



FIGHTING BID RIGGING IN THE HEALTH SECTOR IN PERU: A REVIEW OF PUBLIC PROCUREMENT AT ESSALUD

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Public procurement plays a strategic role in the economy, as well as the effectiveness and quality of services that governments provide to their citizens. According to the OECD's [Government at a Glance: Latin America and the Caribbean 2020](#), in 2017 public procurement represented 46.6% of Peru's government expenditures and 9.9% of Peru's gross domestic product.

Due to its size, public procurement attracts bid-rigging conspiracies, i.e. illegal agreements among bidders for public contracts, who collude to artificially raise prices or lower the quality of the goods or services that they offer. According to estimates, bid rigging can increase prices by 60% and this percentage can be even higher in certain cases. Bid rigging is illegal in all 38 OECD Members, and a criminal offence in 29 of them.

The prevention and detection of bid rigging are crucial to ensuring that public-procurement procedures are genuinely competitive. In 2012, the OECD adopted a Recommendation on Fighting Bid Rigging in Public Procurement (Recommendation), which has since become a global reference, helping countries assess the competitiveness of their procurement laws and practices, and implement reforms.

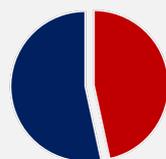
Against this background, in 2019, Peru's Social Security body (Seguro Social de Salud del Peru, EsSalud) requested that the OECD assess EsSalud's procurement framework in light of the Recommendation. EsSalud and Peru's Institute for the Defence of Competition and Intellectual Property (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual, Indecopi) provided valuable inputs and support throughout the project.

EsSalud procurement in goods, services and works, 2017-2020

	Goods		Services		Works	
	Procurement processes	Total value (millions, PEN)	Procurement processes	Total value (millions, PEN)	Procurement processes	Total value (millions, PEN)
2017	788	682.4	797	357.7	1	8.3
2018	795	939.5	627	1 744.8	3	19.5
2019	665	682.5	497	799	4	21.9
2020	665	842	553	440.1	2	3.8
Total	2 913	3 146.4	2 474	3 341.6	10	53.5

Source: OSCE (2021), "Principales indicadores de: Seguro Social de Salud", <https://public.tableau.com/app/profile/osce.bi/viz/Adjudicaciones6/h>.

The main outcome of the project is a report that assesses procurement rules and practices that concern EsSalud, and, in some cases, affect all public procurement in Peru. Peru has taken significant steps to limit bid-rigging risks over the last few years, and the report makes recommendations for further steps to make public procurement more competitive.



In 2017, public procurement represented **46.6 %** of Peru's government expenditures.

Most recommendations are addressed to EsSalud, while some also concern other public bodies in Peru. The OECD also delivered an action plan to implement the main recommendations.

The report is available at oe.cd/fbrhsp in English and Spanish.

KEY RECOMMENDATIONS

Be informed about the market

Market research and planning help procuring entities understand supply solutions and capacity, and design tenders that are technically accurate, consider alternative and innovative solutions, and reduce the likelihood of collusion among the bidders. Solid procurement planning also gives potential suppliers visibility about the products, services or works to be procured, and enables them to prepare their bids.

Key recommendations

1. **Publish EsSalud's annual procurement plan as early as possible** and modify it as few times as possible.
2. **Centralise market research in a central EsSalud department**, such as the Strategic Goods Supply Office (Central de Abastecimiento de Bienes Estratégicos, CEABE), ensuring that it has sufficient resources and updated guidelines on minimum market-research content, including on market factors beyond price.
3. **Engage with potential suppliers early in the procurement process** to be informed of market trends and conditions, while ensuring that tender terms are not tailored exclusively to information provided by potential suppliers.
4. **Establish a comprehensive EsSalud database** with information from past and ongoing procurement processes.

Maximise participation

Increasing the number of bidders intensifies competition and offers more opportunities for obtaining value for money. Higher participation also reduces bid-rigging risks, as the pool of bidders that would need to agree to a bid-rigging scheme is bigger and collusive agreements are more difficult to reach.

It is therefore important to maintain a pool of bidders with a continuing interest in current and future projects. Selection and awarding criteria must ensure that credible bidders, including small and medium enterprises, have opportunities to bid and remain interested.

Key recommendations

1. Assess the level of bidder participation in EsSalud's tenders and **remove barriers to bidding**.
2. **Monitor reasons for direct awards**, including those made during the COVID-19 pandemic.
3. **Ensure that** the Government Procurement Supervisory Agency (Organismo Supervisor de las Contrataciones del Estado, **OSCE**) **consults with** Peru's competition authority, **Indecopi**, **in preparing standard tender documents** to ensure that they include competition-related aspects.
4. **Clarify in calls for tenders that joint bids and subcontracting are allowed only when justified and pro-competitive**, and request information from bidders justifying their choices, such as why they are not bidding separately.
5. **Simplify Peru's system of consolidation and centralisation** for healthcare procurement.
6. **Consider increasing co-operation between EsSalud**, the National Centre for the Supply of Strategic Resources in Health (Centro Nacional de Abastecimiento de Recursos Estratégicos en Salud, **CENARES**) and Peru's central purchasing body, **Perú Compras**.

Procurement methods used by EsSalud, 2019

Year	Regime	Procurement method	Quantity	Amount (millions, PEN)	Average number of bidders
2019	Public Procurement Law No. 30225	Simplified award	1 039	424.7	2.5
		Price comparison	43	2.2	3.2
		Public contest	189	663.5	2.6
		Direct award	144	374.6	1.0
		Public bid	179	476.6	2.2
		Electronic reverse auction	88	255.8	3.1
	Other regimes	Simplified award – Decree No. 1355	1	1.1	1.0
		International contracting	8	1.1	1.0

Source: CONOSCE, “Estadísticas de Contrataciones por Entidad”, <https://portal.osce.gob.pe/osce/conosce/indicadores-del-mercado-estatal.html>.

Design better tenders

The effectiveness of each procurement depends upon the chosen procurement method, as well as how the selection and award criteria are designed. Price-only criteria are suitable for more standardised goods, works or services for which cost is the main issue for the contracting authority.

Price is an objective clear criterion that limits the risk of a contracting authority’s impartiality being questioned and the award decision being challenged in court. Non-price criteria are better suited to tenders in which price alone is insufficient to provide a good response to EsSalud’s requirements.

In technical, complex and innovative projects, award criteria based on quality rather than price can yield better procurement outcomes and reduce the risk of collusion, since quality is more difficult to rig than prices.

Key recommendations

1. Use **quality-related award criteria**, in addition to price, when quality and innovation are relevant dimensions of the procured goods, services and works (for example for non-standard pharmaceutical products).
2. Consider how award criteria could also **reward savings in contract delivery**.
3. Avoid **modifying contracts post-award** and remain attentive to renegotiation.

Pay attention to transparency

Transparency ensures that suppliers are aware of opportunities and the requirements to participate in them. It is also indispensable for a sound procurement procedure free from corruption.

Still, transparency requirements should be carefully considered in order not to inadvertently facilitate collusion by disseminating excessive information.

Key recommendations

1. **Refrain from publishing the complete version of the annual procurement plan.**
2. **Limit transparency when it might increase the procurement procedure’s vulnerability to collusion**; for example, avoid any public release of information about bids and bidders until a set time after the tender conclusion.

Raise awareness about bid rigging

Raising awareness about bid rigging is as important as strong competition enforcement in terms of preventing and deterring bid rigging. Co-operation between the competition authority and public purchasers and advocacy initiatives addressed to the public and private sector have proven effective in the fight against bid rigging in many OECD jurisdictions.

Key recommendations

1. **Increase co-operation between EsSalud and Indecopi**, based upon the memorandum of understanding that the OECD has prepared, and develop a joint long-term action plan for its implementation.
2. Ensure **that EsSalud, Indecopi, OSCE and Perú Compras design a joint strategy for public procurement and competition training** for public procurement officials and the private sector, and have resources to implement this strategy.
3. **Realise an ex post evaluation** to assess the implementation of this report's recommendations and evaluate their impact.

From advice to action: OECD in-country work on fighting bid rigging

The OECD reviews national and sector-specific public procurement regimes, to guide and support countries in combatting collusive practices.

As part of these reviews or independently, the OECD develops wide-ranging capacity building programmes on fighting bid rigging in procurement, including workshops and training manuals, for competition, public procurement, budget and internal control officials.

Peru (2021), Ukraine (2021), Brazil (2021), Argentina (2019), Mexico (2018, 2017, 2016, 2012, 2011), and Colombia (2014) have already undergone reviews.

Access all reviews at www.oecd.org/competition/bidrigging

