periodically and consistently the results of the procurement process, including collecting consistent, up-to-date and reliable information and using data on prior procurements, particularly regarding price and overall costs, in structuring new needs assessments, as they provide a valuable source of insight and could guide future procurement decisions. It also requires developing indicators to measure the performance, effectiveness and savings of the public procurement system for benchmarking and to support strategic policy making on public procurement. Peru could for example adapt some of the indicators developed by OECD countries to address key dimensions of the procurement process, see Box 3.4 (OECD, 2015).

### Box 3.4. Towards public procurement performance indicators

In February 2013, the Leading Practitioners on Public Procurement asked the OECD to help develop a set of indicators to measure the performance of public procurement systems and its evolution over time. Following the Leading Practitioners' meeting, a Task Force on Public Procurement Performance Indicators was formed, and they identified the following four areas for the development of indicators:

*Efficiency of the public procurement process* – Efficiency in public procurement refers to the proportionality between, on the one hand, the costs and time of each public procurement procedure, and on the other the value of the contract. It is possible to achieve efficiency gains through the use of consolidation mechanisms and e-procurement.

*Openness and transparency of the public procurement process* – Openness is understood as fair, equal and equitable treatment of participants in the public procurement process. According to UNCITRAL, transparency in public procurement involves five main elements: public disclosure of rules applied in the public procurement process; publication of public procurement opportunities; prior determination and publication of what is to be procured and how submissions are to be considered; visible conduct of public procurement according to the prescribed rules and procedures; and existence of a system to monitor that these rules are being followed and to enforce them if necessary.

*Professionalism of the public procurement workforce* – Having a public procurement workforce meeting high professional standards and being capable of achieving strategic government objectives is essential. Key factors for the professionalism of the public procurement function include: sufficient staff in terms of numbers and skills; recognition of public procurement as a specific profession; certification and regular trainings; integrity standards for public procurement and contracting officials; and the existence of a unit for analysing public procurement information so as to monitor the performance of the public procurement system.

*Contract management and supplier performance* – This dimension aims to look at the contract performance phase. Contract performance management activities can be grouped into three areas: delivery management (ensures that whatever is ordered is then delivered at the required level of quality and performance as stated in the contract); relationship management (seeks to keep the relationship between the supplier and the contracting authority open and constructive); and contract administration (covers the formal governance of the contract and any permitted changes to documentation during the life of the contract). By monitoring and documenting supplier performance, public officials are in a position to require corrective actions from suppliers when they are not in compliance with contract requirements. Performance monitoring could also provide a feedback loop in the selection of potential suppliers, therefore contributing to improving the pre-qualification system. An element for measuring the performance of government in contract management is whether suppliers are paid on time.

*Source:* OECD (2014b), “Towards public procurement performance indicators, 2014”, unpublished.

In 2016, the Inter-American Development Bank (IADB) and the World Bank assessed the Peruvian public procurement regime using the methodology for assessing procurement systems (MAPS) developed by the joint World Bank / OECD Development Assistance Committee (DAC) Procurement Round Table initiative. One of the main findings of their analysis was that information on contracts is sporadic or occurs normally with considerable delay after the end of the fiscal year. Furthermore, the procurement system is not sufficiently integrated with the financial management systems and the budget to provide information on the implementation of major contracts. The systems in Peru for collecting and disseminating information on procurement that are key for evaluating performance

have improved significantly since the previous MAPS assessment was carried out in 2008 (MAPS, 2016), but more can still be done according to the World Bank and the IADB.

Analysis of the Peruvian procurement system identifies two key platforms – SEACE and RNP – that can provide relevant data for officials to help manage the overall performance of the system. Without the data stored on these platforms it would be unclear whether public entities were complying with procurement rules, or whether the system had the potential to become more efficient. In addition to the two platforms, OSCE has recently implemented CONOSCE, which will report information on public entities that are not publishing purchases under the 8 UIT, identifying entities that are splitting contracts, among other irregularities. CONOSCE will help the Peruvian authorities to monitor the output of public entities. However, despite these data-gathering platforms, OSCE has not developed a performance system with indicators measuring for savings, quality of supplies, bidding, the use of procurement tools or the level of completion (public biddings vs. restricted invitations or direct awards). The lack of these indicators has strong implications for the efficiency of the system. Even though targets may have been set there is no way to assess if they have been achieved or not, since there are no indicators to measure the impact.

### **3.5. Fostering transparent and effective stakeholder participation**

#### ***3.5.1. Exploring new clarification approaches to increase suppliers' engagement***

*Peru should consider introducing clarification meetings in order to improve the supplier's engagement in public procurement processes and contribute to more efficient public procurement systems.*

The regulatory framework in Peru does not permit any kind of clarification meeting to take place during the solicitation process. However, participants can request clarification of tender documentation before the tendering stage in writing, through the presentation of queries that are clarification requests or other required information concerning the tender documentation (Table 3.10). Besides the queries, participants can also present observations in order to confirm an infringement to the public procurement regulation or any other related law. The selection committee in charge of the tendering procedure needs to answer all the queries through a well-grounded document containing information about the participants who formulated them. It is mandatory that this document be published on SEACE. Despite not being permitted to communicate with tenderers for clarifications, the selection committee may formally request participants to correct errors or omissions in filings as long as they do not modify the scope of the proposal. During the fact-finding mission suppliers raised the lack of flexibility during the bidding process as an issue, with suppliers prohibited from clarifying issues and bids during the tendering process. With the new regulation Law No. 30225 this issue should improve, as formal or material errors can now be amended, among others:

- the lack of information in formats and affidavits, different from the ones that contain the price or the economic offer
- the issuance of dates or the name of certifications provided by public entities
- the lack of signature or numbering
- certifications about qualities, characteristics or specifications about the goods or services offered, as long as those circumstances already exist at the moment of the tender or if they were referenced in the bid.

Regarding the omissions, it is only possible to amend documentation whenever the authorisations, permissions, titles, licences or certifications have been issued by a public entity or a private one that practices public function, before the date of the presentation of tenders. There has been an effort among procuring entities to improve the speed and substance of responses to bidders' inquiries for clarification. The situation can be improved by making responses to suppliers more timely and substantive. As previously discussed, OSCE is developing a process to receive and respond to the queries and observations electronically.

Table 3.10. **The terms to present queries depend on the selection method**

Selection method	Legislative Decree No. 1017		Law No. 30225	
	Formulation	Reply	Formulation	Reply
Public tender	Queries		Queries + Observations	
	Minimum five working days	Maximum five working days	Minimum ten working days	Maximum seven working days
	Observations			
	Minimum five working days	Maximum five working days		
Public bidding	Queries		Queries + Observations	
	Minimum five working days	Maximum five working days	Minimum ten working days	Maximum seven working days
	Observations			
	Minimum five working days	Maximum five working days		
Direct tender (public or selective)	Queries		-	-
	Minimum three working days	Maximum three working days		
	Observations			
	Minimum three working days	Maximum three working days		
Simplified tender		-	Queries + Observations	
			Minimum two working days. For works, it's minimum three working days	Maximum two working days. For works, it's maximum three working days
Awarding for lesser amounts (joined with the formulation of observations)	Queries + Observations			
	For works, minimum three working days. Does not apply to goods and services	For works, maximum three working days. Does not apply to goods and services	-	-
Selection of an individual consultant			Does not apply	Does not apply
Shopping			Does not apply	Does not apply

Source: Information provided by MEF.

Peru could add another dimension to the clarification system by offering clarification meetings held at a specific point in time during the solicitation process, and sometimes with the possibility of having more meetings based upon participants' needs. They would be held before the presentation of the written queries and observations, or replace them

altogether. The clarification meetings represent an efficient form of communication, allowing direct interaction with suppliers and clearing up their doubts. However, it is not ideal to solely provide clarifications through established meetings, as this can slow down the process and create unnecessary delays and effort.

### ***3.5.2. Introducing a debriefing framework will improve relationships with suppliers***

*Peru should consider introducing supplier debriefings in order to improve relationships with bidders and suppliers as well as the efficiency of public procurement processes.*

Standstill periods are currently implemented in many countries, and in Peru they have been a part of the public procurement process for some time. The period refers to the time between the date bidders are notified of the contract award decision and the date the contract comes into force. They were included in the previous Legislative Decree No. 1017, and are also included in the current legislation. The terms for any standstill period are required to be stated in the documentation for formalising the contract.

In Peru, public procurement regulation establishes that after notification of the awarding of the contract, the entity has to wait a period of eight working days in the case of public tenders and public bidding, and five working days in the case of simplified tender, selection of an individual consultant and price comparison, in order to consent to the awarding of the contract. That consent can only be given if the losing bidders have not presented an appeal. In the case of reverse auctions, the consent allows for five days after the awarding, but when the estimated value of the RA corresponds to a public tender or a public bidding, then consent allows eight days after the awarding. After the consent, the winning bidder has to wait for the signing of the contract as established in the regulation.

Furthermore, the period for the consent to the awarding does not include the period for the signing of the contract. The maximum period to sign a contract is 18 working days, including the possibility to ask the supplier to correct errors or omissions. This period only starts once the awarding decision has been consented to. During the period before the signing of the contract, it is not possible to raise claims against the awarding or the evaluation of the bids. This practice promotes fairness and integrity of the procedure by providing dedicated and sufficient time for bidders to use existing remedies and permitting the suspension and annulment of the decision at a stage where the infringement can still be rectified or its impacts minimised.

Meanwhile, Peru has no regulatory framework for debriefing bidders. Meetings with bidders who do not get the contract are not held face-to-face or over the telephone or by videoconference. If the bidder is not awarded the contract they are informed of these results via SEACE. Besides having information on SEACE, the non-winning bidders can access the procurement record in order to review the information about the whole procurement process, except for the information qualified as secret, confidential or reserved. The procurement record is not electronic and it is kept in the custody of the office in charge of procurement. Companies are permitted to approach public entities and ask about issues or feedback but they tend not to do it. However, unsuccessful tenderers may want to know why their tender failed. Bids are often rejected on technicalities, and losing companies can have a hard time obtaining an explanation as to why they lost the bid. However, the selection committee issues minutes that state the reasons for the disqualification of bids and the awarding of the contract, and that is published in SEACE.

Verbal debriefings are used in some OECD countries to engage with the market and to expand the supply base. Implementation of adequate debriefing with the suppliers provides a valuable opportunity for both parties to benefit from the process. Verbal debriefings can improve the relationship with suppliers and the quality of their offers.

In order to increase the benefits of such debriefings while mitigating any potential risks, guidelines should be developed that create a clear framework for that activity. The debriefing should be conducted at the request of a respondent after the award is made and the contract has been signed. To get maximum benefit from a debriefing, it is better not to delay it beyond two weeks after contract award. It is recommended that certain generic content be considered in its development (see Box 3.5). OSCE or PC should support that activity with clear guidelines that provide a structured framework, and clarify elements such as when and where debriefings take place, what information can and cannot be provided, the standard discussion structure to be followed, etc.

### Box 3.5. The benefits of debriefing

Debriefing is beneficial to bidders, in that it:

- a) helps them to rethink their approach in order to make future bids more successful
- b) offers targeted guidance to new or smaller companies to improve their chances of doing business in the public sector
- c) provides reassurance about the process and their contribution or role (if not the actual result)
- d) provides a better understanding of what differentiates public sector procurement from private procurement.

That dialogue can also by:

- a) identifying ways to improve subsequent solicitation processes, including the associated communications
- b) making sure best practice and guidance is updated to reflect any relevant issues that have been highlighted
- c) encouraging better bids from those suppliers in future
- d) getting a better understanding of how that segment of the market thinks, enhancing the organisation's market intelligence;
- e) helping establish a reputation as a fair, open and ethical buyer with whom suppliers will want to do business in the future
- f) potentially reducing the number of challenges.

It can also benefit government and the wider public sector, by:

- a) demonstrating commitment to good practice and openness
- b) contributing to intelligence gathering about the market
- c) educating the market, letting it know that the public sector is value-driven and not cost-driven.

*Source:* United Kingdom Office of Government Commerce (2003), "Supplier debriefing", <http://prp.gov.wales/docs/prp/generalgoodsservices/130617ogcsupplierdebrief.pdf> (accessed 13 May 2017).



### 3.6. Proposals for action

The new regulatory framework further indicates the commitment from the Peruvian Government to enhance the efficiency of the procurement process. In addition, there seems to be a common understanding of the need to focus on simple and faster processes – the system needs to be more transparent, accessible and service oriented. The new public procurement law can be considered a steppingstone towards strengthened efficiency and competition, but policy makers in Peru need to be sure to implement the new provisions. In order to improve the efficiency and value of its procurement function, the following proposals could be considered:

- Peru should consider developing a strategy that aims at broadening the pool of potential suppliers and increasing competition for public contracts.
- Peru must ensure that public officials have the necessary competencies to apply the new standardised tender documentations in order to safeguard a reasonable level of impartiality, competition and integrity.
- Peru should reintroduce the estimated value and strengthen the capacities of the public procurement workforce to undertake market analysis, by developing specific guidelines or tools, in order to help identify the estimated value for goods and services.
- In order to better reap the benefits of economies of scale Peru needs to ensure better co-operation and commitment to corporate purchasing from public entities at the national-, and especially sub-national level. Also, strengthen the use of technical sheets and the supply conditions in the framework of reverse auction processes.
- In order to strengthen competition, Peru should reduce the number of economic operators in framework agreements in the interests of strengthening competition.
- Peru should further support contracting authorities to apply second stage competition, so as to increase efficiency within framework agreements.
- Peru should assess periodically and consistently the results of the procurement process and develop indicators to measure performance, effectiveness and savings of the public procurement system.
- Peru should consider introducing clarification meetings in order to improve the supplier's engagement in public procurement processes and contribute to more efficient public procurement systems.
- Peru should consider introducing supplier debriefings in order to improve relationships with bidders and suppliers as well as the efficiency of public procurement processes.

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