OECD Public Governance Reviews

Public Procurement in Peru

REINFORCING CAPACITY AND CO-ORDINATION



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Foreword

Recent growth performance has made Peru one of the fastest-growing economies in Latin America, reducing poverty and inequality and improving the quality of life for citizens. There are still many challenges to be addressed, however, such as how to improve productivity and maintain this growth trajectory. Public procurement is the most relevant direct economic activity carried out by a government, and has a significant impact on the economy and society. It can play a pivotal role in the success of reforms. The Peruvian economy is currently feeling the effects of a major corruption scandal related to the public procurement of large infrastructure projects. Investment could be hampered as a result of delays in some public infrastructure plans as the government seeks to root out corruption. A sound governance system ensuring integrity and transparency in public procurement, while achieving adequate outcomes for the money spent, is essential for public trust in any country. Providing relevant information to all stakeholders, opening and levelling the playing field for potential providers, and guaranteeing adequate remedy and redress processes are all cornerstones of an effective public procurement system.

Since 2016, Peru has strengthened its public procurement system with improved laws and regulations. Like in many other Latin American countries, public procurement practices in Peru have long focused on instilling a culture of formalities and procedures among procurement officials and other stakeholders. With the 2016 legal framework, the country aims to establish norms that will maximize value-for-money of invested public resources and promote results-based management in the area of public procurement.

While the new reforms in Peru are certainly a positive step, whether they lead to real change will depend on the extent and success of their implementation. Recognising the progress made so far, this review suggests concrete and tangible actions for successfully putting the reforms into practice. The review also addresses existing strategic and operational gaps, and reflects on how the country can move toward establishing a coherent and comprehensive public procurement system, develop a culture of efficiency across levels of government and strengthen the governance model, based on the framework set by the 2015 OECD Recommendation on Public Procurement.

The 2016 legislation strengthens the institutional setting of the public procurement system, in particular by introducing a national central purchasing body (CPB), a common practice in almost all OECD countries. In other countries in the region, Chile and Colombia for instance, an effective CPB has already led to the creation of centres of expertise and knowledge dissemination, transforming traditional practices. Other objectives of the new law are also aligned with international best practices, such as the simplification and standardisation of the public procurement processes and the increase of competition.

This public procurement review of Peru is part of a broader OECD country programme with Peru that was launched in December 2014. The programme includes several policy reviews, participation in OECD committees and support for implementing reforms in different policy areas based on peer-driven knowledge-sharing and capacity building projects. In co-operation with Peruvian authorities from the Ministry of Economy and Finance (MEF), the Government Procurement Supervising Agency (OSCE) and the Central Purchasing Body (Perú Compras), the OECD reviewed the recent reforms as well as issues and challenges related to their implementation. Under the framework of the twelve principles of the 2015 OECD Recommendation of the Council on Public Procurement, this review is the most comprehensive assessment of a country's procurement system conducted so far by the OECD, setting a new benchmark. This document was approved by the Public Governance Committee on 16 June 2017 and prepared for publication by the OECD Secretariat.

Peru has already achieved ambitious reforms, whose results are reflected in many improved economic and social indicators. Its reform path and agenda is aligned with the UN Sustainable Development Goals. Recognising the importance of public procurement, policy makers have changed the legal and institutional frameworks. Now, the opportunity to realise its full potential is here. Yet, doing so will require collective action based on a clear understanding of priorities and responsibilities. Only a co-ordinated effort across the entire spectrum of stakeholders and the whole of the public sector will take the public procurement system to a higher level and achieve the promise of reform.

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Acronyms and abbreviations

ACFFAA	*Agencia de Compras de las Fuerzas Armadas* The Central Purchasing Body of the Armed Forces
ADP	*Adjudicación Directa Pública* Public Direct Tender
ADS	*Adjudicación Directa Selectiva* Selective Direct Tender
AMC	*Adjudicación de Menor Cuantía* Awarding for Lesser Amounts
APC	*Asociación Peruana de Consultoría* Peruvian Consultants Association
APUC	Advanced Procurement for Universities and Colleges, Scotland
AS	*Adjudicación Simplificada* Simplified Tender
AVO	*Aula Virtual de OSCE* Virtual classroom' website
CA	*Carrera Administrativa* Public Office Regime
CAD	*Ciudadanos al Día* NGO CAD
CAN	*Comisión de Alto Nivel Anticorrupción* High-Level Anti-Corruption Commission
CAPECO	*Cámara Peruana de la Construcción* Peruvian Chamber of Construction
CAS	*Contratación Administrativa de Servicios* Administrative Service Contracting
CCL	*Cámara de Comercio de Lima* Chamber of Commerce of Lima
CCP	*Certificación del Crédito Presupuestario* Budget Credit Certificate
CCR	Central Contractor Registration (United States)
CENARES	*Centro Nacional de Abastecimiento de Recursos Estratégicos en Salud* National Center for the Supply of Strategic Resources in Health
CERGE-EI	Center for Economic Research and Graduate Education – Economics Institute (Czech Republic)

CGR	*Contraloría General de la República* General Comptroller of the Republic
CONOSCE	*Indicadores del Mercado Estatal* Business Intelligence Tool
CONSUCODE	*Consejo Superior de Contrataciones y Adquisiciones del Estado* The Government Procurement and Acquisitions Superior Council
COSO	Committee of Sponsoring Organizations of the Treadway Commission (United States)
CP	*Concurso Público* Public Bidding
CPB	Central Purchasing Body
CPI	Corruption Perception Index
CM	*Convenio Marco* Framework Agreement
CSOs	Civil society organisations
EBRD	European bank for Reconstruction and Development
EEV	Environmentally friendly vehicles (Estonia)
ENAP	*Escuela Nacional de Administración Publica* National School of Public Administration
ENC	*Escuela Nacional de Control* National School of Control
EPEAT	Electronic Product Environment Assessment Tool (Canada)
ERM	Estonian Road Administration
FAME	Fatty acid methyl esters
FONAFE	*Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado* National Fund for State Enterprise Activity
FONCODES	*Fondo de Cooperación para el Desarrollo Social* Cooperation Fund for the Social Development
FMC	Financial and Managerial Control
GPP	Green Public Procurement
HLRMs	High-level reporting mechanisms
IADB	Inter-American Development Bank
IA	Internal Audit
ICT	Information and Communications Technology
INDECOPI	*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* National Institute for Protection of Competition and Intellectual Property

INFOBRAS	*Sistema de Información de Obras Públicas* Public works information system
INPE	*Instituto Nacional Penitenciario* The National Penitentiary Institute
JRD	*Junta de Resolución de Disputas* Dispute Resolution Board
KOFA	The Norwegian Complaints Board for Public Procurement
LAC	Latin America and the Caribbean
LP	*Licitación Pública* Public Tender
MAPS	Methodology for Assessing Procurement Systems
MAS	Multiple Award Schedules
MEAT	Most Economically Advantageous Tender
MEF	*Ministerio de Economía y Finanzas* Ministry of Economy and Finance
MIDIS	*Ministerio de Desarrollo e Inclusión Social* Ministry of Development and Social Inclusion
MINEDU	*Ministerio de Educación* Ministry of Education
MSMEs	Micro, small and medium-sized enterprises
NCA	Norwegian Competition Authority
OCI	*Órgano de Control Institucional* The Institutional Control Bodies
OEFA	*Organismo de Evaluación y Fiscalización Ambiental* Environmental Assessment and Audit Body
OSCE	*Organismo Supervisor de las Contrataciones del Estado* The Government Procurement Supervising Agency
PAC	*Planes Anuales de Contrataciones* Annual Procurement Plan
PAS	*Programa de Acompañamiento y Seguimiento* The Programme 'Support and Assessment of Public Entities
PC	*Perú Compras*
PDP	*Plan de Desarrollo de las Personas al Servicio del Estado* Development Plan of Public Officials
PCM	*Presidencia del Consejo de Ministros* Presidency of the Council of Ministers
PFM	Public Financial Management
PIA	*Presupuesto Institucional de Apertura* Institutional Opening Budget

PIM	*Presupuesto Institucional Modificado* Modified Institutional Budget
PNUMA	*Programa de las Naciones Unidas para el Medio Ambiente* United Nations Environment Programme
PPSD	Public Procurement Supply Directorate (Hungary)
PRODUCE	*Ministerio de la Producción* Ministry of Production
PWGSC	Public Works and Government Services Canada
RIAs	Regulatory Impact Assessment
RENIEC	*Sistema Nacional de Identificación y Estado Civil* National Identification and Civil Status Registry
RNA	*Registro Nacional de Árbitros* National Registry of Arbitrators
RNP	*Registro Nacional del Proveedores del Estado* National Registry of Suppliers
RNSA	*Registro Nacional de Secretarios Arbitrales* National Registry of Arbitral Secretaries
ROF	*Reglamento de Organización y Funciones* Regulation of Organization and Functions
RUC	*Registro Único de Contribuyente* Single Register of Contributors
RUP	*Registro Único de Proponentes, Colombia* Single Suppliers Register
SA	Social accountability
SAM	System for Award Management (United States)
SCI	*Sistema de Control Interno* Internal Control System
SEACE	*Sistema Electrónico de Contrataciones del Estado* Electronic System for Government Procurement and Contracting
SERFOR	*Servicio Forestal y de Fauna Silvestre* National Forestry and Wildlife Authority of Peru
SERVIR	*Autoridad Nacional del Servicio Civil* National Civil Service Authority
SFP	*Secretaria de la Función Pública, Mexico* Ministry of Public Administration of Mexico
SI	*Subasta Inversa* Reverse auctions
SIAF	*Sistema Integrado de Administración Financiera* The Integrated Financial Management System of Peru
SMEs	Small and medium-sized enterprises

SNA	*Sistema Nacional de Arbitraje* National Arbitration System
SNC	*Sistema Nacional de Control* National Control System
SOAS	*Sociedades de Auditoria* Independent Audit Firms
SNIP	*Sistema Nacional de Inversión Pública* Public Investment National System
SPIJ	*Sistema Peruano de Información Jurídica* Peruvian System of Legal Information
SPP	Sustainable Public Procurement
SUCAMEC	*Superintendencia Nacional de Control de Servicios de Seguridad, Arma, Municiones y Explosivos de Uso Civil* National Superintendence of Control of Security Services, Weapons, Ammunition and Explosives for Civil Use
SUNAT	*Superintendencia Nacional de Aduanas y de Administración Tributaria* National Superintendence of Customs and Tax Administration
SWP	Strategic workforce planning
TI-USA	Transparency International-USA
TUPA	Consolidated Text of Administrative Procedures
UIT	*Unidad Impositiva Tributaria* Peruvian Taxation Unit
UN	United Nations
UNCAC	United Nations Convention Against Corruption

Executive Summary

In Peru, public procurement accounts for the majority of government expenditure – an impressive 50.7% – and 11.6% of GDP, which is in line with the OECD average. This shows how crucial public procurement is for the country's economy and society as a whole. It is a critical channel for delivering services to citizens, and an area where the public and private spheres intersect. Recognising the strategic role of public procurement, public authorities in Peru have been undertaking major reforms of the system since 2016. In doing so, they are gradually nudging the culture towards result-based management and introducing a new vision for public procurement officials. The legislative and institutional reforms enacted in January 2016 and the legislative adjustments made in 2017 are steps toward a better-functioning public procurement system.

In accordance with the 2015 OECD Recommendation of the Council on Public Procurement, the review examines key aspects of Peru's system. These include the institutional arrangements; the extent to which relevant regulations and strategies have been developed and adapted through the new public procurement law; measures to drive efficiency; support for secondary policy objectives; the capacity of the workforce; the use of electronic instruments, integrity safeguards, internal control tools and risk management; and the effectiveness of the dispute resolution system. The review presents recommendations and identifies measures to maximise outcomes, based on international good practices and experiences.

The government of Peru has made significant progress in improving how public procurement is organised, but still faces challenges in implementing a more efficient and inclusive system. The Ministry of Economy and Finance (MEF) should consider developing an action plan for effecting a change of culture among public officials, reducing excessive formalities, incorporating flexible tendering procedures with greater competition, and professionalising the public procurement workforce. Finally, to ensure compliance and effective outcomes, the MEF should constantly monitor implementation and verify the achievement of goals.

Key Recommendations

- *Strengthen the structure and co-ordination of the public procurement function.* Prior to the regulatory changes in early 2016, the system was unbalanced, with an excessively large control and supervision function (CGR and OSCE) and no effective central purchasing function. The implementation of Perú Compras as the national central purchasing body marks a significant step forward, but there is still a need to ensure efficient co-ordination (particularly in communication) and strategic aggregation of demands, such as through framework agreements and corporate purchases.

- *Ensure implementation of the new public procurement law.* This requires a synchronised and sustained effort by the MEF, OSCE and Perú Compras to ensure that their reorganisation and new functions are complementary and allow them to work together effectively. Clearly communicating the origins and benefits of the new regulatory framework will be crucial to ensure the buy-in of all relevant stakeholders, including the private sector. Monitoring implementation of the new law through the development of specific indicators would help ensure effective compliance.
- *Work toward a more efficient and fair solicitation process.* The strategic use of public procurement could improve transparency, integrity, efficiency and accountability within the procurement system in Peru. The Peruvian authorities should take the necessary measures to increase competition in solicitation processes and improve efficiency by streamlining the system and simplifying administrative procedures. Key performance indicators would help measure market performance as well as legal compliance.
- *Systematically expand the use of award criteria and enhance the commitment to innovative and environmentally sustainable public procurement*. Public entities in Peru tend to prioritise price in considering offers for works, services and goods. They need to look beyond the lowest price at other criteria, such as the most economically advantageous tender, lifecycle cost, quality, innovation and environmental performance. Doing so would not only make Peruvian public procurement more efficient, but also help the government achieve broader policy objectives.
- *Enhance procurement capabilities*. Effective implementation of reforms requires a properly trained public procurement workforce. This, in turn, requires strategic workforce planning. Identifying gaps in capacity and knowledge will help determine how best to enhance procurement capabilities. Steps to take include recognizing the singularity and the specificity of the procurement function, defining procurement job profiles, introducing a certification and performance management system, developing a specific and detailed training curriculum for public procurement, and more systematically assessing training and trainers, including involving the private sector.
- *Develop effective internal control and risk management systems to support accountability*. While Peru has developed a robust national control system and internal control and risk management frameworks, these should be buttressed by guidelines, tools and templates for public procurement entities. The participation of other relevant stakeholders in control activities will also improve effectiveness and strengthen accountability.
- *Use digital technology for more effective communication.* Peru's national e-procurement platform, SEACE, generates a vast amount of rich information. As in other OECD countries, the platform has increased the transparency of and improved access to public procurement procedures. However, there is also a need for effective communication strategies to make this information available and reusable by different stakeholders. Making the platform more interactive and integrating it with other public finance management systems would further improve efficiency.
- *Instilling integrity throughout the procurement cycle*. Public procurement is regarded as one of the government activities most vulnerable to corruption and integrity breaches. Peru has enhanced the institutional framework for integrity and made specific provisions for public procurement. Providing guidance and training will help ensure that procurement officials' behaviour is consistent with the principles of integrity. The

Peruvians also need to be more strategic in how they identify risks in order to prevent and manage them.

- *Ensure compliance with rulings.* There are procedures for suppliers to lodge complaints and challenge decisions made throughout the procurement procedure. However, litigation is lengthy and little is known about the degree of compliance with decisions. To reduce the number of challenges, potential sources of dispute could be addressed early in the tendering process, for example by exploring the use of pre-trials to resolve disputes without full litigation. Early mediation offers real opportunities for resolving disputes during the execution of the contract.

Chapter 1

Strengthening the structure and co-ordination of the Peruvian public procurement system

This chapter analyses the organisational structure of public procurement in Peru and the reforms undertaken in 2016. It will discuss how these reforms are set to move the procurement agenda towards greater efficiency and value for money. It further assesses the mechanisms used by the Government Procurement Supervising Agency (Organismo Supervisor de las Contrataciones del Estado, or OSCE) and Perú Compras (PC) to co-ordinate the high number of procurement entities and ensure communication with and among these entities at the national and sub-national level. Finally, the chapter looks at the pros and cons of the core change in the Peruvian procurement structure, and presents an argument for further reorganisation of key platforms within the system.

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 overall organisational design and governance of any procurement function play a tremendous role in determining whether or not that procurement's framework is effective and accountable. Weak governance structures and systems in public procurement hinder efficiency and directly impact public expenditures and taxpayers' resources. To optimise public value throughout the procurement cycle, it is essential to ensure effectiveness, transparency and accountability through the structure and governance of the procurement function. In many countries a key challenge in reforming the process, along with reform of the legal framework, is the issue of how best to design the central organisational structure for co-ordination, implementation and monitoring.

The Peruvian authorities reformed their legal framework with Public Procurement Law No. 30225, which came into force on 9 January 2016. Despite the introduction of Legislative Decree 1341 in 2017, which modifies certain parts of that law, no real further changes have been made to the governance structure discussed in this chapter. Law No. 30225 not only significantly modified the public procurement legal framework, but also set up a central purchasing body. Adequate political support is fundamental to successfully implement the reforms introduced by the public procurement law, particularly within the first year following its adoption. The country is in a transitional period implementing a results-based management system by integrating more flexible and simplified measures. The ultimate goal is to make the management of purchasing by public officials more efficient and transparent.

The 2015 OECD Recommendation of the Council on Public Procurement (hereinafter "OECD Recommendation") encourages organisations to drive efficiency throughout the public procurement cycle so as to satisfy the needs of government and its citizens (OECD, 2015a). Furthermore, it stresses the relevance of evaluating existing processes and institutions to streamline the system and identify functional overlap, inefficient silos and other causes of waste (see Box 1.1). The procurement reforms in Peru offer a unique opportunity to enhance efficiency and equity within the system.

This chapter describes and analyses the organisational structure of the reformed system and the role and relevance of the institutions managing it, in order to examine the advantages and disadvantages resulting from restructuring. The key management bodies are the Ministry of Economy and Finance (Ministerio de Economía y Finanzas, or MEF), the Government Procurement Supervising Agency (Organismo Supervisor de Contractaciones del Estado, or OSCE) and the central purchasing body – Perú Compras (PC). The chapter also assesses the mechanisms used by OSCE and PC to co-ordinate the high number of procurement entities and ensure communication with and among these entities at the national and sub-national level. The organisational structure of procurement systems tends to vary between countries, but certain commonalities can be identified. Furthermore, the procurement system in Peru is benchmarked against other procurement systems in an effort to identify the potential for further improvement of the system.

Box 1.1. **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.

Source: OECD (2015a), "Recommendation of the Council on Public Procurement", www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf (accessed 18 April 2017).

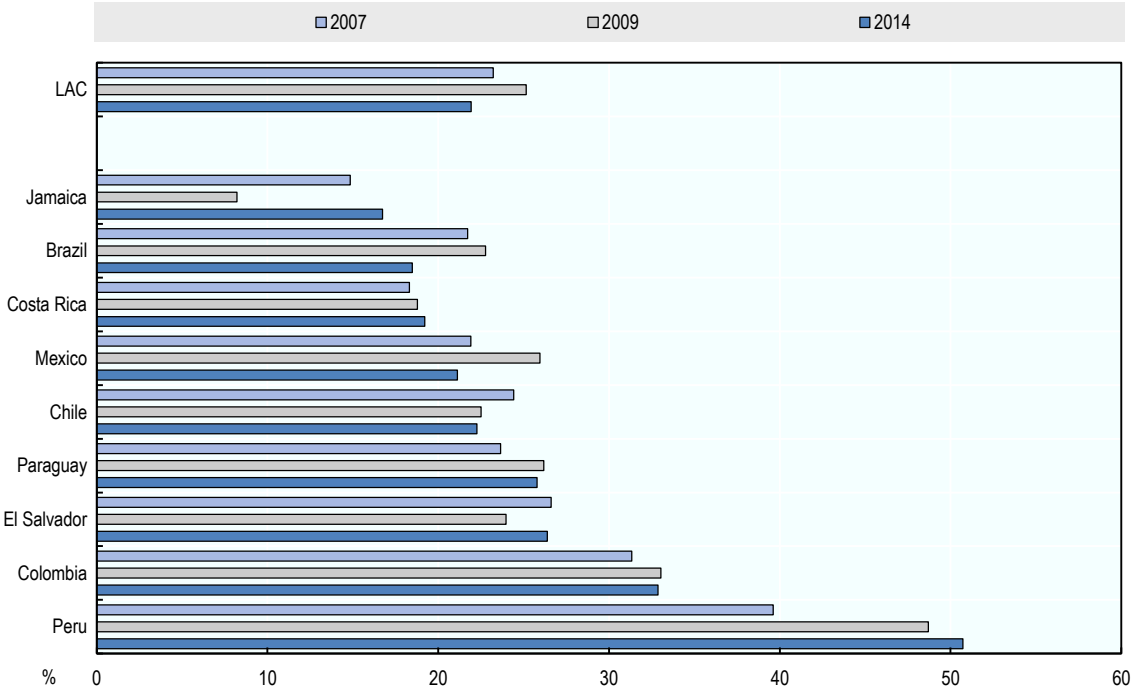
1.1. Simplifying the public procurement system to increase competition and maximise value for money

Public procurement in Peru represents slightly more than 50% of total government expenditures, a higher percentage than in other countries in Latin America. For instance, in countries such as Brazil, Chile and Mexico, public procurement does not exceed 30% of total expenditure (Figure 1.1). Public procurement in Peru as a percentage of GDP is close to 12%, similar to the OECD average. In Latin America only Colombia has a higher government procurement value in relation to GDP, close to 13% in 2014 (OECD, 2016a). Peru is one of the few countries that maintained a positive growth rate during the recent global economic crisis. The country managed to enter the global crisis in a solid economic position, and addressed challenges well by implementing a fiscal stimulus plan, cutting interest rates, and injecting substantial liquidity into the banking system (TI-USA and CIPE, 2011).

There are three levels of government in Peru: national level, regions and local level (provinces and districts). This makes it the only Latin American economy to have a local government system with two sub-levels – provinces and districts. Peru has a central government and 25 regions subdivided into 196 provinces, 1 853 municipal districts, and the special Lima region (OECD, 2015b). In 2002, Peru adopted a Basic Law on Decentralisation No. 27783, which gave the regions significant power that had previously been wielded by central government. The following year, the citizens of Peru elected 25 regional presidents. The decentralisation process has been slow, and over 90% of

revenues and 80% of expenditures are still controlled by the central government. Nonetheless, by law much of the power to raise revenue and spend it resides with the regional governments. Many of the regions have significant revenues from natural resources, such as silver, zinc, lead, copper, gold and natural gas (TI-USA and CIPE, 2011).

Figure 1.1. **Government procurement as a share of total government expenditures, 2007, 2009 and 2014**



Note: Data for Peru and Paraguay are recorded on a cash basis. For Costa Rica and Jamaica the part of government procurement related to gross fixed capital formation does not include the consumption of fixed capital. Costs of goods and services financed by general government are not included in government procurement because they are not accounted separately in the IMF Government Finance Statistics (database). Data for El Salvador and Mexico refer to 2013 rather than 2014. Data for Colombia refer to 2008 rather than 2007.

Source: OECD (2016a), *Government at a Glance: Latin America and the Caribbean 2017*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264265554-en.

The foundations of the current public procurement system go back to 1999, when the Government Procurement and Acquisitions Superior Council (Consejo Superior de Contrataciones y Adquisiciones del Estado, or CONSUCODE) was created. It was a decentralised public agency assigned to the Presidency of the Council of Ministries (Presidencia del Consejo de Ministros, or PCM); its remit covered both the national and sub-national levels. It had technical, functional, administrative, economic and financial autonomy, and its staff operated under private sector labour regulations. Until 2006, the Supreme Decree No. 084-2004-PCM established that regulations for the public procurement and acquisitions administrative system came under the remit of the PCM and CONSUCODE. The latter proposed modifications to the regulations, in accordance with its functions developed in article 59 of Law No. 26850. With the Supreme Decree No. 063-2006-EF, the regulation function was transferred to the MEF but CONSUCODE retained the faculty of proposing modifications to the law and its regulation. In December

2007, the Organic Law of the Executive Power established a list of the administrative systems in operation nationally; the public procurement and acquisitions was not included. Hence, public procurement was not recognised as an administrative system.

CONSUCODE is the predecessor of the current OSCE, which became operational in 2009 with the enactment of the 2008 Public Procurement Law, approved by Legislative Decree No. 1017. Perú Compras (PC), a central purchasing body (CPB), was created as part of the 2008 reforms in Legislative Decree No. 1018, but did not become operational until December 2015, with the publication of Supreme Decree No. 364-2015-EF that approved the Regulation of Organisation and Functions (ROF) for Perú Compras. The director of PC was appointed on 25 December 2015 by Supreme Resolution No. 053-2015-EF. The regulatory reforms of 2016 were particularly aimed at transforming a system with excessive formal requirements and complex selection processes to one that prioritises results over procedures.

The structure of the public procurement system in Peru prior to the regulatory changes in 2016 was epitomised by a very strong agency: OSCE was in charge of supervising the public procurement processes of all public entities from three government levels. As part of its functions, OSCE had the duty to promote reverse auctions (Subasta Inversa, or SI) and was responsible for framework agreements. Now, both activities have been assigned to PC. Since 2008 the MEF has been the main regulator for procurement policy, with passage of Supreme Decree No. 063-2006-EF. Even so, first in CONSUCODE and now in OSCE, there has been a very active normative section that leads development of procurement procedures and takes part in any changes made to the regulatory framework. The previous legal and regulatory framework, Legislative Decree No. 1017, was developed in the spirit of OSCE, in that it focused on compliance with procedures and not enough on encouraging efficiency. One of the objectives of the recent reforms is to change the way procurement officials in Peru approach purchasing; another, however, is to create a better equilibrium within the system. Hence, the transfer of certain assignments to Perú Compras is a very positive step forward. OSCE still plays a significant advisory role, although it sometimes conflicts and overlaps with the MEF.

Another objective of the 2016 reforms was to improve the level of competition by simplifying the approach to regulation. The World Bank and various other national advisers assisted the Peruvians in developing this new strategy. The private sector provided feedback and the Peruvian authorities ended up with over 1 000 recommendations from all sectors. Despite an extensive consultation process to improve the overarching framework, certain changes to the procurement procedures have faced resistance, such as the proportional reduction in pre-payments for the execution of works. In early 2017 the Peruvian parliament agreed to make changes to certain parts of the Public Procurement Law No. 30225 with the introduction of Legislative Decree 1341. These changes are not all-embracing but do have a significant impact on certain phases of the procurement process. The introduction of estimated prices in Law No. 30225 was a positive step in the right direction; the 2017 legislation, however, abolishes this mechanism and once again reinstates the use of referential prices. There has been less resistance to some of the other major organisational reforms accompanying the 2016 regulatory changes, such as the introduction of Perú Compras. The 2016 regulatory framework is discussed in greater detail in Chapter 2.

1.2. Governance of the public procurement system

Peru needs to ensure that there are clear lines of accountability between MEF (ruling entity), OSCE (supervising), Peru Compras (execution) and the coordination between them needs to be strengthened

As public procurement is one of the more important economic activities in all countries, the development of a sound and efficient public procurement system is often a political priority. Establishing capable central public procurement bodies is key to the successful development and favourable overall position of the public procurement system in a country. All of the key stakeholders within a public procurement system rely extensively on these bodies to provide assistance, safeguard standardisation and ensure the overall progress of the system. In Peru the system is comprised of three institutions: a ministry, a supervisory agency and a central purchasing body. Additionally there are over 3 000 registered public entities, with close to 12 000 professionals and technicians certified by OSCE, the supervisory agency.

1.2.1. Structure of the Ministry of Economy and Finance

Peru needs to ensure that the MEF has the capacity to steer and assess the performance of key public procurement institutions, i.e. OSCE and the new CPB, Peru Compras

The Ministry of Economy and Finance is responsible for formulating, proposing, executing and evaluating policies, regulations and technical guidelines relating to public procurement matters. The General Directorate of International Economic Affairs, Competition and Productivity is the unit within the ministry in charge of formulating, proposing and directing policies related to public procurement and other matters. One of the main roles of the directorate is to promote efficiency in the allocation of funds in a consistent way. The number of employees within the directorate working on procurement-related issues was less than five in 2016.

The directorate is tasked with:

- proposing bills relating to public procurement matters
- providing technical opinions on such bills
- proposing regulations (supreme decrees and supreme resolutions among others) concerning public procurement matters, in co-ordination with OSCE
- giving a binding opinion in order to sign into effect or modify any fund management agreement
- negotiating the public procurement chapters of the free trade agreements
- participating in group meetings with public entities to discuss implementation of the public procurement regime
- participating as members in technical boards related to public procurement.

The MEF has a very clear role and purpose as outlined in the aforementioned tasks, and is heavily involved in implementing Law No. 30225. The ministry is taking on a greater procurement policy role than before the regulatory reforms and is now able to provide more guidance on the new legal framework. However, the MEF needs to be more strategic in implementing the new vision by setting targets and developing key performance indicators that are missing. Furthermore, it should be the role of the MEF to set targets and assess the performance of OSCE and Perú Compras. For PC, the ultimate

purpose is to achieve savings for the government. There are various methods for evaluating and measuring performance to that end, such as:

- Estimating the extent to which prices are lower due to the centralisation of procurement. Prices obtained under framework agreements thus could be compared to the suppliers' "ordinary" prices for certain products.
- Estimating the process savings, i.e. the extent to which transaction costs are reduced through centralised procurement and the use of framework agreements.
- Assessing how turnover develops under the framework agreements, as an indicator of how competitive the agreements are.
- Carrying out customer satisfaction studies (OECD, 2011).

Although still limited in terms of human resources, the MEF procurement role and capabilities have been enhanced in recent years, and issues relating to overlapping roles and responsibilities between it and OSCE have been resolved with the 2016 regulatory framework. As to the OSCE, more established indicators are in place; however, the MEF needs to be able to hold OSCE accountable. For that to happen, extensive institutional and legal knowledge about the procurement system is imperative within the ministry.

The Ministry of Economy and Finance operates CONECTAMEF, which is a users' assitance centre that has 27 offices located all around the country. These offices are made up of multidisciplinary teams that offer personalised, direct and easy access to services within the competence of the MEF, through effective and permanent communication with its users. CONECTAMEF a) delivers training services, b) offers technical asistance, c) responds to queries, and d) receives documentation. These services are mainly directed toward officials of the public entities at sub-national level, as well as to public bodies and entities with corporate management. CONECTAMEF should progressively implement the services of OSCE in order to promote improvement of how public entities are managed and the optimisation of their resources.

1.2.2. Structure of the Government Procurement Supervising Agency (OSCE)

Peru needs to ensure that effective monitoring of procurement processes at the central and sub-national level leads to improvement in how procurement procedures are practiced

OSCE is a public entity attached to the Ministry of Economy and Finance. It has technical, functional, administrative, economic and financial autonomy. The functions assigned to OSCE with the 2016 legislative framework made it necessary to change the structural organisation of the institution in order to accomplish all the duties entrusted, creating new directorates and units in accordance with the functions assigned (see Box 1.2). The main laws and regulations governing OSCE are the Public Procurement Law No. 30225; regulation of the Public Procurement Law, approved by Supreme Decree No. 350-2015-EF; and the Regulation of Organization and Functions (ROF) of the Government Procurement Supervising Agency, approved by Supreme Decree No. 076-2016-EF. OSCE has jurisdiction over the national level, including the procurement of goods, services and works at the sub-national level. The procurement governance system applies to all public entities of the public sector, including at the central, regional and local levels. OSCE is a relatively large agency with over 600 employees, and has been the most relevant public body for public procurement in Peru since it was established. Its predecessor, CONSUCODE, played a similar role for public procurement.

Box 1.2. **The procurement functions of OSCE**

1. To watch over and promote contracting entities in drawing up efficient contracts under the parameters of the Public Procurement Law No. 30225 (legislation)**,** its regulations and complementary regulations, and in doing so to maximise the value of public funds and manage for best results.
2. To supervise, randomly and/or selectively, tendering methods referred to in the legislation or in the regulations. This authority also extends to cases excluded from the scope of supervision.
3. To perform supervisory actions at the request of an entity, according to the provisions of the Single Text of Administrative Procedures and guidelines. This authority also extends to cases excluded from the scope of supervision.
4. To implement activities and mechanisms to develop skills and competencies in management, as well as terms of contracts.
5. To propose amendments to regulations which it deems necessary within the framework of its authority.
6. To issue directives, standardised documents and guidance documents on matters within its competence.
7. To resolve matters within its competence in last administrative instance.
8. To manage and operate the National Registry of Providers (RNP).
9. To develop, manage and operate the Electronic System for Government Procurement and Contracting (SEACE).
10. To manage and operate the National Register of Arbitrators and an Arbitral Award Bank easy to access in which it is possible to identify arbitrators, topics, terms of the process and parties, among others.
11. To certify arbitral institutions that provide services and administration of arbitrations and supervise state contracts, according to the provisions of the regulations.
12. To organise and manage arbitration according to the provisions of the regulations and in accordance with the directive to be adopted for this purpose.
13. To appoint arbitrators and resolve challenges in arbitration not subject to an arbitration institution.
14. To resolve claims for refunds of fees for arbitrators, as stated in the regulations.
15. To respond to queries about the meaning and scope of the rules of contracting made by the entities, as well as by the private sector and civil society. Queries made by the entities are free of charge.
16. To alert the General Comptrollership of the Republic to clear evidence of transgressions observed in the performance of public entities duties when there are reasonable signs of economic prejudice to the state, or crime, or serious offences by those with functional administrative responsibility, according to the current legal framework.
17. To suspend selection procedures during the process of supervision – on its own initiative or at the request of a party – in order to identify whether there is a need to exercise enforcement action to prevent the entity from continuing with its actions.
18. To decentralise its functions in their regional or local bodies according to the provisions of its Regulation of Organisation and Functions.
19. To conduct studies aimed at evaluating the performance of the government procurement regimes; analysing and proposing new appropriate procurement mechanisms according to markets; and proposing strategies for the efficient use of public resources. Any other duties established in the rules.

Source: Law No. 30225; Ley de Contrataciones del Estado (Public Procurement Law) and Legislative Decree No. 1341.

The main function of OSCE is to supervise the procurement process, selectively and/or randomly verifying the procedures made by the public entities while procuring goods, services or works. OSCE does not act as a central purchasing body, but oversees several services necessary for the execution of public procurement in the country. In 2015 the National Registry of Suppliers (RNP), managed by OSCE, provided a total of 254 617 services which in turn brought in over 90% of the total income grossed by OSCE that year. The RNP has been the main funding source of OSCE. With the 2016 legislation, OSCE is no longer promoting reverse auctions or establishing the technical characteristics of the goods and services; these functions were transferred to Perú Compras, as mentioned above. The reverse auction processes are applied by public entities directly.

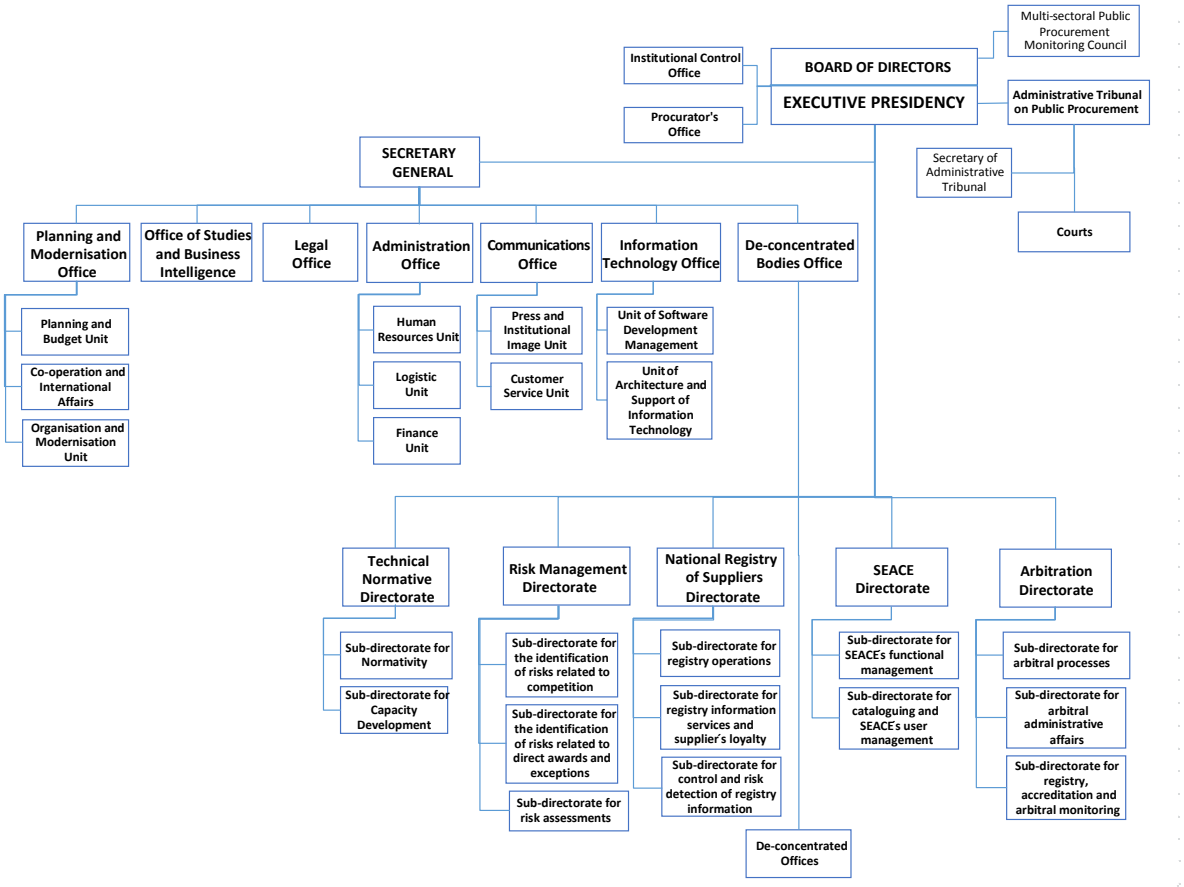
Two of the main changes made to the function of OSCE with the introduction of the new legislation relate to transfer of responsibilities concerning reverse auctions. OSCE maintains responsibility for the electronic reverse auction in terms of managing SEACE, the Electronic System for Government Procurement and Contracting (Sistema Electrónico de Contrataciones del Estado); regulating the SI procedure; and supervising the reverse auctions themselves. Deciding the tendering procedures is subject to guidelines issued by OSCE. The responsibility for electronic reverse auction has been transferred directly to Perú Compras, which now approves the technical specifications of tradable goods and services. The other significant amendment is how the role of the OSCE in supervising the arbitrational process has been enhanced; see functions 10 to 14 in Box 1.2. However, OSCE no longer imposes sanctions on arbitrators; this infringed on their constitutional status that states that arbitration is an independent jurisdiction and it should therefore be impossible for an administrative tribunal to intervene in those cases. It is the role of the Administrative Tribunal to impose sanctions on suppliers, participants, bidders and/or contractors when they commit certain offenses – see article 50 of Law No. 30225.

The board of directors is the highest authority within OSCE. It is highly involved in some of the key strategic decisions made by the agency, and plays a significant role in the management of internal controls and the Administrative Tribunal. The board is comprised of three members who are appointed for a period of three years, renewable for an additional period through Supreme Resolution signed by the Minister of Economy and Finance. The executive president of OSCE is also the executive president of the board of directors. The new functions of the board of directors are established in article 8 of Supreme Decree No. 076-2016-EF, which approved the OSCE ROF:

- to approve directives of general application on public procurement
- to propose regulatory projects on public procurement
- to approve strategic objectives, strategic plans and institutional policies
- to propose to the head of the sector strategies aimed at promoting efficient use of public resources and reduced costs of public procurement
- to approve de-concentration of functions and its management guidelines, as well as authorising the opening and closing of de-concentrated bodies
- to regulate its own functioning
- to propose to the Executive Branch for approval the OSCE's Regulation of Organization and Functions and the corresponding tools of the Administrative System Human Resources Management

- to elect the president of the Administrative Tribunal and the presidents of each court, from among the members selected by public contest and appointed by Supreme Resolution
- to establish the composition of the members of each court of the Administrative Tribunal
- to establish guidelines for the random distribution of cases at the Administrative Tribunal
- to approve the compulsory standardised tendering documentation to be used by public entities
- to approve binding administrative precedents
- in special cases, to delegate to the executive president functions agreed by the board of directors, with the exception of those that the regulation expressly prohibits.

Figure 1.2. **Overview of the organisational chart of OSCE**



Source: Information provided by OSCE.
http://portal.osce.gob.pe/osce/sites/default/files/Documentos/Banner/Enlaces/organigrama.pdf

There have been several initiatives to improve co-ordination between OSCE and other procurement entities, including at the central level. There is in particular a need for strong co-ordination to be established among OSCE, the MEF and PC. During the fact-finding mission to Peru in March 2016**,** the issue of co-ordination between OSCE and suppliers was raised; current efforts were criticised for not being sufficiently effective, especially concerning the standardisation of documents and validation of objectives. In 2016 OSCE and the MEF worked towards improving co-ordination, organising weekly meetings of a technical board composed of representatives of the Lima Chamber of Commerce, the Peruvian Chamber of Construction (Cámara Peruana de la Construcción, or CAPECO) and other private organisations. During these meetings the board reviews standardised tender documentation as well as some of the public procurement directives.

OSCE has the task of monitoring at the pre-tender phase, the tendering phase and the post-tendering phase. It can intervene during the tendering phase and once a contract is signed when citizens are affected (due to delays or interruptions in contract execution), as long as the alleged deficiencies have not been submitted to arbitration or conciliation. The General Comptrollership of the Republic and OSCE should not be working on the same issue at the same time, as that could undermine the process. There is limited procurement specialisation within the comptroller's office, which is why it is important that OSCE participates in all three stages of the procurement process, not just the selection process. There is thus a need for the general comptrollership and OSCE to co-ordinate their approach to supervision.

The main activity of the risk management directorate of OSCE is the monitoring of performance. The directorate is tasked with verifying that the activities carried out by the public entities for the procurement of goods, services and works during the different phases of the procurement cycle are in line with the public procurement law, its regulations and complementary directives, as well as in accordance with good practices in public management. According to the latest ROF, the concept of risk has been incorporated, but this supervisory function applies only to certain aspects of procurement. The risks must relate specifically to competition, direct awards and exceptions under OSCE´s supervision, and possible barriers to access to selection procedures.

Moreover, at any time OSCE can receive complaints about other transgressions, which are addressed from a risk management approach. The agency undertakes supervisory actions regarding: i) direct awards and exceptions; and ii) macro supervision reports to analyse the purchases below the threshold of eight UIT (Unidades Impositivas Tributarias), approximately USD 9 200; that amount may be subject to change given the annual change of the UIT). A sub-directorate for the identification of risks related to competition undertakes actions only upon request. The units that perform *ex officio* monitoring are: i) the sub-directorate for identification of risks in direct awarding and excluded cases under OSCE´s supervision, and (ii) the sub-directorate for risk assessment. However, the risk management directorate can undertake monitoring action on its own initiative.

1.2.3. Structure of Perú Compras

Peru needs to ensure that the vision, strategy and objectives for procurement are clearly communicated to all procurement units and discussed to ensure full understanding.

The Central Purchasing Body – Perú Compras (PC) – was created by Legislative Decree No. 1018 in June 2008, but only became operational in December 2015 with the publication of Supreme Decree No. 364-2015-EF, which approved its Regulation of Organisation and Functions. The delay mainly can be traced to a protracted lack of political will. PC is a specialised technical agency that belongs to the Ministry of Economy and Finance, with technical, functional, administrative and financial autonomy. Its objective is to optimise national procurements through dynamic and efficient systems and procedures, taking advantage of technology and economics of scale. With its creation a number of functions were transferred and assigned to the agency (Box 1.3).

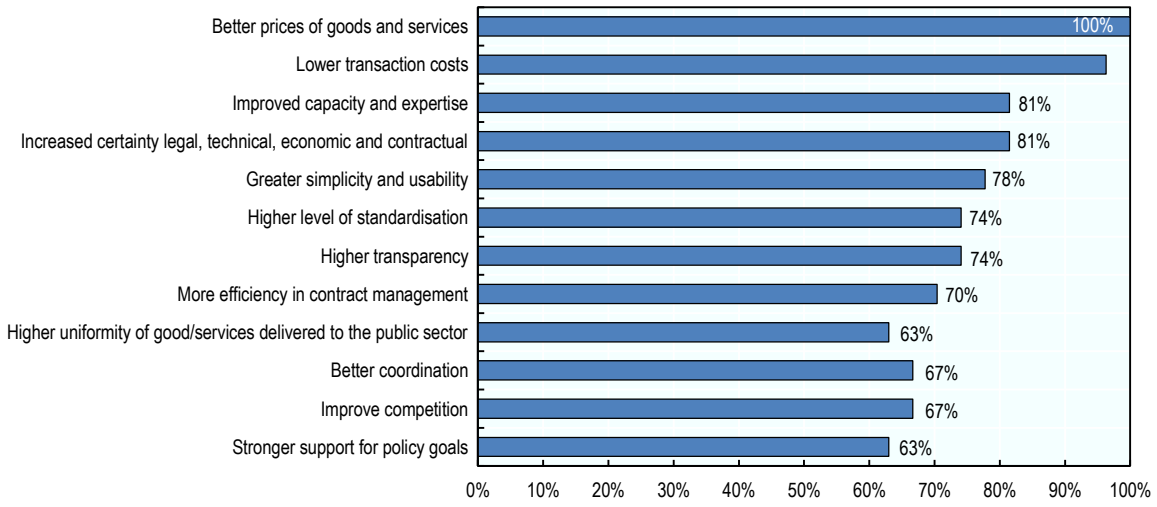
Box 1.3. **Perú Compras procurement functions**

- To conduct mandatory corporate purchasing.
- To conduct the optional corporate purchasing requested by other public entities.
- To conduct the purchases requested by other public entities in accordance with the corresponding agreement. This involves determining the technical characteristics of the goods and services to be purchased and the referential value, as well as approval of the procurement file and the procedure's tendering documentation. This function ends before the signing of the contract.
- To advise the public entities that carry out optional corporate purchases, as well as planning and managing the purchase procedures to ensure that the purchase is carried out properly.
- To promote and conduct the tendering processes and framework agreements.
- To carry out the tendering processes for specific purchases assigned by Supreme Decree, approved by the Council of Ministers.
- To promote the reverse auctions – determining the technical characteristics of the goods and services provided by this method – and to establish yearly institutional goals regarding the number of technical files of the goods and services to be purchased.

Source: Legislative Decree No. 1018.

The primary goal in setting up a centralised purchasing system is to increase savings in the public procurement system by obtaining lower prices and reduced transaction costs. By consolidating the purchases of public entities (at both the national and sub-national level) of widely used goods and services in large contracts, considerable quantity discounts will be generated, resulting in reduced acquisition costs for the public sector. Another important economic justification for centralised purchasing is the reduced transaction cost at the level of procuring entities and economic operators (see Figure 1.3) (OECD, 2014). PC will identify the common needs and standards among the entities that facilitate planning for corporate purchases. However, it is the responsibility of each public entity to define its needs for goods, services and works to be procured, in accordance to its objective, target and budget.

Figure 1.3. **Factors that motivated the implementation of Central Purchasing Bodies in OECD countries**



Source: Based on the 2014 OECD Survey on Public Procurement.

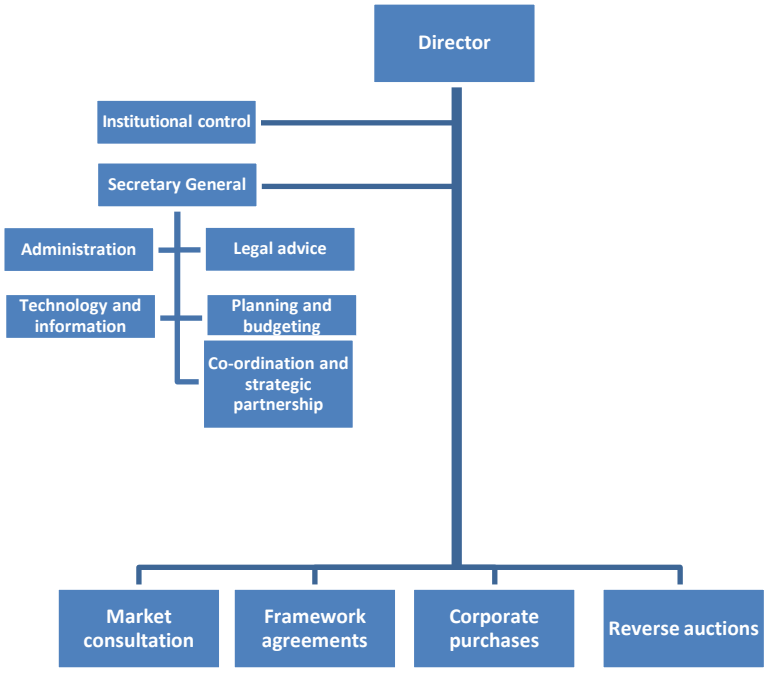
The director of PC is appointed by a Supreme Resolution signed by the Ministry of Economy and Finance and subsequently by the president. The agency is relatively independent in its management, as expressed by the conditions and procedures for the appointment and dismissal of other employees, and is financed through ordinary resources from central government. The role of the MEF is to measure the performance of PC by applying the following indicators, included in the "Efficient Public Procurement Budget Program", that measure: i) the level of progress and production of the technical specification sheets of the goods and services that must be procured by reverse auction, and ii) the increase in the number of electronic catalogues of frameworks agreements, to achieve better procurement capacity and quality.

Perú Compras can be in charge of both the pre-tender and tender phases when it is so assigned by another public entity and in the case of corporate purchases. It is possible for PC to take charge of specific purchases if public entities delegate those powers to PC. In such cases the requesting public entity has the responsibility for signing the contract. These services will streamline the procurement process of public entities, helping them to reach their institutional goals and objectives and enhancing the level of quality in the budget execution. Furthermore, Perú Compras should carry out corporate purchases given delegated management; that allows it to make the standardisation of goods and services for the pre-tendering phase and the tendering process, including the signing of the contract with the selected suppliers. It can additionally handle management of the contract throughout its validity. The public entities that request corporate purchasing are in charge of the payment for the goods and services that they require.

It will take some time for PC to become fully operational. The first quarter of 2016 saw the agency setting up its internal infrastructure and hiring the remaining executive directors. The director of PC estimates that close to 125 staff will be working for the agency when it does become fully functional. Many PC employees will be coming from OSCE, which should help strengthen co-operation between PC and OSCE. PC worked with the National Civil Service Authority (Autoridad Nacional

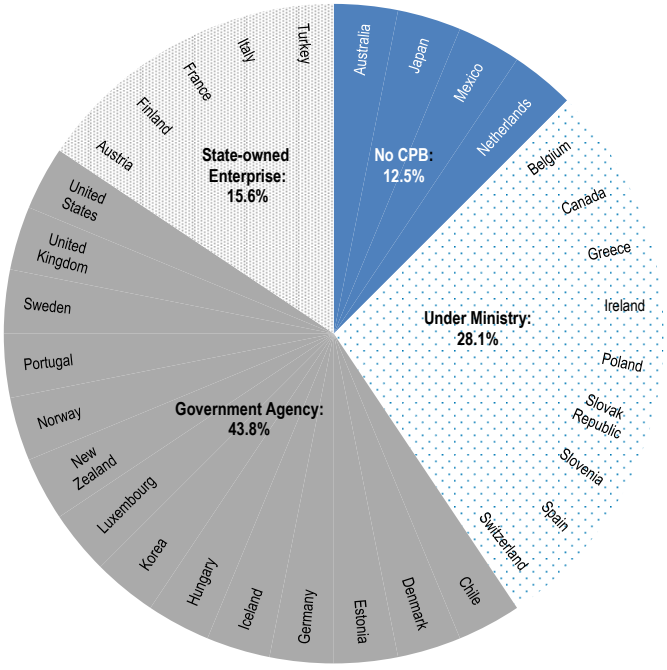
del Servicio Civil, or SERVIR) to assess the level of officers, especially executive directors; the results of the assessment became available at the end of 2016. One of the projects for 2016 was the development of a platform with a database from OSCE, with an improved version estimated to be ready in late 2016. PC has also been reviewing the current catalogues, designing procedures for corporate purchases, and reverse auctions.

Figure 1.4. **Overview of the organisational chart of Perú Compras**



Perú Compras is a state agency financed directly from government funds. Proponents of this organisational model argue that it eliminates the profit risk and provides better incentives for cost efficiency. Those against it say that it removes the incentive to find the most attractive product areas and framework agreements. Moreover, it runs the risk of underinvestment in new technology due to a lack of funds. The advantages of a limited company model are that it can provide flexibility and a certain degree of freedom compared with the government administration model. It is also argued that being a corporation makes it easier to attract competent and specialised staff. Centralised state purchasing systems can be organised and managed in several different ways. These various choices usually have both advantages and disadvantages in terms of the key factors affecting attractiveness. For this reason, it is not possible to single out one model as the best one for organising and managing centralised purchasing. There are CPBs in Europe based on the limited company model, which are often non-profit companies with the objective not to maximise profits (see Figure 1.5). However, the most common legal status of CPBs in OECD countries is that of government agency (OECD, 2011). Perú Compras has a similar legal status as a government agency.

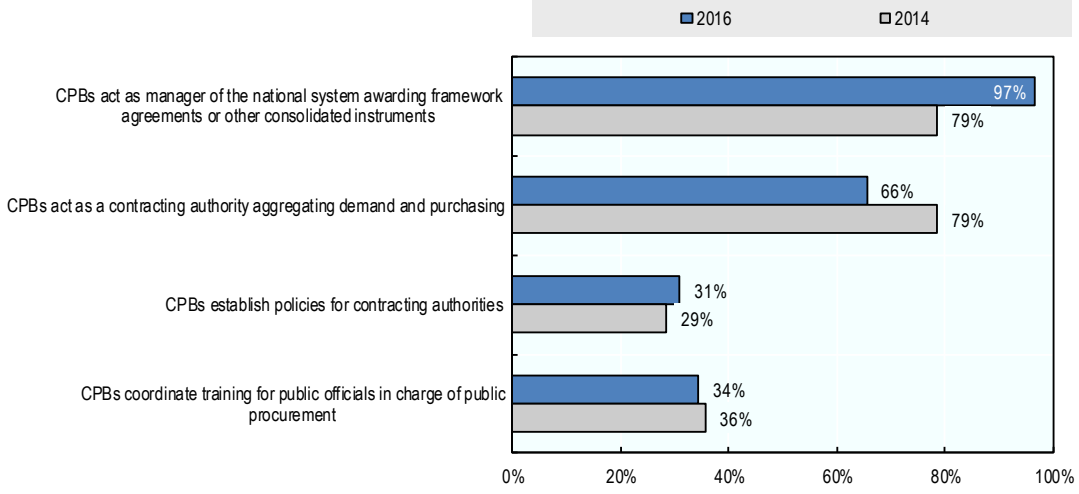
Figure 1.5. **Legal status of central purchasing bodies in OECD countries (2014)**



Source: OECD (2015c), *Government at a Glance 2015*, OECD Publishing, Paris. http://dx.doi.org/10.1787/gov_glance-2015-en.

Aggregating demand and purchasing and managing framework agreements are the key tasks of the CPBs in most OECD countries. The roles that are less commonly undertaken by CPBs include co-ordinating training and establishing polices; those are instead some of the main roles of regulatory agencies in Latin American countries (OECD, 2016a). Perú Compras is nonetheless currently providing public officials and suppliers with free training programmes in the use of their main mechanisms, such as the catalogues of the framework agreements and the reverse auctions.

Figure 1.6. **The role(s) of the CPBs in OECD countries**



Source: The 2014 OECD Survey on Public Procurement and OECD (2017), *Government at a Glance 2017*, OECD Publishing, Paris. http://dx.doi.org/10.1787/gov_glance-2017-en

The roles and responsibilities of Perú Compras are more or less aligned with those of other CBPs Table 1.1). It is therefore important to allow PC time before making any drastic changes to its current organisational structure or responsibilities. PC will be judged on how well it satisfies the needs of: external stakeholders, i.e. the procuring entities that use the framework agreements operated by it; the suppliers providing the goods or services to PC, either directly or under framework agreements; and the political system, which may recognise that PC contributes to reduced public expenditure, increased value for money, and the realisation of certain important policy goals, such as those related to environmental or social issues, or to SMEs. However, it is unlikely that PC will be able to service all the procuring entities if demands for its services grow. Hence, the only way forward will be more centralised purchasing.

Table 1.1. **Summary of centralised purchasing systems in selected EU Member States and Peru**

CPB	Legal Status	Funding	Coverage	Mandatory or voluntary	Framework model	Call-off method
Hansel (Finland)	Limited company	User fees (paid by suppliers)	The state (at all levels) and entities owned or controlled by the state	Mainly (80%) voluntary	Both single supplier and multi-supplier	Both ranking and mini- tender
Consip (Italy)	Limited company	State budget	Whole public sector	Mandatory (central government)	Single supplier	
SKI (Denmark)	Limited company	User fees (paid by suppliers)	Whole public sector	Voluntary	Multi-supplier	Ranking and mini-tender
UGAP (France)	Public body with legal personality	Sales revenues	Whole public sector	Voluntary		
KSzF (Hungary)	Non-profit-making body with economic independence	User fees (paid by contracting authorities)	Whole public sector	Mandatory (central government)	Multi-supplier	e-auction and mini-tender
Perú Compras	*Government agency*	*State budget*	*Whole public sector*	*Semi-mandatory*	*Multi-supplier*	*e-auction and mini-tender*
Buying Solutions (United Kingdom)	Non-profit-making body, run on commercial lines	User fees (paid by suppliers)	Whole public sector	Voluntary		
Sweden*	Government agencies	User fees (paid by suppliers)	Mainly central government	Semi-mandatory	Single supplier and multi-supplier	Ranking and mini-tender

Source: OECD, 2011

1.2.4. Supporting the sub-national level

Peru needs to consider ways to ensure that the sub-national level takes advantage of corporate purchasing as large procurement volumes generate better prices

With larger procurement volumes, increasing competition in the market normally follows, affecting prices and other terms in ways that are favourable to the purchaser. An

individual procuring entity will seldom have a procurement volume large enough to generate prices that are comparable to those obtained in a situation where there is an aggregation of needs among many procuring entities. The potentially large sales volumes that can be expected under centralised procurement mean that economic operators can exploit economies of scale. Public entities at the sub-national level rarely use corporate purchases despite opportunities to carry out bulk buying along with other municipalities. In general, there has been little co-operation between provinces or districts in terms of working together. A major reason that was mentioned during the fact finding mission to Peru relates to their will to manage their own financial resources, in particular in the underdeveloped regions.

It is the role of PC to conduct optional corporate purchasing at the sub-national level (local and regional) and to carry out a tendering process delegated by a specific entity of the sub-national level. The use of corporate purchasing does not include activities related to management of the contract, such as the payment, the supervision of the contract performance, the settlement of the contract, and other basic obligations of the participating entities. However, corporate purchasing can include the activities related to the post-awarding phase until the issuance of the last certificate of compliance, with exception of the payment. Apart from PC, corporate purchasing can only by applied by the National Fund for Financing the Corporate Activity of the Government (Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado, or FONAFE) and the Central Purchasing Body of the Armed Forces (Agencia de Compras de las Fuerzas Armadas, or ACFFAA).

While PC is gradually establishing itself as a driving force for change and efficiency within the procurement process, it will need to provide evidence for the benefits of bulk buying. In recognising value for money, public entities will realise those benefits. One of the advantages of having a voluntary system is that it provides an incentive for Perú Compras to offer their customers favourable framework agreements and other services on competitive terms. If PC fails to do so there could be less demand for their services, and their own existence may be at risk. The benefit of a voluntary system is that it exposes PC to a form of competition, which stimulates it to offer attractive products whereby it creates the most value for money. The other option would be to force contracting authorities to use PC, but such a requirement can weaken the incentive of PC to be user-friendly and create a risk of monopolistic behaviour.

Moreover, PC could set up pilot projects in collaboration with regional entities for standard products and then assess the benefits, because the infrastructure is in place with the current planning system to achieve greater value for money. Despite a relatively decentralised procurement system with over 3 000 public entities, the role of PC is likely to grow in the future as it moves towards more centralised and corporate purchasing. More centralised purchasing would include more collaborative procurement in specific, predetermined categories for procuring entities at the national and sub-national level. Furthermore, it will be important for the other operating CPBs in Peru to ensure more effective corporate purchasing in their sectors as well (Box 1.4).

Box 1.4. **Other central purchasing bodies**

There are three institutions of the national government that formulate national or sectoral policies and are entitled to establish a list of goods and services that are procured through corporate purchasing.

a) *National Centre for the Supply of Strategic Resources in Health* (Centro Nacional de Abastecimiento de Recursos Estratégicos en Salud, CENARES) – The Centre is a decentralised body of the Ministry of Health responsible for the programming, acquisition, storage and distribution of strategic resources. These include pharmaceutical products, medical and dental supplies, laboratory equipment, materials for diagnosis, medical instruments and medical and dental equipment, as well as pesticides and veterinary health products. It is also responsible for managing the sectoral and intergovernmental supply of these resources under the best market conditions, ensuring accessibility, availability and quality for the population.

b) *Central purchasing body the Armed Forces* (Agencia de Compras de las Fuerzas Armadas, ACFFAA) – This is the public executing agency attached to the Ministry of Defence responsible for the planning, organisation and execution of the Procurement Strategic Plan for the defence sector, as well as the procurement processes of goods, services, works and consulting services in the national and international market. The relevant entities of the defence sector include: a) the Joint Command of the Armed Forces, b) the Army of Peru, c) the Navy of Peru, d) the Air Force of Peru, e) the National Merchant Marine School, f) the National Committee of Aerospace Development and Investigation, g) the Insurance Bureau of the Armed Forces and, h) Other entities established by Supreme Decree.

c) *The National Fund for Financing the Corporate Activity of the Government* (FONAFE) is a public law corporation in charge of regulating and directing the corporate activity of the government. The corporations under its framework are the ones that the government has a majority shareholding in, as well as a number of those requesting. Even though this corporation was not created for carrying out corporate purchasing, FONAFE is one of the main entities that engage in corporate purchasing to provide goods and services to the corporations under its framework.

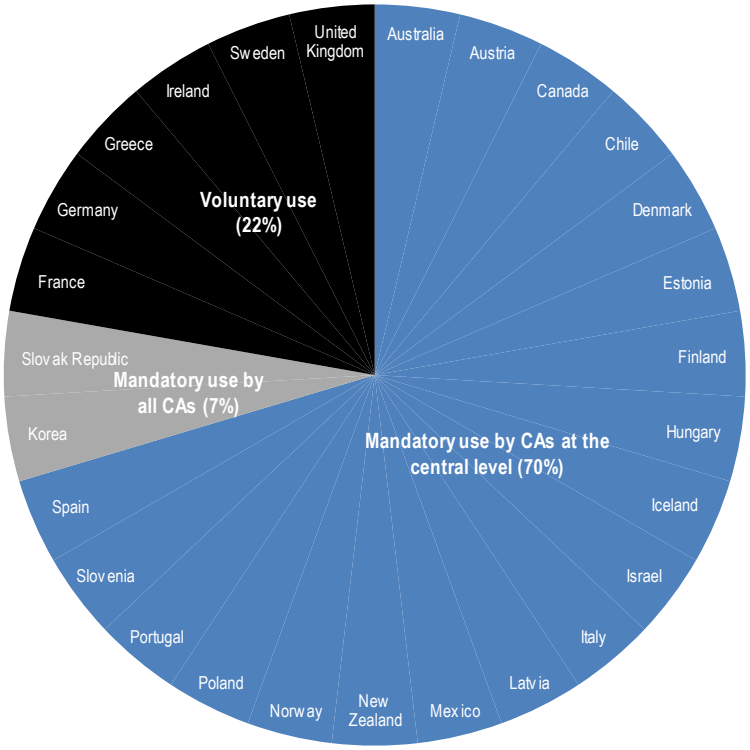
Source: Information provided by Ministry of Economy and Finance.

1.3. Better value for money with more centralised purchasing

Peru should consider regional CBPs or PC regional offices with a more centralised role for the 3000 procurement entities, possible with a specific mandate to carry out corporate purchasing for standardised products and providing advice for more technical procurement

In recent years Peru has shown the will to modernise its procurement system. It has continually sought ways to simplify the procurement process to make it more accessible and efficient, while incorporating new tools for dispute settlement during the execution of government contracts. In Peru it is mandatory for procuring entities at the sub-national level to use centrally managed framework agreements with excessively stringent regulatory processes. Figure 1.7 shows that the majority of OECD countries make it mandatory for contracting authorities at the central level to use framework agreements, but only two – Korea and the Slovak Republic – make it mandatory for all contracting authorities.

Figure 1.7. **Mandatory vs. voluntary use of framework agreements by contracting authorities established by the CPBs in OECD countries**



Source: OECD (2017), *Government at a Glance 2017*, OECD Publishing, Paris. http://dx.doi.org/10.1787/gov_glance-2017-en

Legislative Decree No. 1017 established a mechanism for delegating the tendering process to international organisations. This was a tool applied by a good number of public entities at the sub-national level because of the lack of capacity of officials in some of the categories of purchasing. Many of these entities didn't always apply the tool in the proper manner, and there were cases of fraud and corruption. The 2016 legislation, Law No. 30225, excluded the possibility of delegating tendering processes to international organizations. The 2017 amendments to that legislation create room for contracting authorities in Peru to approach accredited international organisations, subject to express authorisation, when the subject matter of the contract is qualified as specialised or complex. Given the limited institutional capacity of the sub-national authorities, better co-ordination with central government would improve the effectiveness of regional public expenditures (OECD, 2015b).

Corruption still is an issue within public procurement, notwithstanding considerable government efforts to tackle the problem. Decentralisation has contributed to the problem, as regional and local governments have not been fully capable of implementing the procurement legislation or adequate measures to safeguard integrity. The regulations have been considered too complicated and bureaucratic, requiring great effort to fulfil the standards of the procuring entity. Too much record keeping is required, causing problems for small and medium-sized enterprises, but SMEs account for the majority of the companies involved in public procurement (TI-USA and CIPE, 2011).

Nor do many procurement entities have the organisational capability to be effective managers of procurement procedures, because of lack of capacity and high turnover within the sector. Management is not applied in the correct manner: it is dispersed and not properly co-ordinated across divisions within organisations. Furthermore, the definition of responsibilities across all levels of government is not always clear, leading to inefficiencies in public service provision and causing a lack of accountability for Peruvian authorities, as it is not clear who is responsible for what. Transparency and publicity in public procurement through electronic catalogues is one of the most effective methods for increasing efficiency, limiting error rate and mitigating against the risk of corruption. Perú Compras is currently developing e-catalogues that will allow suppliers to submit offers in a structured format. Their offer can be assessed automatically by the e-procurement system of the purchaser, thus generating savings and increasing efficiency. The e-catalogues should reduce the number of errors related to the commercial conditions of deliveries and allow extraction of data on what is being procured, by calculating types and quantities of products and services purchased.

1.4. Towards a more balanced system: Improving efficiency and accountability

Peru should look at ways to strengthen the services offered to those participating in the procurement process, for example by working closely with operators/public entities to enhance service orientations and by assessing whether certain service oriented platforms could be placed under more adequate institutional arrangements.

Differences in the circumstances and conditions under which the Peruvian public procurement system was formed and developed are reflected in its structure. The steps taken by the Peruvian Government with the new regulatory framework underscores its commitment and understanding that there was a need to clarify the structure of the procurement function to enable effective and accountable procurement. The structure of procurement organisations in general should include an explicit division of duties and accountabilities that reflect the key tasks of the procurement cycle. These duties and accountabilities should be suitable for discharging the obligations prescribed in the law without gaps or overlaps of tasks. Links with other actors in the public sector involving procurement should be embedded, and procurement operations should not be constrained by external institutional factors. Peru is moving in that direction with the introduction of Perú Compras, but the roles and responsibilities within the procurement framework – including the MEF and OSCE – should constantly be reviewed in consideration of how best to fulfil the objectives of the government.

Implementation of the new public procurement legislation requires effective and quick mobilisation of support by the government. It is important when attempting to reform a programme or a policy that there be adequate political support to ensure that the system gets up and running. A key challenge for reform, alongside reform of the legal framework, is how best to design the central organisational structures for the co-ordination, implementation and monitoring of public procurement. It is not uncommon to find public procurement systems based on three core platforms with a ministry responsible for policy and legislation; a supervisory agency; and a central purchasing body facilitating purchases and/or carrying out actual purchases. There are

several institutional systems in the area of public procurement, which can be explained by the respective differences in countries' legal, political and administrative traditions. These systems take account of how the institutions are centrally organised and the extent to which their authority is dispersed. Below are three broad groups for existing public procurement structures:

- A *centralised* procurement structure is characterised by a high concentration of procurement functions that are allocated to a few centrally placed institutions (normally one or two).
- A *semi-centralised* procurement structure has a mixed concentration of procurement functions that are allocated to a limited number of institutions (normally three or four) placed at various levels within the public administration.
- A *decentralised* procurement structure is characterised by a dispersed concentration of procurement functions that are allocated to several institutions placed at various levels within the public administration; it is often comprised of private and public companies (usually more than five institutions are involved) (OECD, 2013).

The public procurement regime in Peru can be considered quite unique as it does not fall directly into any one category. Despite being relatively decentralised, the supervisory role is strong and procuring entities are required to use the electronic purchasing system and to develop procurement plans. In addition there are currently three central purchasing bodies working in the country, as discussed previously. Each public entity of the three levels of government is in charge of purchasing the goods, services and works required to satisfy their needs and accomplish the public purpose. That means that nearly 3 000 entities have a procurement role and manage their own contracts to a certain extent.

The OECD Recommendation stresses how evaluating existing processes and institutions to streamline systems can identify functional overlaps, inefficient silos and other causes of waste (OECD, 2015a). The objective is to increase flexibility, ensure accountability and improve public services. The organisational format and functions of the key procurement institutions in Peru are not common to many countries, leaning as they do towards a strong supervisory agency with a relatively weak ministry. Despite certain tasks moving from OSCE to PC as part of the regulatory reforms of January 2016, it is clearly a challenge for MEF to hold OSCE accountable with so few dedicated officials working on public procurement.

OSCE is a large supervisory platform, both in size and in number of tasks, compared to many European countries where the role and responsibility of agencies supervising public procurement are either limited or only part of an institution's responsibility. Box 1.5 offers examples of agencies that have a wide supervisory role that includes public procurement. The procurement supervisory agencies in Europe do not operate e-procurement platforms; their operation and development is in the hands of CPBs. The Authority for the Supervision of Public Contract Works, Services and Suppliers in Italy had a role similar to that of OSCE, but the Government of Italy through reforms transferred some of its duties to the National Anti-Corruption Authority.

Box 1.5. **Different types of supervisory authorities**

In general there are internal and external audit offices responsible for supervising procurement procedures, in particular in terms of legality, accounting rules, economic efficiency and efficacy. Some EU countries like Norway and Turkey set up an independent body responsible for supervision of public procurement. There are different types of supervisory authorities for public procurement with either a broad or a narrow remit. There are also authorities that manage supervision of procurement along with other work, such as the Competition Authority in Sweden.

Italy

The Italian Anti-Corruption System was completed in 2014 with the integration of the Agency for Supervision of Public Contracts. The National Anti-Corruption Authority is the central actor in the system, working towards prevention of corruption in public administrations, subsidiaries and state-controlled companies. Its efforts revolve around the implementation of transparency in all aspects of management; supervision of public contracts and in every area of public administration where there is the potential for corruption; and orientation of the behaviour and activities of public employees by means of advisory and regulatory interventions.

Sweden

In Sweden the Competition Authority is the supervisory body for public procurement regulations. Its task is to work for efficient competition and effective public procurement for the benefit of the general public and economic operators on the market. It exercises supervision over public procurement, which includes reviewing, investigating and adopting decisions in regard to whether contracting authorities or entities (authorities) have followed procurement regulations. However, it does not have a mandate to decide that a given procurement should be recommenced or corrected, or to declare an agreement ineffective. Such decisions can only be made by a court.

Spain

Supervision and control of public procurement is subject both to an internal control and to an external and independent control. The internal control is assigned to civil servants who have that competence. Their mission is mainly to ensure that there is enough credit in the budget to afford the payments stipulated in the public procurement contract. The external and independent control is carried out by the Accounts Court. There is one at the national level, and some regions have created their own Accounts Court with jurisdiction limited to their territory. These courts are enshrined in the Constitution and in the law controlling the contractual activity of the public administration. Mainly they see to it that such activity respects principles of legality, efficiency and economy.

Source: Bianchi, T. and V. Guidi (eds.) (2010), *The Comparative Survey on the National Public Procurement Systems across the PPN*, www.publicprocurementnetwork.org/docs/ItalianPresidency/Comparative%20survey%20on%20PP%20systems%20across%20PPN.pdf (accessed 18 April 2017).

The status of the central purchasing body is another important subject to address, since it determines the role and potential impact that the body may have within the public procurement system. At the beginning the position of Perú Compras within the public administration system will be that of a new agency needing time to prove its credentials, delivering what it is meant to deliver according to the political objectives, legal and institutional settings, and operational arrangements and resources. Its overall functions are similar to that of other CPBs but it will be a challenge for PC to deliver in such a decentralised environment. For PC to succeed in the coming years, it clearly will have to rely on close collaboration with OSCE.

Assessment of the tasks performed by OSCE within the procurement process indicates that the agency has been involved in monitoring, administration, regulating, solving disputes (through the Administrative Tribunal and the risk management directorate), provision of services and arbitration. The recent reforms show an understanding of the need to move certain service-oriented tasks, traditionally managed by CPBs in other countries, to Perú Compras. In fact, despite the recent reforms OSCE still manages two service-oriented functions, the National Registry of Suppliers (Registro Nacional del Proveedores del Estado, or RNP) and SEACE. These platforms are very significant for the public procurement process in Peru, as both buyers and suppliers are obligated to use them. SEACE is the e-procurement tool that enables online transactions such as the electronic registration of participants in all the tendering processes; the bids and price improvement in electronic reverse auctions; and acquisitions through the framework agreement's catalogue. The RNP is an information system to register and keep updated the relevant general information of those suppliers interested in taking part in public procurement. The practicalities of both tools are discussed further in Chapters 6 and 7.

Considering the new public procurement law and institutional setting in Peru, raises questions about the permanent location of these two platforms. Are they most ideally placed where they are at the moment? Or should other options be considered? During OECDs fact finding-mission to Peru in March 2016 concerns about the service role of OSCE were raised on different occasions by different stakeholders, mainly concerning RNP and SEACE. Nevertheless, the benefits of reallocating both platforms need to be carefully assessed and measured. For instance, transferring SEACE requires taking into consideration how that move would affect the positive synergies with other OSCE directorates, mainly in evaluating the impact of public procurement regulation on SEACE functionalities. The internal co-ordination of OSCE would change if the SEACE platform were relocated. The introduction of PC does offer an alternative, but registries can also be managed by the private sector – thus PC is not necessarily the only option when considering a possible transfer of SEACE and RNP.

In Chile, the central purchasing agency manages the registry of suppliers. In the United States, the System for Award Management (SAM) is a US federal government-owned and -operated free website that consolidates the capabilities from various legacy databases and systems used in federal procurement and awards processes. Among them is the Central Contractor Registration (CCR), which is the federal government's primary vendor database that collects, validates, stores and disseminates vendor data in support of agency acquisition missions. In Colombia, the Single Suppliers Register (Registro Único de Proponentes, or RUP) has been operated by the Association of Chambers of Commerce (Confecámaras). It is the source of registry for suppliers wishing to participate in public procurement activities. With the new national eProcurement system SECOP II, the situation with RUP has changed. The platform now includes an independent supplier registration process, which is also required for participating in the additional services provided by the new system, including bidding on contracts conducted electronically (OECD, 2016b).

It is not the best setup to have a supervising authority heavily involved in the tendering process while being responsible for supervising it. Hence the transfer of reverse auctions from OSCE was a positive step. The main focus of the system within the previous regulatory framework was on procedures, regulatory processes and supervising, and not enough on completion or efficiency, which is now the strategy. Transferring the most important platforms of the procurement process in Peru from the supervising body

might actually help support that new vision. Any such reallocation would need to consider compensations to OSCE, as RNP services provide more than 90% of the total income of OSCE. In this light, any eventual relocation of RNP must be accompanied by provisions guaranteeing the financing of OSCE.

1.5. Proposals for action

The Peruvian public procurement system, viewed through the role and responsibilities of key public procurement entities, shows a system in transition. The major reforms enacted in January 2016 can be looked upon as a steppingstone towards a high-functioning, mature public procurement system. The regulatory changes that brought about Perú Compras mark a positive step, but the system is still unbalanced. Public authorities need to ensure efficient co-ordination, particularly in communication, and implement a unified approach across OSCE, PC, and all relevant public entities at the national and sub-national level for the current system to be a success. Analysis of the system indicates that there is room to improve the institutional setting, especially the role of different entities. The following proposals could be considered:

- Peru needs to ensure that there are clear lines of accountability between MEF (ruling entity), OSCE (supervising), Peru Compras (execution) and the coordination between them needs to be strengthened.
- Peru needs to ensure that the MEF has the capacity to steer and assess the performance of key public procurement institutions, i.e. OSCE and the new CPB, Peru Compras.
- Peru needs to ensure that effective monitoring of procurement processes at the central and sub-national leads to improvement in how procurement procedures are practiced.
- Peru needs to ensure that the vision, strategy and objectives for procurement are clearly communicated to all procurement units and discussed to ensure full understanding.
- Peru needs to consider ways to ensure that the sub-national level takes advantage of corporate purchasing as large procurement volumes generate better prices.
- Peru should consider regional CBPs or PC regional offices with a more centralised role for the 3000 procurement entities, possible with a specific mandate to carry out corporate purchasing for standardised products and providing advice for more technical procurement.
- Peru should look at ways to strengthen the services offered to those participating in the procurement process, for example by working closely with operators/public entities to enhance service orientations and by assessing whether certain service oriented platforms could be placed under more adequate institutional arrangements.

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Law

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Chapter 2

Implementing strong organisational procurement strategies in Peru

This chapter provides an overview of the legal and regulatory framework that applies to public procurement activities in Peru. It presents the objective of the new public procurement law as well as the main changes that have been introduced. The chapter analyses to which extent relevant directives and strategies have been developed and adapted to the new public procurement law and how the implementation of the new law can be enforced using the framework of the 2015 OECD Recommendation of the Council on Public Procurement. The chapter asks whether the new public procurement law has been disseminated and explained adequately, and finally highlights the importance of strengthening regulatory policy and governance related to public procurement, by developing a standard process when formulating changes to the system as well as an efficient evaluation and monitoring system.

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 public procurement system in Peru has recently been reformed by the adoption of a new public procurement law and its related regulation, effective as of 9 January 2016. The country's challenge is to ensure implementation of the new regulatory framework, which introduces many changes to the public procurement system.

The design and approval of the new public procurement law alone will not produce lasting change in Peru. Only careful and well-designed implementation of the law will have a positive impact. This is the challenge that currently consumes the MEF and OSCE as well as Perú Compras – developing, adapting and enforcing relevant directives and strategies; disseminating and explaining the new regulatory framework and related strategies; and monitoring and evaluating implementation of the new law. This will require a well-resourced, designed, co-ordinated and sustained effort from all involved.

The new public procurement law, which aims at moving from a system characterised by excessive formal requirements and complex tendering processes to a system that prioritises results while respecting procedures, has the potential of creating sustainable change. It is aligned with international best practices, including the 2015 OECD Recommendation of the Council on Public Procurement (hereinafter the OECD Recommendation). The Peruvian authorities need to make sure that the changes aiming at improving the transparency, integrity, efficiency and accountability of the country's public procurement system are translated on the ground, at central as well as at sub-central levels. This requires implementing strong organisational procurement strategies.

The aim of this chapter is to assess the extent to which Peru has developed and adapted the relevant directives and strategies in order to implement the new public procurement law. The chapter also includes recommendations on how to ensure effective implementation of the new regulatory framework and related strategies.

2.1. Peru's public procurement regulatory framework

2.1.1. Key objectives of the new public procurement law

Public procurement in Peru is regulated by the new public procurement law (No. 30225), first published in July 2014 and effective as of 9 January 2016, 30 days after publication of its regulation. The new law replaces the public procurement law approved by Legislative Decree No 1017, which was effective from 1 February 2009 to 8 January 2016. Law No. 30225 is part of a larger regulatory framework for public procurement (see Box 2.1). It covers all the public procurement activities in Peru (goods, works and services), including those of state-owned enterprises, except PetroPeru (article 3 of the public procurement law). The new law has been modified the Legislative Decree No. 1341 in January 2017.

Box 2.1. **List of all the applicable rules and relevant extracts from laws and regulations on procurement**

(Laws, decrees, regulations, procedures)

The four first legal instruments of the list below are of general application: all public entities have to follow the provisions included in the law and its regulation. The other laws and regulations establish particular and exceptional special regimes for certain activities or public entities.

i) Public Procurement Law, Law No. 30225 – Effective from 9 January 2016.

ii) Regulation of the Public Procurement Law, approved by Supreme Decree No. 350-2015-EF – Effective from 9 January 2016.

iii) Legislative Decree No. 1341 modifies Law No. 30225, the Public Procurement Law.

iv) Supreme Decree No. 056-2017-EF modifies Regulation of the Public Procurement Law approved by Supreme Decree N° 350-3016-EF.

v) Law that strengthens transparency and control in the resources management agreements subscribed by the public entities with international organisations, Law No. 30356.

vi) Regulation that establishes guidelines and requirements to ask for the opinion of the Ministry of Economy and Finance in accordance with Law No. 30356, approved by Supreme Decree No. 381-2015-EF.

vii) Petroperú's Procurement Regulation, approved by Resolution No. 523-2009-OSCE-PE.

viii) Regulation for the procurement of goods and services by Proinversión, approved by Proinversión Agreement No. 267-01-2009.

ix) Urgent and extraordinary measures in economic and financial matters in order to maintain and promote the dynamism of the economy, Emergency Decree No. 058-2011 – Effective until 31 December 2016 in accordance to the Thirtieth Final Complementary Provision of the Law No. 29951.

x) Eighty-Fourth Final Disposition of Law No. 29951, Budgetary Law of the year 2013, which approved a special regime for the purchasing of goods and services for the National School Feeding Programme "Qali Warma" – Law No. 29951.

xi) Directive No. 001-2013-MIDIS that establishes general procedures for operating the management model for the care of the food service of, "Qali Warma", approved by Ministerial Resolution No. 016-2013-MIDIS.

xii) Article 83 of the Election Law, Law No. 26859.

xiii) 30th Final Complementary Disposition of Law No. 29951 that establishes the guidelines of government-to-government purchases.

xiv) Armed Forces Central Purchasing Body – Legislative Decree No. 1128 – Supreme Decree No. 005-2013-DE.

xv) Regulation of Acquisitions and Purchases – Agrobanco, approved by Board Agreement No. 3203-10-2015.

xvi) Law that authorises public charities that develop corporate activities to purchase goods and services directly linked to its activity through direct awarding – Law No. 27638.

xvii) Legislative Decree No. 1063 that approves the Law of Public Purchasing through the mechanism of commodity exchange.

xviii) Regulation of the Law of Public Purchasing through commodity exchanges approved by Supreme Decree No. 159-2008-EF.

Box 2.1. **List of all the applicable rules and relevant extracts from laws and regulations on procurement** *(continued)*

xix) Law for the improvement of the competitiveness of the municipal entities of savings and credits of Perú – Law No. 29523 (art. 3).

xx) Procurement process for the construction of five (5) correctional facilities – Seventieth final disposition of the Law No. 29951 (Septuagésima Disp. Comp. Final).

xxi) Procurement process for OSITRAN for the contracting of supervising firms – Supreme Decree No. 035-2001-PCM.

xxii) Law encouraging regional and local public investment with the participation of the private sector, which introduces the contracting mechanism of Works for Taxes Law No. 29230, modified by Law No. 30138.

xxiii) Law that modifies different laws in order to facilitate investment, propel productive development and corporate growth, which authorises the use of the mechanism of Works for Taxes for the Public Universities – Law No. 30056.

xxiv) Law that establishes measures to promote economic growth – Law No. 30264 (article 17).

xxv) Regulation of the Law No. 29230 and of article 17 of Law No. 30264, approved by Supreme Decree No. 409-2015-EF.

xxvi) Law of the National System of Environmental Assessment and Audit – Law No. 29325.

xxvii) Board Resolution No. 008-2013-OEFA-CD, which approves the regime for contracting evaluators, supervisors and auditors of the Environmental Assessment and Audit Body (OEFA).

xxviii) Programmes for food support and social compensation – Law No. 27767.

xxix) Regulation of the Law No. 27767, approved by Supreme Decree No. 002-2004-MIMDES.

xxx) Law that regulates the purchasing of goods and services for the second round of the popular vote - Ley No. 29564 (article 2), Creation of the Social – Productive Emergency Programme "A Trabajar Urbano" – Emergency Decree No. 130-2001.

xxxi) Law that establishes the direct purchase of alimentary products of the National Programme of Alimentary Assistance, from local producers – Law No. 27060.

xxxii) Regulation of the Law No. 27060, approved by Supreme Decree No. 005-2008-MIMDES.

xxxiii) Law that establishes measures to promote economic growth, which includes a special regime for contracting supervisors for INDECOPI – Law No. 30264 (fifth final disposition).

xxxiv) Legislative Decree No. 1224 that sets the framework for the promotion of private investment through public-private associations and Projects in Assets.

xxxv) Regulation of Legislative Decree No. 1224, approved by Supreme Decree No. 410-2015-EF.

Source: Information provided by the MEF.

The general objective of the reform of the public procurement regulatory framework in Peru is to establish norms to maximise value for propel productive money of invested public resources and promote results-based management in the area of public procurement (article 1 of the new law). The new framework aims at ensuring good management in terms of purchasing by public officials, taking into consideration efficiency, transparency and controlling criteria, which represent the basic principles of the public procurement system (see Box 2.2). The specific objectives of the new law are:

simplification of the public procurement processes; implementation of Perú Compras, the central purchasing body; standardisation of public procurement processes (through the development of new tools by Perú Compras); increased competition in public procurement processes; and the inclusion of the conditions and provisions included in the country's international agreements. According to the Ministry of Economy and Finance (MEF), which co-ordinated its preparation, the new law was developed considering the best international practices, as well as the dispositions included in the public procurement chapters of the commercial agreements signed by the government of Peru.

Box 2.2. **Public procurement principles listed in Law No. 30225**

Government purchases are undertaken on the basis of the following principles, without prejudice to applying other general principles of the public law. These principles serve as interpretative and inclusive criteria for the application of the law and its regulation, and as a parameter for the performance of the entities that intervene in such purchases:

a) **Free participation** – Entities promote free access and supplier participation in the procurement processes that they undertake, avoiding expensive and unnecessary requirements and demands. The use of practices that limit or affect the free participation of suppliers is forbidden.

b) **Equal treatment** – All suppliers must have the same opportunities to formulate their bids; privileges and benefits are forbidden, as is evident or disguised discriminatory treatment. This principle requires that similar situations not be treated differently, and that different situations not be treated in an identical way, as long as this treatment has an objective and reasonable justification, favouring development of effective competition.

c) **Transparenc***y* – Public entities shall provide clear and coherent information in order for the procurement process to be understood by the suppliers, ensuring free participation, and to be undertaken under conditions of equal treatment, objectivity and impartiality. This principle respects the exceptions established in the legal framework.

d) **Publicity** – Public procurement processes must be advertised and disseminated in order to promote free participation and effective competition, facilitating the supervision and control of public procurement.

e) **Competition** – Public procurement processes must include provisions that allow establishing effective competition conditions and obtaining the most advantageous bid in order to meet the public interest inherent in public procurement. The adoption of practices that restrict or affect competition is forbidden.

f) **Effectiveness and efficiency** – Public procurement processes and the decisions taken in relation to them must be directed at the fulfilment of the entities' goals and objectives, prioritising these over the realisation of non-essential formalities, ensuring the effective and timely satisfaction of the public interest, and ensuring quality requirements and best use of public funds.

g) **Technological validity** – The goods, services and works must meet the quality requirements and technological modernity necessary to effectively fulfil the entities' goals and objectives, for a limited and foreseeable duration, with the possibility of adjusting, integrating and reinforcing, if necessary, scientific or technological improvements.

h) **Environmental and social sustainability** – In the design and development of public procurement processes, criteria and practices that contribute to environmental and social protection, as well as human development, must be considered.

Box 2.2. **Public procurement principles listed in Law No. 30225** *(continued)*

i) **Equity** – The duties and rights of each party should ensure a reasonable relation of equivalence and proportionality, without prejudice to the faculties that come under the responsibility of government in managing the general interest.

Source: Law No. 30225; Ley de Contrataciones del Estado (Public Procurement Law)

2.1.2. Major changes to the public procurement system introduced by the new law

The new law introduces several changes to strengthen the transparency, integrity, efficiency and accountability of the public procurement system in Peru. These changes respond to specific issues identified by the MEF and the Government Procurement Supervising Agency (OSCE) in the past, with regard to (among others) public procurement programming and planning; market analysis; the definition of requirements; and contract management, including arbitration. Many of the changes introduced are aligned with the OECD's principles on public procurement. The most important changes are presented and analysed below.

The new law aims at improving programming and planning by strengthening the integration of public procurement into public finance management, budgeting and services delivery processes, as well as the overall institutional goals of the entities.

- The law indeed foresees an early preparation (year n-1) of the needs assessment for goods, works and services, on the basis of an Institutional Operation Plan (POI). The POI is a management tool that allows the articulation and co-ordination of the duties of each office of the public entities. It reflects the budgetary goals that the entity expects to reach each year and contains the processes to develop in a short term, establishing the necessary duties in order to accomplish the budgetary goals. These goals are established for each office of the entity in a one-year period, as well as opportunities for their execution. The law invites public procurement entities to consolidate the needs assessment just before approval of the draft budget, and to use it as a basis for the preparation of the Annual Procurement Plan (*Plano Anual de Compras* – PAC). That plan includes the referential value of the goods and services that need to be procured, as well as the programmed costs of the works consultancies and the works that needs to be executed (article 5 of the public procurement regulation).
- This change makes it possible to undertake purchases directly linked to the institutional goals of the public entities; to reduce the chances of incorrect use of the funds; and to avoid carrying out tendering processes of unnecessary goods, services or works just to spend the budget. It is in line with international best practices, including the OECD Recommendation, which recommends that OECD members rationalise public procurement spending by combining procurement processes with Public Financial Management (PFM). This would result in a better understanding of the spending dedicated to public procurement, including the administrative costs involved (OECD, 2015a). PFM relates to the way governments manage public resources (both revenue and expenditure) and the immediate and medium- to long-term impact of such resources on the economy and society (Andrews et al., 2014). Given that public procurement involves the allocation and disbursement of significant public funds, public procurement forms an important element of the overall PFM system.

- The new law also aimed at achieving greater value for money by introducing the concept of "estimated value", which was then removed in Legislative Decree No. 1341 in January 2017. Experience had shown that contracts are usually overestimated by public procurement entities, due to incorrect market analysis, fraud, or corrupt behaviours and/or the lack of cost analysis. Therefore, the law initially introduced the "estimated value" for goods and services, eliminating the "referential value" in the case of goods and services in order to avoid a distortion of prices and to promote value for money. The referential value initially only remained in the case of work consultancies (that cover highly qualified services, including elaboration of the technical record or supervision of the execution of the works) and works. The initial intention was not to release the estimated value to the public before the award of the contract: it was mandatory to register the estimated value of the purchase in SEACE, but the value was only disseminated after the contract was awarded. The estimated value thus could not serve as a basis for refusing or accepting offers. This change had the potential to bring prices in line with real operating or manufacturing costs; to enhance competition; and to reduce the risks of price mismanagement as well as speculation in public procurement. Practices of publishing expected prices when going to markets can indeed encourage poor behaviour.

  But some stakeholders were not convinced about the benefits of not publishing the estimated value, and after lengthy discussion it was removed from the public procurement law by the Legislative Decree No. 1341 in January 2017 (article 18). Unlike the estimated value, the referential value can serve as a basis for refusing or accepting offers. According to article 28, entities can refuse proposals substantially below the referential value in the case of goods and services. In the case of works, proposals above 10% and below 20% of the offer´s average, including the referential value, can be rejected by entities. The latter nevertheless stresses the importance of undertaking market studies, in particular for works, services and consultancies. Internationally, best practice is to publish as much information as possible in the framework of public tenders. Publication of the estimated value is usually included in public tenders. The capacity of public procurement entities to undertake market studies should nevertheless be taken into account in this framework. When contracts are being overestimated by the entities, there is a risk of increasing the value of the contract, in particular when competition is not very high. In addition, when contracts are being underestimated and the bids are higher than the estimation, the contracts may not be approved within the entity because it exceeds the budget.

Another main objective of the new public procurement law is to simplify processes under the public procurement cycle.

- In order to promote standardisation of public procurement processes, the new law introduces the concept of "homologation", a provision allowing public entities issuing national and sectoral policies to standardise their technical characteristics in their specific area of competency. Those characteristics, included in so-called "type-approval certificates", need to be taken into account by all the entities committed in case the required products have been homologated. The homologation process has even been strengthened in the framework of the Legislative Decree No. 1341; article 17 foresees homologation processes for all procurement categories (not just goods and services) and for public procurement processes under the threshold of 8 Peruvian Taxation Units (*Unidades Impositivas Tributarias*, or UIT). This change has the potential to reduce transaction costs of public procurement processes; to improve standardisation, generate predictability and to facilitate the participation of more suppliers due of a unique list of

requirements; to save time during the pre-tendering and tendering phases; and to avoid conflicts related to the definition of the requirements. In short, it can help drive efficiency throughout the public procurement cycle. It also follows the OECD Recommendation on Public Procurement, which urges OECD members to 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, joint procurements and contracts with options (OECD, 2015a).

- The laws also introduces simplified tendering for the purchase of goods, services (except individual consultancies) and works for amounts under USD 120 000 (approximately), which reduces the tendering procedure to a minimum of 8 working days. In addition, the law excludes all purchases under 8 UIT; the threshold under the previous regulation was 3 UIT. Thresholds levels vary among OECD countries. In countries of the European Union, simplified tendering is introduced for amounts under USD 145 000 and direct awards are allowed for amounts below USD 27 000. In case the capacities of public procurement entities are weak and the risk of corruption is high, these thresholds should remain low.
- The new law also offers the possibility of opting for open tendering with pre-qualification. This procedure allows the public procurement entities to evaluate the complete offers of the pre-qualified suppliers only, saving time for the public procurement officials as well as the bidders. It can only be applied when the following conditions are met: 1) it is a public tender process; 2) the object of the procurement process is the execution of works; and 3) the referential value equals or exceeds USD 6 000 000 approximately. Direct awarding is restricted to specific situations, such as the purchase of a piece of land, the rent of a property, goods and services related to technological investigation, and research and innovation. The limitation of direct awarding is in line with the OECD Recommendation on Public Procurement, which recommends that adherents use competitive tendering and limit the use of exceptions and single-source procurement. Competitive procedures should indeed be the standard method for conducting procurement, as these drive efficiencies, fight corruption, obtain fair and reasonable pricing and ensure competitive outcomes (OECD, 2015a).

The law also aims at strengthening the efficiency and preserving the integrity of the public procurement system.

- The law (article 155 of the public procurement regulation) introduced a reduction in the percentage of advanced payments in the case of works: 10% instead of 20% for the contractor; 20% instead of 40% for materials or supplies. According to the law, the advanced payment can never exceed 30% of the total amount of the contract (article 148 of the regulation). Advance payments are advances of funds to a supplier or contractor before, in anticipation of, and for the purpose of performance under the contract. Advanced payments are also used to facilitate the execution of public contracts and ensure equal access to the markets for potential competitors for all sizes, including small and medium-sized enterprises (SMEs). Advance payments may for instance be advisable to cover the initial mobilisation expenses for large civil works or custom-made goods. The above-mentioned change has the potential to create more incentives for suppliers to implement their contract according to the set timelines. Evidence collected by the MEF and others have indeed shown that the advanced payments were not always correctly used, and that it did not incentivise the implementation of works or services.

- There are no international standards with regard to the amount of advance payments for works, goods or services. Yet, the amount should be limited to a reasonable sum in order to cover the necessary costs to allow the work to begin. They should not be as high as progress payments, which are based on actual performance of tasks in furtherance of the contract. If advance payments are as high as progress payments, there is indeed less incentive for the contractor to perform the contract. In France for instance, the advanced payment is set at 5% of the total amount of the contract and cannot exceed 30%, in the case where the amount of the contract exceeds USD 53 000 approximately, and the delivery time of the contract exceeds two months (Decree No. 2016-360 of 25 March 2016 related to public procurement). In Mexico, the advanced payments cannot exceed 50% of the total amount of the contract (Law on Acquisitions, Leasing and Services of the Public Sector, DOF 10-11-2014). In general, the amount of the advanced payments should be adjusted to the nature and complexity of project, in particular in the case of works. The new law also includes a provision specifying that sub-contracting cannot be used for the provision of essential activities of the contract, which where determinant for selecting the contractor.

Given that in the past years the most flagrant and advertised corruption cases in public procurement in the country were related to arbitration, the new public procurement law also aims at improving the efficiency and transparency of public procurement arbitration processes.

- It therefore introduces the Dispute Resolution Board (Junta de Resolución de Disputas, JRD), which deals with conflicts related to the implementation of major works. The board has the potential to solve conflicts in an easy and flexible way in order to finish works on time and to reduce arbitration and thus the overall cost of the public procurement process. In order to be efficient, the resolutions of the Dispute Resolution Board need to be binding and implemented immediately. The new law also introduces a National Registry of Arbitrators (Registro Nacional de Árbitros, RNA) and an Accreditation of Arbitral Institutions (Acreditación de Instituciones Arbitrales) system. The National Registry of Arbitral Secretaries (Registro Nacional de Secretarios Arbitrales, RNSA) initially introduced by the new public procurement law was abolished by Legislative Decree No. 1341 in January 2017. The register and the accreditation system aimed at providing information on "certified" arbitrators and secretaries (that fulfil the criteria defined by OSCE) as well as "certified" arbitral institutions.
- The law also obliges public procurement entities to inform OSCE of the arbitration process, and arbitrators are obliged to publish the arbitral decision on SEACE (article 197 of the public procurement regulation). These changes to the new law have the potential to contribute to handling complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions, preventing wrongdoing and building the confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system (OECD, 2015a).

Legislative Decree No. 1341 of January introduces additional provisions to ensure integrity and fight corruption in public procurement processes. More detailed information on recent changes related to those issues is available in Chapter 8 on "Enhancing Integrity and Management of Conflict of Interest".

2.2. Develop, adapt and enforce relevant directives and strategies

2.2.1. Specifying the new roles and responsibilities of the MEF, OSCE and Perú Compras, and ensuring a co-ordinated and sustained effort

Ensure that the new organization and functions of OSCE and Perú Compras are being implemented and that there is a co-ordinated and sustained effort from all involved in order to facilitate the implementation of the new public procurement law

In order to ensure lasting changes in the Peruvian public procurement system, the implementation of the public procurement law and related regulation needs to be well designed. The design and approval of the new law and regulation is only the start of a longer reform process. This is the challenge that is currently faced by the MEF, OSCE and Perú Compras – developing, adapting and enforcing relevant directives and strategies; disseminating and explaining the new regulatory framework and related strategies; and monitoring and evaluating implementation of the new law. Their role will be crucial in the upcoming months: to ensure the implementation of the new law, which will indeed require the application of their new organisation and functions but also their co-ordinated and sustained effort. The implementation of such a reform indeed necessitates strong horizontal as well as vertical co-ordination mechanisms. Co-ordination can represent an important challenge in this specific case, given that the new law introduces a new actor, Perú Compras, that needs to be properly integrated in existing co-ordination mechanisms. This is a particular challenge for the MEF, which is in charge of steering both OSCE and Perú Compras.

In order to ensure implementation of the legal provisions of the new law and associated regulation, specific supreme decrees have been prepared to specify the organisation and functions of OSCE and Perú Compras. The latter had in fact been created in June 2008 and was not implemented until December 2015, with the publication of Supreme Decree No. 364-2015-EF. According to the new public procurement law and regulation, Perú Compras is supposed to manage centralised procurement and the reverse auctions; administer the framework agreements; issue opinions on homologation processes; and carry out tendering processes requested by other public agencies. The decree specifies which areas are being transferred from OSCE to Perú Compras as well as the timeline for the transfer. At the same time, it was necessary to revise the organisation and functions of OSCE (Supreme Decree No. 076-2016-EF), which lost its former sub-division on special processes given that those responsibilities were transferred to Perú Compras. The decree describes the organisation and functions of the old and new directorates, and therefore represents an important step towards implementation of the public procurement regulation as well.

The role and functions of the MEF are included in the new public procurement regulation as well as in the ROF of the MEF (Supreme Decree No. 221-2016-EF). Article 2 of the public procurement regulation states that the legal provisions with regard to public procurement included in Law No. 30220 and its regulation are national in scope and that the design of policies and regulations on public procurement are an exclusive function of the MEF. The ROF of the MEF specifies that one of the functions of the ministry is to formulate, propose, execute and evaluate the policies, regulations and technical guidance in the area of public procurement. The provisions included in new public procurement law as well as the ROF of the MEF (articles 140 and 143, for instance) are kept very general, compared to the ROF of OSCE for instance, and do not facilitate the oversight or effective co-operation among the MEF, OSCE and

Perú Compras. This is the reason why it seems necessary to specify the division of labour between the MEF and OSCE as well as Perú Compras, in addition to the publication of the ROF of OSCE. The details on the division of labour would also need to be communicated to entities. Also, the MEF, along with OSCE and Perú Compras, may need to think of specific horizontal co-ordination mechanisms among the MEF, OSCE and Perú Compras.

2.2.2. Ensuring that the directives, strategies and tools are being adapted for implementation of the new legislative framework by the public procurement workforce

Ensure that directives, strategies and tools are adapted to the new law and that necessary guidance is developed in order to support public procurement entities as well as suppliers in the implementation of the new regulatory framework

In order to facilitate access to procurement opportunities for potential competitors and to strengthen the transparency, integrity, efficiency and accountability of the public procurement system, governments need to have in place a coherent and stable institutional, legal and regulatory framework, but they also need to deliver clear and integrated tender documentation, standardised where possible and proportionate to the need (OECD, 2015a). Against that background, OSCE as well as Perú Compras needs to ensure that directives, strategies and tools are adapted to the new law. Updating directives, strategies and tools are primarily the task of the OSCE sub-division on normativity, which is in charge of participating in the elaboration of draft legislation related to public procurement; elaborating and issuing opinions; and elaborating and proposing draft directives, templates and orientation documents for the board of directors. The availability of specific guidance and standards is particularly important in implementing the new public procurement law, which gives public procurement officials the capacity to choose from among different tools in order to manage public procurement efficiently. If public procurement officials are not sufficiently informed or guided, they may not derive the maximum benefit from the new clauses of the regulatory framework. In order for the overall public procurement system to be coherent, it is also crucial that other OSCE divisions contribute to developing and adapting their strategies and tools.

Shortly after entry into force of the public procurement regulation on 9 January 2016, the board of directors of OSCE approved a series of directives related to the dispositions of the new public procurement regulation. This series includes directives relating to standard tender documentation for the selection procedures; the electronic reverse auction procedure; the registry of information in SEACE; the supervision actions; the guidelines for purchasing a particular trademark or type of product; the participation of joint suppliers (consortium) in public procurement; the annual procurement plan; the Dispute Resolution Board, the National Registry of Arbitrators and of Arbitral Secretaries; and the Accreditation of Arbitral Institutions. These documents complement the provisions of the public procurement regulation, and contribute to a better understanding of the rationale of the reform.

There has been clearly an effort by the MEF and OSCE to prepare the relevant directives as soon as the regulation was published, but the public procurement entities interviewed still pointed to a number of documents that had not been updated so far (in March 2016). OSCE needs to make sure that not only the directives, but also other guidelines, manuals and statements are up to date and do not relate to other laws that are no longer effective. Not all the pages under the "legislation and documents" section (for

instance, the page listing the Supreme Decrees) are updated at the time of preparation of the review for instance (July 2016). The development of a specific roadmap and deadlines for updating all documents and tools could be useful in this context.

OSCE and Perú Compras may consider updating or developing specific strategies, guidelines, manuals and systems with regard to specific changes introduced by the new law, including the regulation and the legislative decree of January 2017. Specific guidelines or manuals may also be developed for public procurement officers to receive guidance on an operational level for the implementation of the law and related regulation and legislative decrees. Developing specific strategies and manuals would respond to the preoccupations of the interviewed stakeholders, who called for the development of manuals that are easy to understand and to use. OSCE may for example consider specific guidance and manuals on public procurement planning and programming, the preparation of market analysis, and the management of risks.

On June 2017, OSCE has published five practical guides that explain in a simple way and with examples diverse aspects of public procurement. These guidelines address the following topics: i) How the experience of consortiums is qualified in accordance with new regulations? ii) How the best offer is selected in procedures for the execution of works; iii) How the best offer is selected in procedures for consultancy works; iv) OSCE´s tools and orientation documents: how to use and where to find them? v) How should the requirement be formulated? Each guide has its own satisfaction survey and there is an option for users to indicate topics of their interest to be developed by OSCE in new guides. OSCE should continue publishing these documents which have proved to be useful. During the first week of implementation, more than 95% of the users considered that they had increased their knowledge on the subject and will recommend other persons to review the practical guide.

During the period of the review, Perú Compras prepared and issued several orientation documents, including on the homologation procedure and the list of common goods and services to be purchased using the reverse auctions mechanism. In the upcoming months, Perú Compras should consider developing specific guidance on the use of framework agreements and e-catalogues, and OSCE should consider developing specific guidance on the procedures related to reverse auctions. Also, the public procurement tools, such as SEACE, need to be updated by OSCE and Perú Compras. Public procurement officials shared their difficulties in implementing the new law through SEACE, whose features do not as yet seem to be in line with the new regulation. Specific and updated guidance will be particularly useful for public procurement entities to take into account the provisions included in Legislative Decree No. 1341 of January 2017.

2.2.3. Supervision that could lead to correct implementation of the new law throughout the country

Ensure the correct implementation of the new public procurement law by supervising public procurement entities. Supervision by OSCE needs to be complemented by strong internal control and external audit mechanisms

While adoption and communication of a law and related regulations, directives, strategies and tools set the framework for achieving a policy objective, effective regulatory enforcement and compliance are essential for actually meeting that objective. The supervision and monitoring actions of OSCE constitute a primary tool for ensuring effective enforcement and compliance. That body's new risk management directorate is managing its supervision strategy towards the activities of public procurement entities of

the country, and undertaking *ex officio* (random and/or selective) monitoring actions, or monitoring actions upon request, to verify that the activities carried out by public procurement entities are in line with the public procurement law and related regulations and directives. The supervisory actions are based on the identification of risks affecting public procurement planning, the satisfaction of needs, competition, and risks related to the inadequate use of direct awards and exceptions. These actions are complemented by internal controls and audits, undertaken by the Institutional Control Bodies (Órganos de Control Institutional, OCIs), as well as external controls by the General Comptroller of the Republic (Contraloría General de la República, CGR).

The supervision activities of the OSCE are central to ensuring effective enforcement and compliance and thus need to be strengthened, particularly in implementing the new regulatory framework. The activities indeed have the potential to oversee correct implementation of the new public procurement law and to take corrective actions if needed.

There is little evidence that OSCE is conducting inspection based on the identification of risks, in terms of public procurement planning, customer satisfaction and competition. In order to make its supervision activities truly effective, strong co-ordination between its sub-division on normativity and the new risk management directorate will be crucial. As underlined by the ROF, that co-ordination will be necessary for the elaboration of directives and other tools of general application. Both sub-divisions could for instance develop joint criteria to be used in their respective functions. They also need to communicate any infringement and/or transgressions of public procurement regulation to the technical and normativity directorate on (article 76 of the ROF). Finally, co-ordination of OSCE with the OCIs and the CGR with regard to the enforcement and compliance of the public procurement law needs to be strengthened.

2.3. Disseminating and explaining the new regulatory framework

2.3.1. Allowing all stakeholders free access, through an online portal, to information related to the regulatory framework, to ensure adequate diffusion and implementation of the new law

Ensure that the new public procurement law and related regulations and strategies are easily accessible to the public at no cost and that other relevant information is made available to the public procurement entities

In order to ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle, governments need to ensure free access, through an online portal – for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public – to public procurement information, notably related to the pertinent laws and regulations (OECD, 2015a). As with any other regulations, public procurement regulations should indeed be freely available to the public in a searchable format through a user-friendly interface over the Internet. This increases regulatory transparency and so reduces possibilities for abuse of discretion and for corrupt behaviour from public officials (OECD, 2012).

In order to ensure adequate transparency as well as the dissemination and implementation of the public procurement regulations, Peru needs to ensure that the new public procurement law and related regulations and strategies are easily accessible to the public at no cost and that relevant information is circulated to public procurement entities. In general, laws and regulations are available at no cost on the website of the Official Journal *El Peruano*, in which the new law was published on 11 July 2014. It is also

accessible on the Peruvian Legal Information System (*Sistema Peruano de Informacion Juridica*, SPIJ), available for public officials, private sector representatives and civil society representatives. The MEF and OSCE publish all relevant information on their websites under their "normativity" and "legislation and documents" section, respectively. On its website, OSCE makes available the new public procurement law and its regulation; directives, the supreme decrees and emergency decrees as well as the resolutions of the executive presidency and of the general secretary; and ministerial and supreme resolutions.

OSCE is also publishing judgements, opinions and communications. Under "normativity" and "legislation and documents" section, public procurement officials can also find guidelines and standards aiming at facilitating application of the public procurement regulation. The *OECD Regulatory Policy Review of Peru* nevertheless notes the lack of a single registry with quality information for laws and regulatory instruments in Peru, which can create uncertainty in citizens and businesses as to the legal obligations required of them (OECD, 2016). Peru needs to make sure that the legislation related to public procurement (in particular the public procurement law and regulation) is available in SPIJ.

OSCE has also introduced a specific advice portal on public procurement legislation called, Buscador de Interpretación Normativa en Contrataciones del Estado. This tool allows public procurement officials as well as suppliers to access interpretations of OSCE on different articles of the public procurement law, its regulations and directives. This tool has proved very useful. According to a survey undertaken by OSCE in October 2015, 96.4% of the users considered the portal to be useful and 96.7% of the users declared their interest in using the portal in the future. The advice portal has been awarded by the NGO CAD (Ciudadanos al Día) as a "Good Practice in Public Management". This tool certainly can be very useful, but OSCE needs to make sure that it is updated on a regular basis as well as other relevant webpages, both its own and those of other institutions.

2.3.2. Providing coherent guidance to public procurement officials in a reasonable timeframe, to ensure a correct and homogenous interpretation and implementation of the new law.

Consider improving its information and consultation desks in order to provide coherent guidance to public procurement officials in a reasonable timeframe. The division of labour between the MEF and OSCE might need to be clarified in that regard

During the fact-finding mission, interviews revealed that public procurement officials need more than just access to the new public procurement law and related regulations and strategies in order to correctly implement the new regulatory framework. They also need explanation and guidance while they are interpreting and implementing the new law. Public procurement officials shared their difficulties in asking specific questions and in getting guidance on articles of the new law. They have for example difficulties getting in touch with OSCE experts (through the consultation centre) and accessing relevant information in a reasonable timeframe. It seems that the number of advisers in the OSCE consultation centre is not enough to cover the increased needs that adoption of the new public procurement law call for. The feedback received during the fact finding mission to Per also stressed that the advice given was not always specific enough, due to the lack of experience of some of the advisers. Public procurement officials also mentioned during the interviews that advice given by OSCE differed sometimes with that given by the MEF.

In order to avoid duplication and inconsistencies in interpreting the public procurement legislation, it seems necessary to clarify the responsibilities of the MEF and OSCE and the division of labour between those institutions in relation to the "normative guidance" to public procurement entities. The new public procurement law (Law No. 30225, index [o] of article 52) establishes that one of the main functions of OSCE is to answer the queries of the procurement entities as well as the private sector and civil society about the scope and meaning of the public procurement regulation. According to the latest legislation (Supreme Decree No. 076-2016-EF) describing the organisation and roles of OSCE, its sub-directorate on normativity is in charge of "advising the entities in terms of public procurement" (article 71.h). The MEF does not have the competence to issue advice on the framework of public procurement regulation, according to its ROF. The MEF should therefore refer any enquiry related to the roles and functions of OSCE to that body, and OSCE could consider moving towards a more service-oriented strategy and reviewing the way it assists public procurement officers throughout the year.

OSCE should also consider developing more efficient and accessible information desks and consultation centres. One option that could be taken into account by OSCE is designating specific advisers for a group of public procurement entities. Those advisers or focal points would be able to co-ordinate and follow up on requests from the entities. OSCE could also consider strengthening its regional offices in order to provide more efficient and more relevant guidance to public procurement entities at sub-national level. The "Programme of Support and Assessment of Public Entities" *(*Programa de Acompañamiento y Seguimiento, PAS) is one good example in terms of guiding public procurement officers in the implementation of the public procurement regulatory framework and strengthening the management of their public procurement processes (see more information in Chapter 5 on "Enhancing procurement capabilities"). Improving the OSCE information desks, strengthening its regional offices and developing initiatives such as PAS would not only enhance the dissemination and implementation of the new regulatory framework, but also strengthen the service orientation and communication of OSCE towards public procurement entities. It would increase its credibility, and OSCE would gain more appreciation for its work.

The experience of various OECD countries has shown that information about the procurement process is made accessible in many different ways to public procurement entities, the private sector and the public at large: via a specific hotline, on line through a dedicated website, and through specific document templates. According to the experience collected in OECD countries, methodological guidance is provided through general guidance (for example education – specific literature included legislation and handbooks), templates (e.g. requests for quotations, draft agreements), ad hoc/problem solving guidance (concerning legal issues, subject issues) and actor-specific guidance (states, municipals, the private sector). Analysis has also shown that guidance should be specific to decision makers, procurement specialists, technical specialists and other interest groups, at the different stages of the procurement process (OECD, 2012 and 2015b).

For each new regulation, governments need to consider developing, implementing and evaluating a communications strategy to secure ongoing support for the goals of regulatory quality (OECD, 2012). Communications are particularly important in the context of the new public procurement law, the implementation of which is still being heavily debated, particularly in parliament. The MEF and OSCE have made significant efforts to present the new public procurement law and explain the changes to all stakeholders, including public procurement entities, representatives of the private sector, civil society and the general public. However, given the significance of the new law and

the marked opposition towards some aspects of the new legislation, it would be relevant for the MEF and OSCE to develop a clear and consistent communications strategy around the new public procurement law. The strategy would need to clearly frame the benefits of the new law and be honest about any perceived limitations. It would differ from the procurement capacity strategy, in the sense that it would focus on explaining the origins and benefits of the new law to all relevant stakeholders. The procurement capacity strategy would instead explore and select the best options for addressing procurement knowledge gaps and bottlenecks in order to build a sustainable procurement workforce (refer to Chapter 5 on "Enhancing procurement capabilities").

2.3.3. Training on the new law and related regulations and strategies to help close the compliance gaps, in particular at sub-central level

Consider expanding the training offer related to the new public procurement law in order to ensure the dissemination and implementation of the new regulatory framework, and adherence by public procurement officials as well as suppliers, in particular at sub-central level

Making the new regulatory framework accessible online and providing relevant information and guidance to the public procurement officials and suppliers is not sufficient to ensure dissemination and implementation of the new public procurement law. The public procurement workforce needs to be trained adequately and in a reasonable timeframe in order to help close the compliance gaps with the regulatory framework for procurement. Adequate training on regulations is particularly important in the area of public procurement, where laws and regulations play a central role. Public procurement training should be developed in the framework of a wider effort to strengthen the capabilities of the public procurement workforce, in line with competency frameworks and job profiles and linked to certification and performance management systems. Training should not only be available, but also be accessible and tailored to the needs of the different stakeholders.

OSCE has undertaken important efforts to increase the training offer, particularly on the new regulation, but it seems that the offer is not yet sufficient. Interviews have shown that the new public procurement law is not yet understood by all relevant stakeholders, and that the lack of information and training impedes correct implementation of the new regulation. Meetings with main stakeholders were organised by the MEF and OSCE before pre-publishing the law, but now that the law and regulation are published and adopted, the Peruvian authorities should consider expanding the training offer related to the new public procurement law. This training offer should be in line with the procurement capacity strategy, yet to be defined. Due to the issuance of the new public procurement regulation, OSCE planned a new 30-hour training programme among other activities, but the programme needs to be implemented more widely. Practitioners numbering 18 374 (including public officials, suppliers and civil society representatives) participated in 325 trainings by August 2016 (see Table 2.1). There needs to be a continuous effort from the MEF, OSCE and Peru Compras to inform and train public procurement officers – in particular since the publication in January 2017 of Legislative Decree No. 1341, which introduces several changes to the new public procurement law.

Table 2.1. **Information about the training on the new public procurement regulation (by August 2016)**

OSCE	Dissemination events	Number	35
		Participants	6 822
	Academic training events	Number	72
		Participants	3 049
Strategic allies	Dissemination events (Arequipa, Cusco, Puno, Lambayeque, La Libertad, Piura, Lima and Ica)	Number	218
		Participants	8 503

Source: Information provided by OSCE.

In addition to the creation and implementation of specific courses on the new regulation, OSCE needs to ensure that public procurement training curricula are being updated and reflect the changes introduced by the new law. OSCE also developed online training offers, through its "virtual classroom" (Aula Virtual de OSCE – AVO) website and the YouTube channel that proposes several specific videos on the new public procurement law. According to OSCE, the videos were viewed 106 000 times during the first month, which shows the interest of the operators in learning more about the dispositions included in the new public procurement regulation for its correct implementation, and mirrors the importance of training needs in terms of public procurement legislation (see Table 2.2).

Table 2.2. **Number of views of the YouTube videos on public procurement regulation (by August 2016)**

	Name of the video	Number of views
1	Direct contracting	5 320
2	General aspects	35 364
3	Results-based management	31 166
4	Obligations of the constructors	9 564
5	Valuations and measurements (works)	15 664
6	Public tender and public bidding	24 150
7	Selection of an individual consultor	10 544
8	Price comparison	14 730
9	Additional works	8 562
10	Impediments to contract	11 672
11	Principles of the new public procurement regulation	6 289
12	Dispute Resolution Board	4 856
13	Direct awarding	14 574
14	Works record	7 637
15	Contract resolution	5 766
16	Reception and settlement of the contract	6 732
17	Economic intervention	4 116
18	Subscription of the contract (works)	5 306
19	Additions and reductions (goods, services and consultancies)	5 509
20	Advanced payments and the start of the contract	6 287
21	Procurement record	11 649
22	Extension of the contract term (goods, services and consultancies)	4 859
23	Extension of the contract term (works)	5 356
24	Resolution and nullity of the contract	5 982
25	National Registry of Arbitrators and of Arbitral Secretaries	4 457
26	Complementary procurement	4 446
27	Bodies in charge of procurement	4 350
28	National Registry of Suppliers	12 455
29	Formalisation of the contract	5 320
30	Tender documentation	6 515

Table 2.2. **Number of views of the YouTube videos on public procurement regulation (by August 2016)** *(continued)*

31	Selection committee and body in charge of procurement	5 793
32	Appeals	4 171
33	Offences and sanctions	3 685
34	Guarantees	5 698
35	Strategic planning	6 780
36	Code of ethics for public procurement arbitration	2 329
	TOTAL	322 333

Source: Information provided by OSCE.

Peru also needs to ensure that the training offer is accessible and tailored to the needs of the different stakeholders. Particular attention should also be given to public procurement officials working at the sub-national level and to SMEs. Statistics related to the number of certified trainers show that most of the trainers (90 out of 114) are based in Lima, which does not facilitate the implementation of courses at sub-national level where the capacities are less developed, according to the diagnoses of the capacity and knowledge gaps. Interviews have showed that entities based in the regions have applied for specific training on the new public procurement law to OSCE, but that the training requests were not taken into account. Tailored trainings should be accessible to suppliers, including SMEs and micro-SMEs that have difficulties understanding and applying public procurement legislation. Suppliers represent only 20% of the total number of trained people. In order to ensure implementation of results-based management in public procurement (focusing on results, rather than on rules), the rationale, principles and provisions of the new public procurement law also need to be explained to auditors from the CGR. The Report of the Presidential Integrity Commission from December 2016 also stresses the need for auditors from the CGR to be familiar with issues related to public management, and to provide relevant training in this area.

Finally, the training offer specific to the new public procurement law should be proposed at no cost for the public procurement entities, in order to make sure all public procurement officials are informed of the changes. Interviews have shown that the training budgets of entities were limited, and that they could not cover the costs of the training for all public procurement officials. Free classes on the specificities of the new law would ensure a higher awareness within the public procurement workforce. OSCE could also identify if specific scholarships, such as for example scholarships from the National Civil Service Authority (SERVIR), could be introduced or used.

2.4. Strengthening the regulatory policy and governance

2.4.1. Regulatory consultation and stakeholder engagement to help ensure that the public procurement regulations are designed and implemented in the public interest

Could consider developing a standard process when formulating changes to the public procurement system. Such a standard process should promote public consultations, invite the comments of the private sector and civil society and ensure the publication of the results

Laws and regulations govern the everyday lives of businesses and citizens. They are essential instruments, together with taxes and spending, in attaining policy objectives. When poorly conceived however, they can be ineffective in achieving their objectives while imposing unnecessary costs on citizens and businesses. In order to ensure that the regulation serves the public interest and is informed by the legitimate needs of those

interested in and affected by regulation, governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place (OECD, 2015b). Also in the area of public procurement, governments need to develop and follow a standard process when formulating changes to the public procurement system. The standard process should promote public consultations, invite the comments of the private sector and civil society, ensure publication of the results of the consultation phase, and explain the options chosen – all in a transparent manner (OECD, 2015a).

Stakeholder engagement allows governments to collect better evidence as a basis for their decisions; improves the quality of the rule-making process by attracting more diverse inputs and opinions; increases the sense of "ownership"; and leads to better compliance with regulations. OECD countries are clearly paying increased attention to various ways of engaging stakeholders in making, implementing and reviewing regulations, and there have been numerous attempts to involve them. However, there is still some way to go to change the culture and many obstacles to overcome on the way to effective stakeholder engagement. A proportion of civil servants still might not see the value added and perceive stakeholder engagement as an additional burden when drafting and reviewing the regulations (OECD, 2015b).

In developing the new public procurement law, the MEF, along with OSCE, undertook a consultation process. According to the stakeholders interviewed, this process took longer than foreseen, in particular due to the lack of confidence of several stakeholders, but it was nevertheless characterised by very active participation. More than 1 000 proposals and recommendations were received from all sectors. Public entities as well as representatives of the private sector seem to have been involved in many preparatory meetings and the channel of communication with the MEF and OSCE were considered good. Stakeholders nevertheless stressed that not all their points had been taken into account. The Peruvian authorities need to make sure to inform the stakeholders on when and why they might have a chance to influence government's decisions, but also to provide them with sufficient feedback. While it is legitimate that governments do not systematically accept all inputs received during the engagement process, policy makers should set out openly and transparently the reasons for rejecting the inputs and maintain accountability. This is one central condition for building trust in the engagement process.

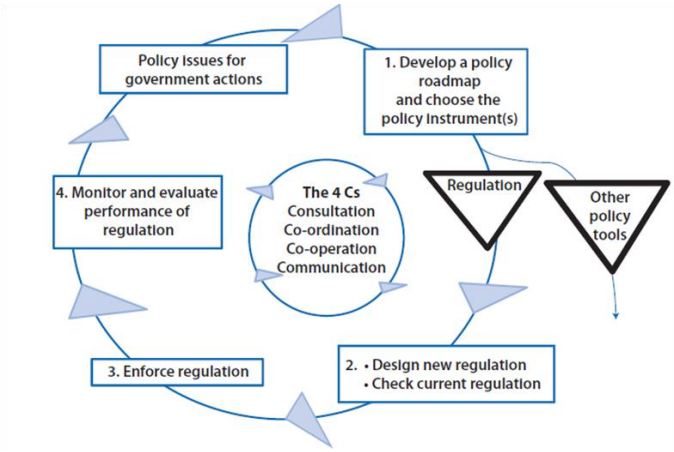
The active participation of stakeholders in the consultation process seems to indicate that there is already an "engagement culture" in Peru, in the mindset of both policy makers and stakeholders. It can nevertheless be strengthened by careful planning and a better choice of engagement tools and training of civil servants, and by continuously educating stakeholders in the "engagement culture". The OECD has identified many different types of consultations: advisory group or preparatory committees; broad circulation for comment; formal consultation with selected groups (e.g. social partners); physical public meetings; postings on the Internet without invitation to comment; public consultation conducted over the Internet with invitation to comment; and virtual public meetings (OECD, 2015b). Also, stakeholder engagement should not be restricted to the drafting of legislation. Stakeholder engagement should be extended both upstream (at the initiation stage of the proposal) and downstream (at the monitoring and evaluation stages), so as to cover the whole regulatory governance cycle (see Figure 2.1).

The government of Peru engaged with external stakeholders from the first stages of the elaboration of the law through focus groups and workshops. It could however consider planning downstream stakeholder engagement, which should also be designed with long-term impacts in mind and focus on developing a continuous relationship. In

Peru, the engagement of external stakeholders, in particular of the private sector, is sustained through a technical board composed of public as well as private stakeholders involved in the development of the public procurement law. This technical board is composed of the MEF, OSCE, the CGR, the Chamber of Commerce of Lima (Cámara de Comercio de Lima, CCL), the Peruvian Chamber of Construction (Cámara Peruana de la Construcción, CAPECO) and the Peruvian Consultants Association (Asociación Peruana de Consultoría, APC). The technical board, which met for the first time in May 2016, was created in order to pursue the dialogue with the private sector, which was opposed to the law (see above). It gives the stakeholders listed above the possibility to exchange their views on the new public procurement law, as well as on the new mechanisms introduced by the reform. The board has been created to ensure implementation of the provisions introduced by the law, rather than to contribute to the monitoring and evaluation stages of the new legislation. The first output of the technical board was for instance the modification and update of the standardised tendering documentation. Peru may want to use this board in order to pursue its consultation effort and contribute to the evaluation of the new law. The constitution of the technical board has nevertheless failed to prevent the adoption, in January 2017, of Legislative Decree No. 1341 that voided several initiatives included in the new public procurement law.

Also, Peru could consider going beyond conventional approaches to stakeholder engagement. Where appropriate, the country could consider using digital engagement. Mexico for instance publishes all draft regulatory impact assessments (RIAs) on the website of the relevant ministry or regulatory agency, as well as the comments and inputs received from stakeholders. This information can potentially allow relevant stakeholders to participate more effectively in the process, and provides the basis for a more detailed dialogue on its merits among interested parties (OECD, 2015b).

Figure 2.1. **The regulatory governance cycle**



Source: OECD (2013), *Public Procurement Review of the State's Employees' Social Security and Social Services Institute in Mexico*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264197305-en (accessed 12 May 2017).

2.4.2. Preparing ex ante impact assessments and ex post evaluations to strengthen evidence-based decision making in the area of public procurement

Consider preparing regulatory ex ante impact assessments, when developing or amending public procurement laws and regulations, as well as ex post evaluations in order to strengthen evidence-based decision making in the area of public procurement

Policy making can also be made more evidence-based by using regulatory impact assessment. RIA is a regulatory policy tool that examines and measures the likely benefits, costs and effects of new or amended laws and regulations. RIA is one of the most important regulatory tools available to governments. Its use has expanded over the past 30 years to become universal across OECD countries (OECD, 2015b). According to the OECD Recommendation of the Council on Regulatory Policy and Governance, RIAs have to be integrated into the early stages of the policy process formulating new regulatory proposals; policy goals have to be clearly identified; it should be established whether the regulation is necessary and how it can be most effective and efficient achieving its goals. Although some of the building blocks have been set, Peru lacks a full-fledged system for *ex ante* evaluation of draft regulations and of regulations that are subject to modifications; thus it cannot be assessed whether they provide a net positive benefit to society and whether they are coherent with other government policies. A comprehensive system of *ex ante* impact assessment would have required the MEF and OSCE to prepare an RIA in order to help the MEF and OSCE in the development of new regulations. Therefore, no specific regulatory impact assessment has been prepared for developing the new public procurement law. OSCE has only undertaken a few studies to evaluate some aspects of the public procurement system before adopting the new regulation, such as a study on the number of public procurement processes below or equal to 8 UIT. The MEF did not prepare a cost-benefit analysis or an *ex ante* evaluation (OECD, 2016).

From a regulatory governance perspective, *ex post* evaluations represent a critical building block for the regulatory policy cycle (see Figure 2.1), in addition to impact assessments. Their goal is to determine if the regulatory framework in place has achieved the desired objectives; if the regulation was sufficiently efficient and effective in its implementation; and to what extend any possible (un)expected impacts of the regulatory intervention were properly addressed at the moment of conceiving the regulatory instrument. Evaluation of the implemented regulations is furthermore instrumental to increasing transparency and accountability – and hence also, trust in public institutions. The Ninth Supplementary Provision of Law 30225 establishes that MEF will send to the Congress a report on the impact of the Law, based on information produced by OSCE and Peru Compras. The MEF, Peru Compras and OSCE have programmed the review of the new public procurement law and related regulation. A report will be sent to the Congress during the third quarter of 2017. The review should also take into account Legislative Decree No. 1018 of June 2008, which created the Central Purchasing Body Perú Compras (PC).

Finally, the MEF and OSCE may consider using administrative simplification as a tool to review and simplify the stock of regulations, in order to identify and eliminate or replace those that are obsolete, insufficient or inefficient. Administrative simplification aims at reducing the red tape that complicates the work of public procurement officials as well as the daily lives of citizens, and impedes the efficient functioning of business. Red tape can be particularly burdensome on small and medium-sized enterprises. Administrative simplification is in line with the OECD Recommendation on Public Procurement, which suggests that adherents streamline the public procurement system and its institutional frameworks. It particularly

stresses the importance of building efficient and effective procurement processes and workflows to reduce administrative red tape and costs (OECD, 2016).

2.4.3. A thorough monitoring of the public procurement system to ensure that the law is correctly implemented

Consider strengthening the monitoring of the implementation of the new law and related regulations and strategies in order to ensure that they are correctly implemented

In addition to programming an *ex post* evaluation, the MEF and OSCE, in co-operation with Perú Compras, should strengthen its monitoring of implementation of the new law. Monitoring is different from evaluation, in the sense that it refers to the continual assessment of implementation in relation to an agreed schedule. Monitoring activities are concerned with the systematic collection of data on specified indicators of policy interventions that provide administrative management, affected parties and other stakeholders with an indication of progress and achievement of objectives (OECD, 2015b). According to the OECD Recommendation on Public Procurement, governments should periodically and consistently assess the results of the procurement process. They also should develop indicators to measure the performance, effectiveness and savings of the public procurement system, for benchmarking and to support strategic policy making on public procurement (OECD, 2015a).

Monitoring the public procurement system is primarily the role of the Office of Studies and Business Intelligence of the OSCE. The office is in charge of elaborating and approving social, economic and statistical studies, at the request of OSCE management. Those studies aim at supporting proposed modifications to the public procurement law, or the implementation of new public procurement mechanisms and tools. The office is meant to co-operate closely with the MEF on these issues:

- The Office of Studies and Business Intelligence used to publish monthly public procurement reports on the basis of information from SEACE and the National Registry of Suppliers (RNP). Reports included information and figures on planned public procurement processes (based on the annual procurement plans) and the execution of those processes; the number of called tending processes and awarded contracts; and the distribution of public procurement processes, in terms of objects and regions. The reports have recently been replaced by the CONOSCE tool, which was launched in June 2016. This business intelligence tool aims at helping citizens find statistics on public procurement contracts (general public procurement market indicators), as well as specific information (for instance, how many contracts have been signed by one supplier, how many tendering processes have been executed by one entity, etc.).
- OSCE also needs to continue undertaking specific monitoring and review activities, including cost-benefit analyses of the public procurement law. Its reviews need to be shared with the General Directorate of International Economy, Competition and Productivity Affairs of the MEF, in particular the Directorate of Regulatory Efficiency for Productivity and Competition. The latter is in charge of formulating, proposing, monitoring and analysing the impact of public procurement policies and regulations, promoting efficiency of the allocation of the funds (article 143 of the ROF of the MEF). Consequently, the MEF should comment and give its opinion on the analysis done by OSCE and ensure proper oversight on the procedures. Against that background, policy makers need to ensure close co-operation between OSCE and the General Directorate of

the MEF in relation to monitoring implementation of the new law and related regulations and strategies.

In order to undertake proper monitoring, OSCE – again, in co-operation with the MEF and Perú Compras – should also consider developing indicators to monitor implementation progress in public procurement entities in a transparent way. It should also publish regular progress reports on implementation, highlighting problem areas, identifying blockages and suggesting solutions. By doing so, Peru could take into account the experience of Mexico in developing indicators for public procurement (see Box 2.3). Indicators may be aligned with the public procurement principles listed in the new public procurement law. Those principles represent the development outcomes of the public procurement law. They are supposed to govern the procurement processes and serve as interpretative and integrating criteria for the application of the public procurement regulation, as well as parameters for the performance of the officials and agencies responsible for the procurement. But for the moment, there is no monitoring of the public procurement principles in place, or an established process to review the principles. Reviewing, Peru would have a better idea of how they are driving performance improvements, at the level of individual procurements and the level of the system as a whole. Also, OSCE could consider preparing thematic evaluations of the public procurement regulatory framework, such as OSCE studies related to evaluation of the public procurement legal framework. Those thematic evaluations would go beyond the collection of data in the framework of the CONOSCE tool; it would also include some qualitative analysis.

Box 2.3. **Development of indicators for public procurement in Mexico**

With a view to promoting improvements in the Federal Public Administration's procurement system, based on a periodic and systematic assessment of the public procurement procedure's management and results, it is necessary to develop suitable indicators. Thus, the Mexican Government has taken the following crucial steps:

1. The development of an electronic system that makes it possible to obtain and systematise public procurement information. Currently, the public administration uses the "Market Information and Intelligence Module for Public Procurement" on CompraNet, which includes a section that generates indicators providing information, both in general and specific to each public institution, on the following patterns of behaviour, among others: a) in terms of efficiency, the frequency of use of framework agreements and consolidated procurement, as well as the number of abandoned procurement procedures; and b) in terms of competition, the use of procedures other than public bidding, and the rate of submitted proposals in the various procurement procedures. More information is available at: https://compranetim.funcionpublica.gob.mx/CompranetIMindex.html.
2. The issuance of specific and clear public policy instructions for public procurement to improve its system. The instructions were established in the Program for a Close, Modern Government, 2013-2018, through the definition of strategies and lines of action. Among these, especially worth mention are the measures to promote competition; the use of electronic means; and implementation of procurement strategies (framework agreements, consolidated procurement and discount offers in subsequent programmes). Based on the foregoing, it was possible to develop the following indicators, with an annual goal for each institution:
3. Competition in procurement procedures
   - Number of average proposals for public bidding procedure
   - Number of average participants per invitation to tender: at least three
   - Number of average proposals per invitation to tender: at least three

Box 2.3. **Development of indicators for public procurement in Mexico** *(continued)*

4. Percentage of procurement procedures with the possibility of receiving proposals by electronic means
5. List of procurement strategies

Further information about the aforementioned programme and the results obtained by each indicator can be consulted, respectively, at the following websites:

www.dof.gob.mx/nota_detalle.php?codigo=5312420&fecha=30/08/2013 and

http://finanzaspublicas.hacienda.gob.mx/es/Finanzas_Publicas/Informes_al_Congreso_de_la_Union.

Source: Information provided by the Ministry of Public Administration of Mexico.

2.5. Proposals for action

In order to ensure implementation of the new public procurement law, the following actions could be undertaken by Peru:

2.5.1. Develop, adapt and enforce relevant directives and strategies

- Ensure that the new organisation and functions of OSCE and Perú Compras are being implemented, and that there is a co-ordinated and sustained effort from all involved to facilitate implementation of the new public procurement law.
- Ensure that directives, strategies and tools are adapted to the new law and that necessary guidance is developed in order to support public procurement entities as well as suppliers in the implementation of the new regulatory framework.
- Ensure the correct implementation of the new public procurement law by supervising public procurement entities. Supervision by OSCE needs to be complemented by strong internal control and external audit mechanisms.

2.5.2. Disseminate and explain the new regulatory framework

- Ensure that the new public procurement law and related regulations and strategies are easily accessible to the public at no cost, and that other relevant information is made available to the public procurement entities.
- Consider improving the information and consultation desks in order to provide coherent guidance to public procurement officials in a reasonable timeframe. The division of labour between the MEF and OSCE might need to be clarified in that regard.
- Consider expanding the training offer related to the new public procurement law, in order to ensure the dissemination and implementation of the new regulatory framework, and adherence by public procurement officials as well as suppliers, in particular at sub-central level.

2.5.3. Strengthen the regulatory policy and governance

- Consider developing a standard process when formulating changes to the public procurement system. The standard process should promote public consultations, invite the comments of the private sector and civil society, and ensure the publication of results.

- Consider preparing regulatory *ex ante* impact assessments when developing or amending public procurement laws and regulations, as well as *ex post* evaluations in order to strengthen evidence-based decision making in the area of public procurement.
- Consider strengthening the monitoring of the implementation of the new law and related regulations and strategies, to ensure that they are correctly implemented.

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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 (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.
Souce: 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
Total	171 428	10 290 903	170 544	9 477 988	180 195	8 602 928

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 and 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 discloser 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 ≤ 6 => 3 suppliers Valid tenders > 6 => 4 suppliers
Open source	Valid tenders n => n-1 suppliers (maximum 7)
Travel agency services	Valid tenders ≤ 5 c => 3 suppliers Valid tenders 6-7 => 4 suppliers Valid tenders ≥ 8 => 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 consultor			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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Chapter 4

Going beyond price as an award criteria in Peru and measures to support secondary policy objectives

This chapter examines the use of evaluation criteria for awarding contracts to suppliers, including the role of selection committees and how they ensure strict compliance with the criteria in the solicitation documents. It further assesses whether the Peruvian authorities are strategically supporting secondary policy objectives through the awarding mechanism, and if they have taken specific measures to support SMEs, innovation or green procurement. Experiences from other countries provide examples of criteria for sustainable procurement as a secondary policy objective.

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 public procurement process should be properly prepared right from the start. A suitable set of conditions must be provided, including adequate selection and award criteria that will allow for equitable results from the bidding process. Specific tender opportunities should be designed in order to encourage broad participation from potential competitors, including new entrants and small and medium-sized enterprises (SMEs). The evaluation of tenders is the stage of the procurement process during which a contracting authority identifies which one of the tenders meeting the set requirements is the best one on the basis of the pre-announced award criteria. There are several OECD Recommendations (2015a) assessed this chapter, from the need for up-to-date and reliable information regarding price and overall costs in structuring new needs assessments, to public purchasers having sufficient relevant information to develop more realistic and effective tender specifications by better understanding market capabilities.

Secondary policy objectives in procurement (the use of which is known as strategic public procurement) refer to any of a variety of objectives such as sustainable green growth, the development of SMEs, innovation, standards for responsible business conduct and broader industrial policy objectives. Increasingly, governments pursue these objectives through use of procurement as a policy lever, in addition to the primary procurement objective (OECD, 2015a). Given its size and impact, in global economic terms, governments can leverage the procurement process to actively promote secondary policy objectives by using their substantial buying power in the marketplace. However, the benefits of doing so need to be weighed against the costs of including these objectives in the procurement cycle. Adding additional contract clauses, requirements and specifications into contract documentation makes for increased complexity, for both bidders and procurement organisations. This can sometimes result in additional hidden costs in terms of efficiency, transparency and effectiveness.

This chapter analyses the framework for evaluating tenders and the criteria for awarding contracts to suppliers, including the role of selection committees and how they ensure the strict compliance with the criteria in the solicitation documents. It also assesses whether Peruvian authorities are strategically supporting secondary policy objectives through the awarding mechanism and if they have taken specific measures to support SMEs, innovation or green procurement. Examining the balance of benefits and the costs of such policies and how they are linked to the overall strategy is especially important: for instance, SMEs account for 98% of all Peruvian enterprises, 60% of the active working population, and over 40% of the national GDP.

4.1. Towards a framework for evaluation and awards to ensure value for money

To ensure a sound evaluation framework that will produce equitable results, it is absolutely essential to prepare the public procurement process properly and from the very earliest stages. Tender evaluation has been identified as a particularly vulnerable step in that process. All evaluation criteria must be directly linked to requirements, be as objective as possible, and not favour a particular supplier. Evaluation criteria, as well as other requirements for compliance, must be clearly identified in the solicitation documentation, and the evaluation must entirely and exclusively adhere to them with no other elements considered.

4.1.1. Identifying and communicating appropriate evaluation and award criteria

Peru should broaden the award criteria and adopt the most economical offer that reflects proportionally the best price and quality (best price/quality ratio).

The evaluation method used in procurement operations involves the application of scores in a series of criteria determined by a selection committee; the criteria must be binding, reasonable and proportional with the object of the procurement. Under the former public procurement law (Legislative Decree No. 1017), bidders had to present two envelopes, one containing the technical proposal and the other containing the economic proposal. For the evaluation, the technical envelope was opened first; the committee verified compliance with the requirements and applied the evaluation criteria in order to determine the score applicable to each tender. The total sum of all the scores had to be equivalent to a hundred (100) points. Only the tenders that exceeded the minimum score of the technical proposal – sixty (60) points in the case of goods and works and eighty (80) points in the case of services and consultancy – passed onto the evaluation of the economic proposal.

This methodology changed for the procurement of goods, services and works in the framework of the new public procurement law (Law No. 30225); with the exception of consultancies where the bidders have to present only one envelope containing all the tender documentation required. For the evaluation, the selection committee needs to verify compliance with the technical requirements and to apply the evaluation criteria – price may well be the sole criterion – in order to determine the score applicable to each tender (see Box 4.1). The committee then verifies compliance with the qualification requirements established in the tender documentation, but only that of the bidder with the best score.

New standardised tender documentation, in accordance with Law No. 30225 and its regulation, was approved in January 2016 by Directive No. 001-2016-OSCE/CD, and updated in August 2016 through Resolution No. 304-2016-OSCE/PRE. In accordance with the new public procurement law (as well as the prior public procurement regulation), the evaluation criteria are the basis for allocating scores to those", so there's already a first elimination bids that are considered more advantageous to the entities (see Table 4.1). However, there are some differences between the evaluation methods established in the former regulation and the new public procurement law. Formerly, there were two evaluation stages: one technical and one economic. The most common competition criteria were: i) delivery timetable, ii) experience of the bidder, iii) experience of the proposed workforce and iv) improvements to the technical requirements, which means that the supplier should offer goods and services with best features rather than the ones required by the entities. Information on use of the different evaluation methods used is very limited. Moreover, no data are available for the preceding five years showing the allocation of the different evaluation methods in procurement procedures, neither in total registered nor in amount of the corresponding contract. The public procurement regime is designed to promote competition, making all public tenders open for participation in order to select the best tender. Hence, there is no specific tender method for international suppliers.

Table 4.1. **The evaluation criteria established in the public procurement regulation**

Category	Legislative Decree No. 1017	Law No. 30225
Goods	Availability of services and replacements Commercial guarantee Delivery timetable Training of the entity's workforce Improvements to the technical requirements or the conditions established in the tender documentation Experience of the bidder Compliance of the provision of the goods Others defined by the entity	Price (mandatory) Commercial guarantee Delivery timetable Specific features offered for the object of the procurement, such as environmental and social sustainability, improvements, etc. Contracting workforce with any disability Others established in the standardised tender documentation approved by OSCE: availability of services and replacements training of the entity's workforce improvements to the technical requirements or the conditions established in the tender documentation
Services	General and/or specific experience of the bidder (mandatory) Compliance of the service Proposed workforce for provision of the service Improvements to conditions established in the tender documentation Other criteria referred to the object of the procurement	Price (mandatory) Delivery timetable Commercial guarantee Specific features offered for the object of the procurement, such as those involving environmental and social sustainability – among others: contracting workforce with any disability a system to manage safety at work an environmental management system Others established in the standardised tender documentation approved by OSCE: training of the entity's workforce improvements to the technical requirements or the conditions established in the tender documentation quality management system
Consultancy (mandatory for L.D. 1017)	General and specific experience of the bidder – from 25 to 35 points Experience and qualification of the proposed workforce for the provision of the service – from 30 to 40 points Improvements to the conditions established in the tender documentation – from 20 to 25 points Compliance of the service (optional)	Proposed methodology Experience and qualification of the key workforce Criteria referred to the object of the procurement, such as equipment and infrastructure: risks plan Others established in the standardised tender documentation approved by OSCE
Works (mandatory for L.D. 1017)	Experience in general works – from 15 to 20 points Experience in similar works – from 30 to 35 points Experience and qualification of the proposed workforce – from 30 to 35 points Compliance of the execution of works– from 15 to 20 points	Price (mandatory) Specific features offered for the object of the procurement, such as environmental and social sustainability and improvements: system to manage safety at work environmental management system Others established in the standardised tender documentation approved by OSCE: training
Selection of individual consultants		Specific experience Qualifications Interview

Note: According to Legislative Decree No. 1017, the unique evaluation criterion for the economic proposal is the total amount of the offer.
Source: Information provided by the MEF.

With the new Law No. 30225, evaluation can be based on the price and other criteria established by the entity in the tender documentation. The competition criteria established by the new legislation are referred to as: i) the environment, ii) social goals, iii) improvements to the technical requirements, iv) delivery terms, v) the experience of key staff, etc. It is important that public officials in Peru are trained in applying these new criteria. Still missing from the new legislation are criteria such as innovation or life cycle costs. The main changes to the criteria concern the technical and economic scores for goods, services and works. For consultancy works, score weighting remains the same. The changes to the regulatory framework clearly indicate that the economic part of the offer can account for up to 100% of the total score, compared to only 40% before (Table 4.2) However, some of the technical aspects are now compulsory as part of the requirement – for example, the supplier's experience, equipment, staff experience and qualifications in the procurement of works – instead of being voluntarily included by public entities as part of the evaluation criteria. Public entities must guarantee that participants accomplish all "qualification requirements" and are technically able of executing the contract. Furthermore, the new legislation includes specific selection procedures for specialised (individual) consultancy services. Here, different evaluation criteria are applied as relates to experience and qualifications; there is also an interview.

Table 4.2. **Scores depending on evaluation criteria**

	Legislative Decree No. 1017		Law No. 30225	
	Technical score	Economic score	Technical score	Economic score
Goods, services and works	*Minimum weighting*	*Minimum weighting*	*Minimum weighting*	*Minimum weighting*
	60% of the total score	30% of the total score	0% of the total score	50% of the total score
	Maximum weighting	*Maximum weighting*	*Maximum weighting*	*Maximum weighting*
	70% of the total score	40% of the total score	50% of the total score	100% of the total score
Consultancy	*Minimum weighting*	*Minimum weighting*	*Minimum weighting*	*Minimum weighting*
	70% of the total score	20% of the total score	70% of the total score	20% of the total score
	Maximum weighting	*Maximum weighting*	*Maximum weighting*	*Maximum weighting*
	80% of the total score	30% of the total score	80% of the total score	30% of the total score

Source: Information provided by the MEF.

The technical requirements are established by the procuring entity and should contain an objective and precise description of the functional features and/or conditions that are essential to fulfil the public purpose of the procurement, as well as the terms for executing the contract. It is allowed in the definition of the requirements for entities to include environmental or social sustainability conditions deemed appropriate, as long as these do not limit the participation of suppliers. In addition, the requirement may further include the evaluation criteria deemed necessary. Thus, Law No. 30225 has established that the tender documentation for the procurement of goods, services and works may include environmental or social sustainability criteria.

Awarding criteria are developed in the tendering documentation that is published in the Electronic System for Government Procurement and Contracting (Sistema Electrónico de Contrataciones del Estado, SEACE) with the contracting notice. Public entities can make changes to the selection or award criteria after the publication of the tendering documentation in the contracting notice due to consultations and the observations of participants. Furthermore, if any of the participant's notes that the methodology provided

in the contract notice is not in line with the provisions of the regulation, they can make an observation before the selection committee, who in such cases may adjust the evaluation methodology to the provisions specified in the regulation. If any of the participants in a public tender or open bidding considers that the amendment performed by the selection committee violates the regulation, they can request that the public entity refer their queries or observations to OSCE for the risk management directorate to issue a judgement. The directorate may evaluate the legality of the methodology and adjust it to the provisions of the public procurement regulation, for which a document called "judgement" will be issued within seven working days. After registering the judgement in SEACE, the selection committee of the public entity issuing the call for tenders must incorporate within the original text all the corrections, clarifications and/or amendments provided in the judgement, under penalty of nullity that is without prejudice to any liability resulting therefrom.

The first supervision level of the selection processes is the responsibility of the public entity, which should take the necessary actions for its implementation. Public entities have the power to declare an *ex officio* nullity of the selection procedures when justified by an existing defect. Second-level supervision is performed by the Government Procurement Supervising Agency (Organismo Supervisor de las Contrataciones del Estado, OSCE) through the risk management directorate. However, when a violation of the public procurement regulation cannot be corrected under certain circumstances, the case is then referred to the National Control System (Sistema Nacional de Control, SNC).

During the fact-finding mission several issues were raised by suppliers strongly indicating that the tender evaluation process needs to be improved. Among the issues raised were concerns over the abilities of smaller public procurement entities to follow proper and transparent procedures. There were claims of practices resulting in limited opportunities for suppliers an disqualification on unfair grounds. In fact, these practices are common to many countries and can hinder competition significantly. It is therefore important to ensure equal treatment and symmetry of information for potential bidders during the preparation and evaluation of bids. (See Box 4.1 for an example of objective award criteria).

Box 4.1. **Objective award criteria**

Ensure that award criteria are clearly and objectively defined by:

i) using as a basis for evaluation what is economically most advantageous, unless this is a commodity purchase for which the basis of the lowest may be used

ii) specifying the relative weightings of each criterion and justifying them in advance

iii) specifying the extent to which these considerations are taken into account in award criteria when using economic, social or environmental criteria

iv) including any action that the procuring agency is entitled to make with regard to the criteria (such as negotiations, specific conditions, etc.) and recording them.

Source: OECD (2009), *Principles for Integrity in Public Procurement*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264056527-en.

Part of the evaluation process relates to the qualification criteria set forward for each specific purchase. The OECD Recommendation on participation encourages buyers to

engage in dialogues with suppliers and business associations in order to develop more realistic and effective tender specifications by better understanding market capabilities (OECD, 2015a). Public entities should consider holding pre-procurement engagement with the market prior to inviting bids, following a transparent process. Market consultation should be used when there is a need for a technical dialogue and when the public entity does not have full knowledge of the market, or when it is procuring a high-value or complex item for the first time and it has limited knowledge on the subject. Care must be taken, however, to avoid inadvertently handing unfair advantage to one or more suppliers, and to ensure that all exchanges are transparent and compliant with the procurement regulations.

Procurement entities are not obliged by law or regulations to require the potential supplier or contractor (participating in a tendering) to present quality certifications during the selection process. However, public entities are obliged to require documents to verify that companies are authorised to operate. It is important that the selection and qualification criteria are developed in accordance with the needs identified during the preparation process. If the process of needs assessment is not carried out properly, the criteria could be based on inaccurate information and set either too high or too low. Setting criteria too low can jeopardise the execution of projects, leading to extra cost if the supplier is incapable of fulfilling their commitments. In Peru there are examples of public authorities setting too-high demands compared to the actual need for projects. Furthermore, suppliers sometimes need to certify their experience over a period longer than needed for projects. This kind of behaviour not only excludes capable suppliers from participating, but also can diminish trust in the process if executed deliberately to favour a specific supplier. If evaluation of minimal technical requirements is overly specific or basic, that can signal a discriminatory process tailored towards one company. Regarding the qualification process, the National Registry of Suppliers (Registro Nacional de Proveedores, RNP) filters out suppliers prohibited from working with the government, i.e. sanctioned companies. Whenever there is a sanctioned supplier, the Administrative Tribunal communicates with the RNP in order to have that information included in the registry.

4.2. Enhancing the role of selection committees

Peru should enhance the role of selection committees by enlarging them for more extensive procurement and introduce a social witness scheme to ensure better transparency and increase efficiency.

All entities publish annual procurement plans (Planes Anuales de Contrataciones, PAC) and, except under special circumstances, can only issue tenders that are included in the annual plan. Prior to issuing an open request for tender, a procuring entity establishes specifications and a budget, develops evaluation criteria, undertakes market research, and creates a selection committee. The selection committee is in charge of elaborating the tender documentation and responsible for conducting and executing public bidding and public tenders. Furthermore, selection committees are in charge of conducting and executing the simplified tender for works consultancy and execution of works, and the selection of individual consultants. The committee can also conduct and execute simplified tenders for goods and services and reverse auctions. (See Table 4.3 for more information on the responsibility of committees.) The office in charge of procurement within a public entity, on the other hand, is in charge of the electronic reverse auction; the simplified tender for goods, services and consultancy; price comparison; and direct awarding. In the case of

electronic reverse auction and the simplified tender for goods, services and consultancy, the entity can designate a selection committee when doing so is considered necessary.

Table 4.3. **The responsibility for different activities at each phase of the procurement cycle**

Phases	Activity	Office in charge
Pre-tendering	Planning of the procurement	User offices and Office for planning and development
	Definition of the requirements	User office
	Market research	Office in charge of procurement
	Determination of the estimated value or the reference value	Office in charge of procurement
	Elaboration of the tender documentation	Selection committee or the office in charge of procurement, as correspondent.
Tendering	Notice of the procurement	Selection committee or the office in charge of procurement, as correspondent
	Clarification of the tender documentation	Selection committee or the office in charge of procurement, as correspondent
	Modification of the tender documentation	Selection committee or the office in charge of procurement, as correspondent
	Integration of the tender documentation	Selection committee or the office in charge of procurement, as correspondent
	Tendering	Selection committee or the office in charge of procurement, as correspondent
	Evaluation	Selection committee or the office in charge of procurement, as correspondent
	Awarding	Selection committee or the office in charge of procurement, as correspondent
	Consent of the awarding	Selection committee or the office in charge of procurement, as correspondent
	Dispute settlement in open tenders	Administrative Tribunal or head of the entity
Post- tendering	Signing of the contract	Office in charge of procurement
	Subcontracting	Office in charge of procurement
	Additionals and reductions	Office in charge of procurement
	Extension of the agreed term	Office in charge of procurement
	Complementary contracting	Office in charge of procurement
	Mechanisms of dispute settlement: conciliation and arbitration. With the Law No. 30225, the mechanism of dispute boards has been included	Office in charge of procurement

Source: Information provided by MEF

Selection committees participate in the assessment of proposals received. However, each public entity is the body in charge of procurement and is responsible for conducting the award, which includes the evaluation of tenders. The selection committee is formed by three members: one must represent the office in charge of procurement, and at least one must have technical knowledge of the object of the procurement. However, with the procurement of consultancies and works, at least two of the three members must have technical knowledge with regard to the object of procurement. A report must be prepared on the basis of the evaluation of proposals, which should be signed by all members of the selection committee and published on SEACE. The public entity must keep a procurement record containing all proceedings concerning the procurement process, from the user requirements to contract completion, as well as the non-winning tenders. The office in charge of procurement has the procurement record in its custody, except for the period when the custody is in charge of the selection committee (during the tendering process). To offer an example from an OECD member country in the region, in Mexico the committee can include up to seven members and

has the possibility to set up sub-committees (see Box 4.2). Peru should consider the option of enlarging the selection committees in circumstances where that is called for, for example in large infrastructure projects and projects so complex that more opinions and views are likely to enhance the legitimacy of the decision-making process.

Box 4.2. **Selection committees and mechanisms for public procurement in Mexico**

During the public procurement cycle, the corresponding regulations of the Federal Public Administration provide for the permanent existence of committees in some phases, while in others responsibilities are distributed among different public servants.

I. Phases previous to the procurement procedure

All public institutions must set up an Acquisition, Lease and Service Committee, and whenever the number of public works and related services justifies doing so, it must also set up a Public Works Committee. The latter has the following main functions: a) to review the procurement programme and budget for each fiscal year; b) to decide whether to award the contract through public tender exception procedures before the procurement procedure begins; c) to authorise the creation of subcommittees; d) to analyse the conclusions and general results for the procurement contracts awarded on a quarterly basis, and e) to issue recommendations to verify that the procurement programme and budget are duly fulfilled and complied with.

Each committee is chaired by the head of the administrative department of the institution, who shall have the deciding vote in case of a tie. The committee is composed of up to seven full-time mid- and high-level members, including the heads of the planning and budgeting or finance departments and the contracting department. The remaining members shall be appointed by the head of the institution from among public servants who have a connection to or knowledge of the matters handled by the committee and who are not part of the institution's administrative department. Mid- to high-level representatives of the legal department and the internal control unit of the institution itself shall act as committee advisors. Also, the committee may invite the necessary people to its meetings to clarify technical, administrative or other kinds of issues related to the matters under discussion. Such persons shall have the right to speak but not to vote on these matters.

A good practice has been adopted that enables each committee to authorise the creation of a subcommittee with public servants who will review public call to tender processes for, or invitations to tender to, with at least three people, in order to make sure that all related documentation complies with applicable regulations.

II. Phases of the procurement procedure

The area responsible for the procurement procedure is the contracting department of each public institution. Thus, each stage of the procedure shall be presided over and led by a public servant from that department, except for any technical aspects connected to the procurement procedure, which shall be handled by the public institution's technical department. That department will be tasked with establishing the technical specifications to include in the call to tender; answering any technical questions raised in clarification meetings; and assessing the bidders' technical proposals. The award decision shall include the name and job role of those in charge of the assessment.

Source: Information provided by the Ministry of Public Administration of Mexico (Secretaria de la Función Pública, SFP).

The selection committee has full autonomy in its role, and its decision is final. The only way recognised in public procurement regulation to question their decisions is

through appealing. The appeals must be filed between the time the award is announced and the time awarding is completed. The grounds for appeals can vary; examples include unmet requirements and incorrect evaluation of bids. The Administrative Tribunal can intervene in such cases, but only when the award is above a certain threshold. Appeals against the awarding of the contract or any act issued before it must be filed within eight working days after notification of the awarding. In case of simplified tendering, selection of individual consultants and shopping, the appeal is filed within five working days after notification of the awarding. Regarding reverse auctions, the period for filing an appeal is five working days, unless its estimated value corresponds to an open tender or open bidding. In those cases, the period for filing the appeal is eight working days. In case of acts issued after the awarding, as well as the nullity, cancelation and the declaration of desert, the appeal is filed in the same terms established above however the count starts from the day after it is recognised that an act must be challenged.

Citizens should be allowed to participate as witnesses in the work of the selection committees. OSCE told the fact-finding mission that it had studied this mechanism and identified the need for citizens to be better informed so that they can contribute to the monitoring. However, there was no intention on the part of the Peruvian authorities to involve them in the work of the selection committees. The OECD recommends that the authorities consider the social witness mechanism, as it creates a culture of openness in the public sector. Mexico has been at the forefront in this context, where social witnesses are elected by the Ministry of Public Administration through public tendering, and once they participate in the procurement process, they release a final report providing comments on and recommendations for the process. Their comments are analysed and taken into consideration insofar as they are considered appropriate and would contribute to the efficient performance of the procurement activities (see Box 4.3). These reports must subsequently be published on the Mexican federal e-procurement platform (CompraNet).

Box 4.3. **Social witnesses in Mexico**

Social witnesses are non-governmental organisations and individuals selected by the Ministry of Public Administration (SFP) through public tendering. SFP keeps a registry of approved social witnesses and evaluates their performance; unsatisfactory performance can result in their removal from the registry.

When a federal entity requires the involvement of a social witness, it informs SFP, which designates one from the registry. As of January 2014, SFP had registered 39 social witnesses – five civil society organisations and 34 individuals – for public procurement projects. The number of social witnesses, originally 5 in 2005, grew to 40 later in 2014.

SFP notes that "the monitoring of the most relevant procurement processes of the federal government through social witnesses has had an impact in improving procurement procedures by virtue of their contributions and experience, to the point that they have become a strategic element for ensuring the transparency and credibility of the procurement system". An OECD-World Bank Institute study (2006) indicates that the participation of social witnesses in procurement processes of the Federal Electricity Commission (Comisión Federal de Electricidad) created savings of approximately USD 26 million in 2006, and increased the number of bidders by over 50%.

Source: OECD (2013), *Public Procurement Review of the Mexican Institute of Social Security: Enhancing efficiency and integrity for better health care*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264197480-en.

4.3. Implementing secondary policy objectives through public procurement

The OECD Recommendation on Public Procurement encourages balancing use of the public procurement system to pursue secondary policy objectives with the primary procurement objective, which refers to delivering goods and services necessary to accomplish government missions in a timely, economical and efficient manner (OECD, 2015a). In order to have a competitive, effective awarding process, the OECD recommends that countries facilitate access to procurement opportunities by pursuing secondary policy objectives in accordance with clear national priorities. The policy choice regarding whether to pursue secondary objectives will vary according to governments' and citizens' needs, but the Recommendation identifies steps that should be taken whenever such objectives are pursued (Box 4.4).

Box 4.4. **The OECD Recommendation on Public Procurement**

V. **RECOMMENDS** that Adherents recognise that any use of the public procurement system to pursue secondary policy objectives should be **balanced** against the primary procurement objective.

To this end, Adherents should:

i) *Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities*, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives, and the burden associated with monitoring progress in promoting such objectives, should be considered.

ii) *Develop an appropriate strategy for integrating secondary policy objectives in public procurement systems*. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for developing action plans or guidelines for implementation.

iii) *Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives*. The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy target objective outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

Source: OECD (2015a), Recommendation of the Council on Public Procurement, www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf (accessed 13 May 2017).

4.3.1. Using public procurement to foster secondary policy objectives

Peru should develop specific policies and measures to support secondary policy objectives, including green procurement, SMEs, and innovative goods and services, and link them to specific targets.

Examples of secondary policy objectives include sustainable green growth, innovation, standards for responsible business conduct and the development of SMEs. Introducing specific provisions can, for instance, facilitate the participation of SMEs in tender

opportunities. SME support through public procurement can also contribute to economic growth, given that SMEs play an important role in job creation and innovation. Research has indeed shown a positive relationship between the relative size of the SME sector in a country and that country's economic growth; typically, SMEs comprise over 90% of all firms in both low- and high-income countries (Beck, Demirguc-Kunt and Levine, 2005).

Peruvian national regulation (Supreme Decree No. 013-2013-PRODUCE) defines SMEs as economic units constituted as a natural or legal person taking any form of organisation or business management within the law that aims to develop extraction activities, transformation, production or commercialisation of goods or services. Public procurement regulation does not foresee procurement mechanisms especially for SMEs. However, Emergency Decree No 058-2011 created a mechanism called "executor cores" (núcleos ejecutores), which authorises some public entities to procure a list of products that can be supplied by SMEs through a special tendering method, different from the ones established in public procurement regulation. At first the Emergency Decree ran until 30 September 2012; however, with the Thirty Second Complementary Disposition of Law No. 29951, its validity was extended to 31 December 2016. The goods included were: a) school uniforms, b) school footwear, c) school jogging suits, d) uniforms and campaign equipment for the armed forces (navy, army and air force), e) uniforms for the national police. The process involves the publication of the tender notice on the Cooperation Fund for Social Development (Fondo de Cooperación para el Desarrollo Social, or FONCODES) webpage, as well as an advertisement in major newspapers. Both mechanisms are considered to be invitations to all SMEs to participate in the open tender. The tender documentation defines the requirements that SMEs must present, and in cases where the participant does not present all of them, the tender is declared unsuccessful. The tenders are assessed in three phases:

1. verification of the documents presented
2. classification of SMEs according to the criteria established in the tender documentation
3. allocation of production lots to SMEs.

4.4. Supporting SMEs through public procurement

Peru should consider developing a comprehensive policy for SME support that includes current methods to support SMEs as well as additional provisions, such as allotment, the lowering of financial requirements and the shortening of payment deadlines.

Public purchases from SMEs represent approximately 40% of overall purchases made by public entities in Peru (36% in 2015), which is in accordance with targets set in Supreme Decree No. 013-2013-PRODUCE. In Peru small purchases are common, which is likely to benefit SMEs. According to the governmental officials interviewed, close to 80% of all purchases could be below the amount of USD 9 000 dollars. Despite significant purchases from SMEs, their participation in the procurement process has encountered barriers that could be relieved if better market research were to be carried out by public entities. During the fact-finding mission the practical experience of the previous legislation was mentioned as a problem along with SEACE, which was not considered easily accessible to SMEs. Financing is another matter: it is not easy for SMEs in Peru to obtain access to letters of credit from banks or other forms of financing, as the banks tend to charge a great deal for these instruments. This problem arises in OECD countries as well, where credit conditions remain much tighter and SMEs face higher interest rates and tighter borrowing terms and credit

rationing than do large enterprises. New features have been introduced in recent years to support SMEs that the government of Peru should consider, such as offering them pre-approval of a guarantee before the loan request is made; combining financial support with coaching support; experimentation with collateralising intangible assets, such as intellectual property rights; and providing guarantees for specific innovative projects (OECD, 2016a).

The number of purchases from SMEs has been steadily growing in recent years, from close to PEN 8 billion (USD 2.5 billion) in 2008 to PEN 12 billion (USD 3.7 billion) in 2014. There is a relatively equal spread among the three main categories – goods, services and works – which all show proportional SME purchases around the 40% mark. The SMEs seem to benefit more from consultancy work than other categories, with purchasing of works consultancy rising from close to 50% in 2011 to 73% in 2014 (Table 4.4). SMEs were active participants when the procurement procedures used were public direct tender (ADP) and selective direct tender (ADS), between 65% and 85% of the participating companies. However, when public bidding (CP) or public tenders (LP) are applied, the number of SMEs participating drops to 20-25%. The Peruvian authorities will need to monitor how the new method of simplified tendering affects the participation of SMEs in tenders, since ADP and ADS have been so important for SMEs in the past. ADP and ADS were used for the procurement of goods, services and works for lower-cost purchases, which helps explain the greater involvement of SMEs.

Table 4.4. **Percentage awarded to SMEs in the General Regime and by categories of procurement**

Year	Amount awarded to SMEs	Total awarded amount in the General Regime	Goods	Services	Works	Works consultancy	Total %
2011	PEN 8 385.3	PEN 21 627.1	42.3%	39.3%	36.3%	49.1%	39%
2012	PEN 11 498.6	PEN 29 809.0	40.2%	27.4%	43.7%	55.3%	39%
2013	PEN 13 153.0	PEN 32 136.4	39.2%	40.7%	40.6%	61.3%	41%
2014	PEN 11 947.9	PEN 28 820.1	38.6%	40.4%	41.7%	72.5%	41%

Note: The general regime involves tendering processes, reverse auctions and framework agreements.
Source: Information provided by OSCE.

OSCE has been working with suppliers for over four years to develop training sessions nationwide, introducing new and different tools; explaining how to access SEACE and how to find business opportunities; explaining how to develop economical proposals; and teaching SMEs how to understand tender documents, which can be very complicated. The training programme also teaches the SMEs how to read the technical specifications. Blame for the problems of SMEs and their barriers to involvement cannot be laid entirely on the government. SMEs have to take responsibility and be more adept in these situations. It is known that SMEs often do not read certain specifications because they do not understand them.

The procedure for payments is the same for all the suppliers, independently of the tendering procedure applied. There is however a mechanism described in the regulation for fostering, promoting and incentivising the participation of SMEs in public procurement; these fostering measures are described below. In accordance with national regulation (Supreme Decree No. 013-2013-PRODUCE), economic operators should be allocated to one of the following business categories, on the basis of their annual sales:

- micro enterprises: annual sales of up to a maximum amount of 150 Peruvian Taxation Units (Unidades Impositivas Tributarias, UIT)[1]
- small enterprises: annual sales from 150 UIT to 1 700 UIT

- medium enterprises: annual sales from 1 700 UIT to 2 300 UIT.

Supreme Decree No. 013-2013-PRODUCE approved the consolidated text of the Law to Promote Production Development and Business Growth, ordering the following measures related to promoting SMEs in public procurement:

1. minimum programming of procurement to SMEs
2. preference in the event of a tie in simplified tenders
3. a contract performance bond guarantee.

First, the minimum programming to SMEs by public procurement entities should not be less than 40% of their procurement of goods and services. By this provision, the entities are responsible to include in their annual plans all those procurements that shall be attended by SMEs. Second, the preference in the event of a tie should lead public entities to prefer bids made by SMEs, as long as they fulfil the required technical specifications. In order to meet the provision ordered by the previous and new legislation, the evaluation of tenders in case of a tie must prefer the SMEs, including disabled people or partnerships of companies formed entirely by both SMEs and disabled people, or partnerships comprised entirely of SMEs, as long as they prove that they have such status.

Thirdly, in the contracts for the provision of goods or services, as well as the contracts for execution of works and consultancy that are signed by public entities with SMEs, the regulation has ordered that SMEs can choose, as an alternative tool to the obligation to submit the performance bond guarantee, the holding of 10% of the total contract amount by the entity. The amount is retained on an equitable basis during the first half of the total number of payments. This amount should be returned at the completion of the contract. Regarding contracts for the execution of works, such benefit will only be applicable when:

a) For the amount, the contract to be signed corresponds to an awarded open tender of lesser amounts, a selective direct award, or a public direct award (Legislative Decree No. 1017), or corresponds to a simplified tender (Law No. 30225).

b) The term of execution of the work is not less than 60 calendar days.

c) The retained payment amount factors in at least two regular valuations based on the work progress.

The regulation has also established a mechanism to promote the participation of regional and local enterprises outside Lima and Callao provinces, by giving an extra score equivalent to 10% over the total sum of the technical and financial bids to suppliers residing in the province where the work will be executed or the service provided or in neighbouring provinces, whether or not the enterprise is in to the same department or region. This benefit is only given in simplified tenders of services and consultancies with an estimated value that does not exceed PEN 200 000, and works with a referential value that does not exceed PEN 900 000. The framework that has been set up to support SMEs shows that the Peruvian authorities consider it important to have SMEs competing for and enjoying the benefits of public procurement. However, one of the barriers frequently raised by SMEs is access to the process: small companies with limited resources tend to see the rules and requirements as complex and costly. The process in Peru could be streamlined from all the different thresholds, categories, assessment criteria, deadlines, etc.

The vast majority of OECD member countries use public procurement as a tool to implement policies or strategies fostering secondary policy objectives. In fact, 28 OECD member countries have developed strategies or policies to support one of the following categories or all of them: green public procurement, SMEs, and innovative goods and

services. These strategies are predominantly developed at the central level (Table 4.5). Peru has taken steps towards supporting SMEs as well as green procurement but has no dedicated policies or strategies in place, even less work has been done on innovative goods and services. Among the OECD member countries surveyed who have a strategy or policy developed at the central level or by procuring entities (line ministries) in 2014, 20 OECD member countries (71%) measure the results of their strategy or policy to support green public procurement. 17 OECD member countries (61%) measure the results of their strategy or policy to support SMEs (2015b).

Table 4.5. **Development of public procurement strategies/policies to support secondary policy objectives**

	Green public procurement		SMEs		Innovative goods and services	
	2016	2014	2016	2014	2016	2014
Australia	■	●	●	●	●	●
Austria	●♦	●	●♦	♦	●♦	●
Belgium	●♦	●♦	●	●	●	●
Canada	●♦	●♦	●	●	♦	●
Chile	●♦	●♦	●♦	●♦	○	●
Czech Republic	".."	".."	".."	".."	".."	".."
Denmark	●	●	●	●	●	●
Estonia	●	○	●	○	●	○
Finland	●♦	●	♦	♦	●♦	♦
France	".."	●♦	".."	●♦	".."	●♦
Germany	●	●	●	●	●	●
Greece	♦	●♦	♦	●	○	○
Hungary	●	♦	●	●	●	●
Iceland	●	●	○	○	○	○
Ireland	●	●	●	●	●	●
Israel	●	".."	●	".."	○	".."
Italy	●	♦	♦	♦	♦	♦
Japan	●	●	●	●	○	●
Korea	●	●	●	●	●	●
Latvia	●	".."	●	".."	♦	".."
Luxembourg	".."	●♦	".."	●♦	".."	♦
Mexico	●	●	●	●	●	●
Netherlands	♦	●	♦	●	♦	●
New Zealand	●♦	●♦	●♦	●♦	●♦	●♦
Norway	♦	■	♦	●♦	●♦	●♦
Poland	●♦	●	●	●	●	●
Portugal	●	●	●	♦	♦	♦
Slovenia	●	●♦	●	●	●	●
Spain	●	●♦	●	●♦	●	●♦
Sweden	●	●♦	●	●	●	●
Switzerland	".."	●♦	".."	●♦	".."	♦

Table 4.5. **Development of public procurement strategies/policies to support secondary policy objectives** *(continued)*

	Green public procurement		SMEs		Innovative goods and services	
	2016	2014	2016	2014	2016	2014
Turkey	●	●	●	●	●	●
United Kingdom	●	●	●	●	●	●
United States	".."	●	".."	●	".."	●♦
OECD Total						
● Strategy/policy developed at the central level	25	26	24	24	19	22
♦ Internal strategies/policies developed by some procuring entities	11	14	8	12	9	11
■ Rescinded	1	1	0	0	0	0
○ Never been developed	0	2	1	3	6	4
India	○	0	●	0	♦	0
Russian Federation	0	○	0	●	0	○
Colombia	●	♦	●	●	●	●
Costa Rica	●	●	●	●	○	○
Lithuania	●	0	●	0	●	0

Note: ".." represents where data is not available

Source: OECD (2017a), *Government at a Glance 2017,* OECD Publishing, Paris.
http://dx.doi.org/10.1787/gov_glance-2017-en

4.5. Towards a more innovative and sustainable public procurement

4.5.1. Procurement for innovation

Peru should consider developing a procurement policy for innovation, identifying a number of categories that allow for preferential purchasing of products with new technology, and introduce more flexibility within the tendering process to foster the development of innovative solutions

Public procurement is no longer seen as a back office function, but instead viewed as a strategic tool for achieving key policy objectives. Innovation is one of the most important secondary policy objectives, and is identified in the UN 2030 Agenda for Sustainable Development. It is crucial for economies, as it drives job creation, productivity and growth. Countries use various measures to support innovation procurement – mostly policy instruments, regulations or legal instruments, according to a recent OECD (2017) study that looks at existing government procurement strategies and practices for innovation, collecting practices from 35 member and non-member countries. Approximately 80% of the countries participating in the study take measures to support innovation procurement, and 50% have developed a related action plan, either as part of broader innovation or procurement strategies or as stand-alone initiatives. Demand for a new product or service is the main reason for using public procurement for innovation. The second most common reason cited by countries is improving the performance of existing products or services, achieving reduced costs and/or greater energy efficiency.

Countries have to overcome a range of hurdles to implement their innovative procurement practices. The most common challenges are related to risk aversion, management, personnel and skills capacity, and political support. Sound measurement systems requiring robust data and indicators are crucial for evaluating procurement for innovation strategies and improving the return on investment as well as social benefits. Successful strategic innovation procurement requires governments to:

- communicate the positive outcomes of innovation
- co-ordinate more closely in the horizontal and vertical management of tasks
- demonstrate political leadership and political commitment
- build up the capacity and numbers of skilled staff
- cultivate a more open culture towards new ways of working
- encourage co-operation among different branches of the public procurement process.

Meeting these objectives is a challenge and a long-term process (OECD, 2017). The study collected good practice cases on how innovation procurement was triggered, how partners support the process, and what the expectations and results of the innovative practices were. Table 4.6 includes examples of some of the best practices on strategic innovation procurement within OECD countries.

Table 4.6. **Good practice examples in relation to strategic innovation procurement**

Country	Project	Subject	Keywords chosen by countries
Austria	Full range (socially) sustainable food package with dynamic allergen indication	Food database	Food; Multi-quality-strategy; Dynamic allergen information tool
	MOVEBAG and MOVEBEST - Mobile traffic management system for roadworks and major incidents	Traffic management	Mobile traffic management; Mobile traffic detection
Belgium	Smart@Fire - Smart Personal Protective Systems for fire fighters (Region of Flanders)	Smart Personal Protective System	ICT - Localisation systems; Intelligent personnel protective systems; Integrated systems
Czech Republic	Archive management for State Archives - in line with the BETA programme	Software module	Archive services; Archive process; Hard-copy documents; Safe communication; Document deposition place management
Finland	iLOQ - Energy-efficient locks (Oulu, Jyväskylä and Kuopio Regions)	Digital locks Energy	Digital locks; Energy-efficient locks; Locking system; Energy-efficiency; Digitalisation
France	Liquid LEDs (bulb for public lighting)	Liquid LED technology	Total cost of ownership; Energy savings; More functionalities (video monitoring); Efficiency; Quality
Germany	THALEA - Improve care for acutely life-threatened patients by telemedicine and telemonitoring (Region of North-Rhine Westphalia)	Telemedicine	Telemedicine; Interoperability of Patient Data Management; Systems Decision-support; Closing innovation gap; Sharing expertise
Hungary	Smart@Fire - Smart Personal Protective Systems for fire fighters (Észak-Alföld Region)	Smart personal protective system	PPS; PPE; firefighter gear; ICT; PCP
Netherlands	Robotic Bed-washing Facility in Hospitals (Erasmus Medical Centre, Erasmus University Rotterdam)	Robotic	Clean hospital beds; Lower total costs of ownership; Lower energy costs; Less detergents; CO_2 reduction
Norway	Omsorg + Kampen - Smart house platform for senior housing residence (City of Oslo)	Technology for elderly people	Increased efficiency through user-driven integration of welfare technology
Poland	Hybrid lighting in the Jarosław commune (City of Jarosław)	Lighting	Safety; Clean energy; Environmental protection

Table 4.6. **Good practice examples in relation to strategic innovation procurement** *(continued)*

Sweden	Electrified Roads - knowledge base for industrial, academic and political decisions	Heavy traffic	Electrified roads; Heavy traffic; PCP; Triple-helix co-operation; Environment

Source: OECD (2017), *Public Procurement for Innovation: Good Practices and Strategies*, http://dx.doi.org/10.1787/9789264265820-en.

In Peru it is rare that the entities include the evaluation criteria in tender documents related to social goals, innovation, life cycle costs or the environment. In the Peruvian public procurement legislation is a list of principles that must be taken into consideration by the public entities in the procurement processes (see Box 2.2 in Chapter 2). These principles are meant to govern the procurement process, and serve as interpretative and integrating criteria for application of the public procurement regulation as well as parameters for the performance of the officials and agencies responsible for the procurement. One of the principles included is the environmental and social sustainability principle, which stresses that procurement processes must contribute to the defence of the environment and the development of members of society. The public procurement regulation recognises that tendering documentation for goods, services and works should, among other things, include an evaluation criterion related to environmental and social sustainability.

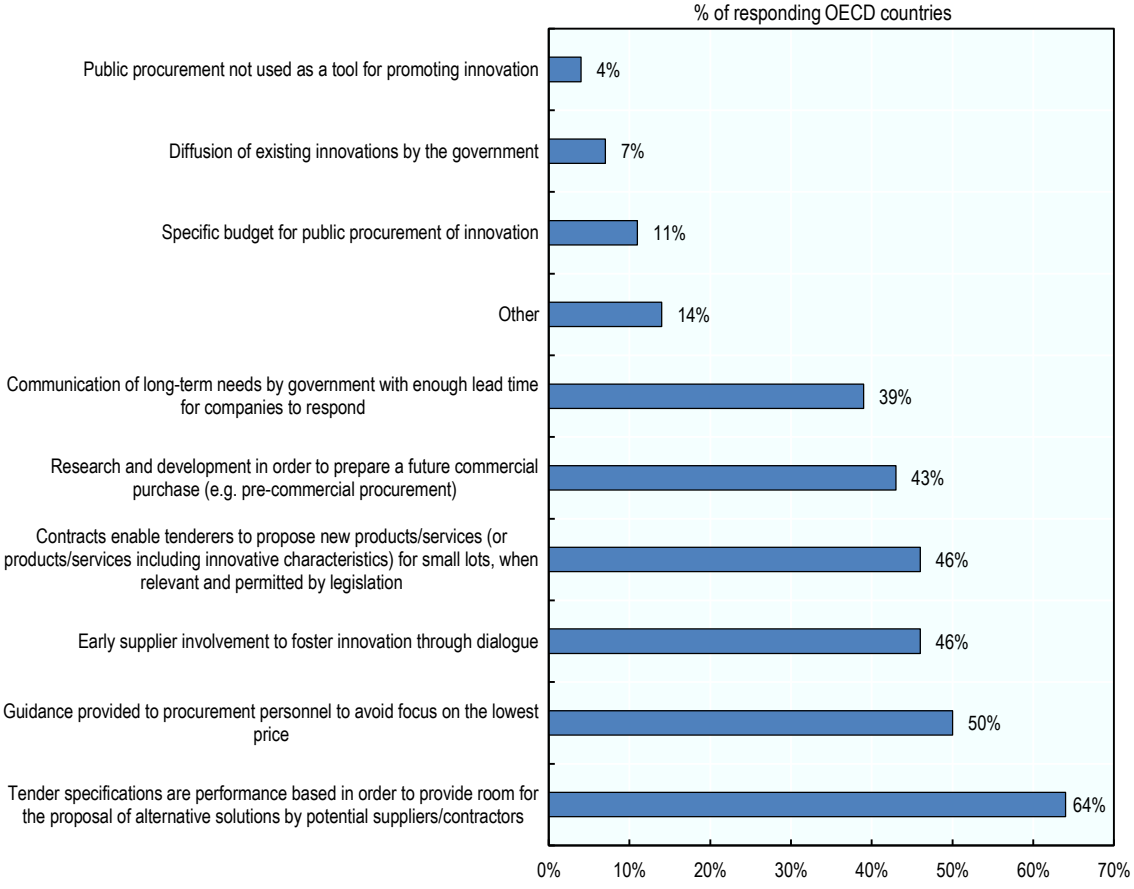
There are no policies or guidelines to foster innovation in procurement activities in Peru, nor are there established requirements involving innovative solutions in the regulations for working with suppliers. However, in order to promote innovation, Law No. 30225 establishes that goods and services for scientific and technological research, experimentation or development that results will exclusively belong to the public entity, can be purchased through direct award. With those measures, Peru is trying to encourage public entities to invest in research and technological innovation, in order to develop new technologies to enhance citizens' lives.

It is important to consider the level of standardisation and flexibility when working towards supporting and enhancing innovation within the procurement process. For some countries, an overly standardised process may become a barrier to innovation. It is not enough to pre-publish a procurement plan, which by itself is not likely to encourage suppliers to produce innovative solutions. The process of negotiation with interested suppliers to stimulate innovative solutions would allow the buyer to work with the supplier towards innovative solutions. If solutions in the market do not meet the needs of public entities, then buyers should be able to work with suppliers to develop the product or services. The prerequisite for delivering such a product would be its functionality and the cost agreed in the beginning. In general there is limited knowledge about this subject in Peru. There is a need to know more about how innovation is measured; concepts like innovation procurement and green procurement are not common, and little has been done to regulate them. In fact, the system should be doing more to support innovation than is actually being done.

A 2012 survey by the OECD suggests that while most OECD countries seek to use procurement for innovation in some way, only a few have set aside a separate budget for that purpose (Figure 4.1). Nevertheless, many had at some point used performance-based tender specifications to encourage innovation, providing guidance to procurement officers or involving suppliers at an early stage in the tender process to foster innovation. This

type of approach could be considered by Peru in the development of its procurement for innovation strategies.

Figure 4.1. **Use of procurement to promote innovation**



Source: OECD (2014), "Intelligent demand: Policy rationale, design and potential benefits", *OECD Science, Technology and Industry Policy Papers*, No. 13, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jz8p4rk3944-en.

4.5.2. Going Green: Implementing best practices in public procurement

Peru should consider ways to make public procurement more environmentally sustainable by including environmental criteria in all tendering procedures.

Green public procurement (GPP), i.e. public purchasing of products and services that are less environmentally damaging when taking into account their whole life cycle, is increasingly used by countries to achieve economy, efficiency and secondary policy objectives. Nevertheless, countries have reported to the OECD that they face obstacles to successfully implementing GPP, for a number of reasons: there is a common perception that green products and services may be more expensive than conventional ones; public officials lack the technical knowledge to integrate environmental standards in the procurement process; and there is an absence of monitoring mechanisms to evaluate whether GPP achieves its goals. However, countries increasingly recognise that GPP can be a major driver for innovation, providing industry with incentives for developing

environmentally friendly works, products and services – particularly in sectors where public purchasers represent a large share of the market, such as construction, health services and public transport (2015c).

Public authorities in Peru have been working with the United Nations Environment Programme (in Spanish, Programa de las Naciones Unidas para el Medio Ambiente, or PNUMA) on implementing sustainable public procurements, and are in the process of executing the project "Stimulating the offer and the demand of sustainable products through public procurement and eco-labelling" under the leadership of the Ministry of Economy and Finance and OSCE. The main objective of the project is to prepare and support implementation of a preliminary plan of sustainable public procurement (SPP), train public officials in SPP, and execute pilots in public procurement with sustainability criteria for the prioritised goods and services.

Most Latin America and the Caribbean have been using or are starting to use public procurement as a tool to implement policies or strategies to foster secondary policy objectives. In fact, compared to 94% of OECD countries, 72.7% of LAC countries, including Belize, Costa Rica, El Salvador and Peru, have developed strategies to promote environmental objectives (Table 4.7). The impact of these strategies/policies developed at the central level in Peru is unknown, and the public authorities have limited information about common products acquired through green public procurement. In previous legislation Peru has included a list of principles, including for environmental and social sustainability, that must be taken into consideration by the public entities in the procurement processes carried out by them.

Table 4.7. **Development of strategic public procurement by objective in the Latin American and Caribbean countries (2015)**

	Green public procurement	Support to Micro, small and medium-sized enterprises (MSMEs)	Support to procure innovative goods and services	Support to women- owned enterprises
Antigua and Barbuda	○	●	●	○
Argentina	●	●	●	○
Bahamas	●	●	●	○
Belize	●	●	●	○
Brazil	♦●	♦●	●	○
Chile	♦●	♦●	●	..
Colombia	♦	●	●	○
Costa Rica	●	●	○	..
Dominica	○	●	●	●
Dominican Republic	♦●	●	♦	●
Ecuador	○	●	●	●
Guatemala	○	●	○	♦
Haiti	○	●	○	○
Honduras	♦	●	♦	○
Jamaica	●	●	●	○
Mexico	●	●	●	○
Nicaragua	♦	○	○	○

Table 4.7. **Development of strategic public procurement by objective in the Latin American and Caribbean countries (2015)** *(continued)*

	Green public procurement	Support to Micro, small and medium-sized enterprises (MSMEs)	Support to procure innovative goods and services	Support to women- owned enterprises
Panama	●	♦●	●	○
Paraguay	♦●	♦●	○	○
Peru	●	●	○	○
El Salvador	●	●	○	○
Uruguay	○	●	○	○
Total LAC countries				
♦ A strategy/policy has been developed by some procuring entities	6	4	2	1
● A strategy/policy has been developed at a central level	12	19	12	3
◘ A strategy/policy has been rescinded	0	0	0	0
○ A strategy/policy has never been developed	6	1	8	16
.. Not available				2
Total OECD				
♦ A strategy/policy has been developed by some procuring entities	13	11	10	..
● A strategy/policy has been developed at a central level	27	25	23	..
◘ A strategy/policy has been rescinded	1	0	0	..
○ A strategy/policy has never been developed	2	3	4	..
.. Not available				32

Source: OECD (2016b), *Government at a Glance: Latin America and the Caribbean 2017*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264265554-en.

Solid green public procurement is at the heart of any sustainable procurement, as it can be used as a powerful tool in advancing the purchase of green products and removing obstacles to GPP. Peru needs to shift market thinking towards sustainability in order to succeed in increasing the demand for green products. Understanding the pros and cons of switching conventional purchases to green ones is paramount for the successful implementation of GPP. OECD countries' experiences demonstrate that without credible standards determining what products or services count as green, it may be difficult to implement GPP. EU studies show that the uptake of GPP strongly correlates with the existence or absence of an eco-label scheme and that eco-labels play an important role in implementing GPP solutions. Using standards can ease the decision-making process in public procurement and contribute to a harmonised approach to GPP. Box 4.5 illustrates how countries are applying award criteria to achieve sustainable procurement (2015c).

The ability to support long-term uptake of green solutions can be disrupted by a number of factors, such as a lack of information on green products, low buyer interest, and the absence of incentives for suppliers. Hence, the Peruvian authorities will need to monitor the results of the SPP project to confirm whether those policies work. It will be important to get the right messages across to government procurement officials and the public, as these can have a significant impact on the success of SPP and GPP. OECD

countries have reported that GPP knowledge, training and advice from the procurement workforce are important elements for successfully using procurement to achieve environmental benefits. Peru will need to take action at national and sub-national levels to build capacity and improve skills.

Box 4.5. **Criteria for sustainable procurement**

Estonia

The Estonian Road Administration (ERM) is a government agency operating in the administrative area of the Ministry of Economic Affairs and Communications. It is responsible for the implementation of transport policy – that is, infrastructure, traffic and public transport. The ERM carried out a procurement process in October 2010 under the Green Investment Scheme ("Promoting the Use of Public Transport"), which is funded from the agreement of the sale and purchase of the CO2 emissions quota between Estonia and Spain. The agreement was awarded in accordance with Kyoto Protocol Article 17 and provided that the Estonian Government invest the proceeds arising from the sale of the CO2 quota into areas where CO2 emission reductions can be achieved. The aim was to introduce new environmentally friendly buses that will help to popularise the use of public transport and reduce CO2 emissions caused by the transport sector. The purpose of the public procurement was to buy new cost-effective and environmentally friendly buses, suitable for running county and regular urban services (category M3 vehicles).

Award criteria

The award criteria were weighted as follows: 55% for the value of the tender (i.e. lowest price); 24% for a combination of warranty, bus engine smoke opacity and repair and maintenance work; and 21% for other technical properties of the buses, including the following:

- Points were awarded if the engines of the offered buses complied with the emission limits applicable to EURO V enhanced environmentally friendly vehicles (EEV) as specified in Directive 2005/55/EC. The tenderer had to prove compliance with this requirement by submitting an engine type approval certificate according to Directive 2005/55/EC.
- Points were awarded if the tender was accompanied by a confirmation from the manufacturer of the engines of the offered buses specifying that the engine may be used without modification with diesel fuel, complying with the standard EVS-EN 590:2009+NA:2009 (the Estonian equivalent of the corresponding European standard). Diesel fuel may contain up to 7% of fatty acid methyl esters (FAME) described in standard EN 14214.
- Points were awarded if urban buses were equipped with dual-zone (driver's cab and passenger compartment) air conditioning equipment that enables automated regulation of the interior temperature.

In order to avoid unequal treatment of tenderers and minimise the risk of disputes, the contracting authority decided not to include criteria on fuel consumption and CO2 emissions of the offered buses. This was because for category M3 vehicles no compulsory testing procedure had been established to measure fuel consumption and CO2 emissions on which the contracting authority could rely. Evaluating such criteria based on testing results provided by the tenderers or the manufacturers of buses would not have provided an adequate overview of the differences in fuel consumption and CO2 emissions between the different buses offered. This deficiency would likely have resulted in unequal treatment of tenderers and lead to disputes.

Box 4.5. **Criteria for sustainable procurement** *(continued)*

Hungary

The Public Procurement Supply Directorate (PPSD) in Hungary is an autonomous central purchasing body. In 2013, PPSD planned to publish six procedures including environmental criteria (one for paper and stationary, four for IT and one for fuel procurement), the aggregated value of which was HUF 129.5 billion (paper and stationary: HUF 5.5 billion; IT: HUF 118 billion; fuel: HUF 6 billion). The terms of the contracts were for 24 and 48 months.

The green criteria applied in the procedures were:

Paper and stationary products:

i) environmentally friendly products (envelopes, folders and other paper products for office purposes)

ii) meeting the environmental management standard (ISO 14001)

iii) technical specifications: environmental labels (FSC, NordicSwan, Blue Angel), eco-labels, recycling.

IT:

i) EU standards

ii) energy consumption (standby and switched-off mode)

iii) noise level

iv) waste management (delivery, recycling, extermination)

v) re-manufactured products.

Fuel:

i) EU standards and environmental/sustainability criteria

ii) alternative fuels (biodiesel, bioethanol).

Canada

The Canadian Policy on Green Procurement was developed in 2006. Development and implementation support of the policy has been led by Public Works and Government Services Canada in collaboration with Environment Canada, Natural Resources Canada and the Treasury Board of Canada Secretariat. Canada has a Green Procurement Plan that includes a scorecard outlining the criteria currently being used and communicated to suppliers. This allows them time to prepare for the next renewal, thus maintaining supplier competition.

Information technology (IT) hardware is an example of a commodity where many environmental criteria have been included in the Standing Offer using this process, including:

i) All desktop and notebook systems as well as monitors are certified through the Electronic Product Environment Assessment Tool (EPEAT Silver level).

ii) Desktop systems and monitors are EnergyStar 4.0 certified.

iii) Monitors are TCO'03.

iv) Desktop systems include high-efficiency power supplies (80plus).

v) All manufacturers represented on the Standing Offer are members of good repute of a recognised entity specifically established to address end-of-life electronics recycling and reuse in Canada.

vi) Desktop Category 1.0D and 1.0A Green PCs have reduced materials (with a smaller case and integrated components) and lower power consumption.

Box 4.5. **Criteria for sustainable procurement** *(continued)*

Where no centralised procurement instrument exists, the environmental considerations used for similar goods and services can be used in other procurement activities.

Source: OECD (2015c), *Going Green: Best Practices for Sustainable Procurement*, www.oecd.org/gov/ethics/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf (accessed 13 May2017).

4.6. Proposals for action

Public entities in Peru tend to base their awarding on the lowest price and not on the most economically advantageous tender (MEAT), which can include, life cycle cost, quality, environmental performance and more. The lowest-price approach may facilitate the evaluation and selection process while ensuring that minimum requirements are met. However, awarding a tender based only on price may result in various negative impacts for the entity, such as lower quality, unsecure supply and unsatisfactory supplier performance.

Peru has made an effort to professionalise its evaluation process by creating selection committees that have helped to increase trust in the process. Overall, the new legal framework seems to be more conducive to secondary objectives than the previous one, as it provides tools for public entities to support SMEs. Despite no explicit strategy for SMEs, public authorities seem to purchase a great deal from them. However, other secondary objectives have had a lower profile in Peru and need to be explored and tested, such as an enhanced engagement of procurement for innovation and more sustainable public procurement. Peru would do well to:

- Peru should broaden the award criteria and adopt the most economical offer that reflects proportionally the best price and quality (best price/quality ratio).
- Peru should enhance the role of selection committees by enlarging them for more extensive procurement and introduce a social witness scheme to ensure better transparency and increase efficiency
- Peru should develop specific policies and measures to support secondary policy objectives, including green procurement, SMEs, and innovative goods and services, and link them to specific targets.
- Peru should consider developing a comprehensive policy for SME support that includes current methods to support SMEs as well as additional provisions, such as allotment, the lowering of financial requirements and the shortening of payment deadlines.
- Peru should consider developing a procurement policy for innovation, identifying a number of categories that allow for preferential purchasing of products with new technology, and introduce more flexibility within the tendering process to foster the development of innovative solutions.
- Peru should consider ways to make public procurement more environmentally sustainable by including environmental criteria in all tendering procedures.

Note

1. One UIT in 2016 was equivalent to PEN 3 950.

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Chapter 5

Enhancing procurement capabilities of the Peruvian workforce

This chapter describes the public procurement workforce in Peru and assesses the capability of that workforce to perform its procurement duties. Against the 2015 OECD Recommendation on Public Procurement, it analyses how Peru has engaged in strategic workforce planning, or is developing procurement capacity strategies, and diagnoses knowledge gaps. The chapter also discusses whether attractive, competitive and merit-based career options are being proposed to public procurement officials. Finally, it highlights how enhancing public procurement training availability and quality through specific training curriculums, certified universities and trainers as well as accessible training opportunities and information desks can contribute to higher levels of aptitudes. The experience of various OECD countries is presented to illustrate what improvements Peru can achieve with a strategic human resource management.

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

Effective implementation of procurement reforms and specific procurement practices requires a properly trained public procurement workforce. Such implementation not only promotes the effectiveness of the system, but also helps ensure its integrity. OECD experience in working with procurement systems around the world has shown that an adequate workforce is one of the key pillars of a public procurement system.

This is the reason why countries, including Peru, need to develop a procurement workforce with the capacity to continually deliver value for money efficiently and effectively, by 1) ensuring that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools; 2) providing attractive, competitive and merit-based career options for procurement officials; and 3) promoting collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competencies of the procurement workforce (OECD, 2015).

Recent OECD surveys point to the most prominent weakness in public procurement systems: the workforce's lack of capability (defined as the skills-based ability for an individual, group or organisation to meet obligations and objectives – also referred to as "know-how") and lack of capacity (defined as the ability to meet obligations and objectives based on existing administrative, financial, human and infrastructure resources). Challenges for public procurement practitioners include the transition from an ordering function to a more strategic one; increasingly complex rules; the multidisciplinary nature of the profession; and the lack of a professionalisation.

This chapter assesses whether Peruvian public procurement entities have the capability and capacity to perform their duties and meet their objectives. It also includes potential strategies for recognising practitioners working in public procurement entities as professionals and developing bidders'/suppliers' skills.

5.1. The public procurement workforce in Peru

The Peruvian National Civil Service Policy is co-ordinated by the central HRM authority, the National Civil Service Authority (SERVIR in its Spanish acronym), created in June 2008 (Decreto Legislativo No. 1023). This is a specialised body under the Presidency of the Council of Ministers (PCM). The role of SERVIR includes the planning and formulation of national policies and technical norms related to the administrative human resource management system; the development, management and evaluation of training policies; and the organisation and supervision of public competition for the recruitment of staff. The country's civil service is regulated by the new civil service law (Ley del Servicio Civil No. 30057), first published in July 2013 and effective as of July 2014, after the publication of its regulations.

The Government Procurement Supervising Agency (OSCE) covers the capacity development needs of the public procurement workforce. Its sub-directorate on capacity development (17 staff by August 2016) develops training offers through strategic allies; organises training events at national and regional level; and identifies and certifies trainers. OSCE also manages the certification process of the public procurement workforce. Finally, OSCE is in charge of monitoring and evaluating the quality of training services delivered by it and by the strategic allies.

In 2010, SERVIR registered 3 646 public procurement practitioners working in 478 entities: 27 at the national level, 25 at the regional level and 426 at municipal level. Fifty-three percent of the total of these public procurement practitioners were working at national level at the time. Thirty-four percent were at management level and sixty-six percent at operational level.

In 2014, SERVIR registered 6 158 public procurement practitioners working in 1 666 entities (an increase of around 69% in four years in terms of the number of practitioners). The same year, 43% of these practitioners were working at national level and 57% at sub-national level; 27% were at management level and 73% at operational level.

Table 5.1. Characteristics of the public procurement workforce in 2010 and 2014

	Number of practitioners	Number of entities	National level	Sub-national level	Management level	Operational level
2010	3 646	478	53%	47%	34%	66%
2014	6 158	1 666	43%	57%	27%	73%

Source: SERVIR (2010), Diagnóstico de conocimientos de las personas al servicio de los Órganos Encargados de las Contrataciones del sistema administrativo de abastecimiento - Informe de resultados; SERVIR (2014), Resultados del sistema administrativo de abastecimiento, Gerencia de Desarrollo de Capacitados y Rendimiento del Servicio Civil – Resultados del censo de Colaboradores.

By August 2016, OSCE had certified 11 865 professionals and technicians – more than 90% over the SERVIR registry of 2014 and four times the 2010 figures. It should be noted that they are not all necessarily working at present. The number of public entities is about 3 000 in total.

Public procurement practitioners are associated with many different employment regimes, which are currently being reformed under the new civil service law. The purpose of the new law is indeed to establish a single scheme for civil servants at national, regional and local levels.

In 2014, the majority of public procurement practitioners (36%) worked under the administrative service contracting regime (Legislative Decree No. 1057 – Contratación Administrativa de Servicios, CAS). This regime offers temporary (renewable) contracts, for periods of three or six months, up to one year; consequently, it does not offer any career stability or evolution (there is no possibility of being promoted). Practitioners under the CAS regime are not subject to performance evaluation. The recruitment of staff under the regime is done at the entity level. The only requirements for hiring a staff member under a CAS regime are a job description, including the requisites and necessary competencies; new hire justification; budget availability; publication of the job offer during at least five working days; an evaluation of the CVs; and an interview.

The second largest public procurement practitioner's group (31%) work under the public office regime (Legislative Decree No. 276 – Carrera Administrativa, CA). Practitioners under this regime have taken part in a public competition for the recruitment of staff. Under the CA regime, training is compulsory and a prerequisite for promotion (51 hours of training are necessary at each career level in order to be promoted to the next career level, unless the state cannot afford the required trainings). Evaluations, which are compulsory for staff under the CA regime, are not taken into account when it comes to promotions. CA staff change levels approximately every 2-4 years.

5.2. Engaging in a strategic workforce planning

5.2.1. A new public procurement capacity strategy to professionalise the workforce

Peru has identified an institution in charge of the capacity development needs of the public procurement workforce, but could also consider developing a new procurement capacity strategy in order to professionalise public procurement staff.

OSCE has been in charge of the capacity development needs of the public procurement workforce since 2008. Issues related to capacity were included in the strategic plan for public procurement in Peru (Plan Estratégico de las Contrataciones Públicas del Estado Peruano) and the OSCE strategic institutional plan (Plan Estrategico Institucional) for 2012-16. OSCE could consider preparing a new procurement capacity strategy, based on the new public procurement law (Law No. 30225, Ley de Contrataciones del Estado). The new strategy would cover the year 2017 and beyond, including objectives for the short, medium and long term as well as related indicators to measure its implementation. The main objectives of the past procurement strategies have been 1) creating a specific certification system; 2) strengthening the capacity of civil servants who work in the area of public procurement; 3) creating the "Programme of Support and Assessment of Public Entities" (Programa de Acompaniamiento y Seguimiento, PAS); 4) strengthening the participation of suppliers in public procurement, including SMEs; and 5) strengthening the participation of other stakeholders in public procurement (including auditors, judges and prosecutors).

On the basis of the work undertaken by OSCE since 2008, the new procurement strategy could explore and select the best options for addressing current procurement knowledge gaps and bottlenecks. Adopting and formalising a new strategy would also constitute a symbolic milestone to attract attention and buy-in from all stakeholders. There is no international model for such procurement capacity strategies, but there are frameworks to provide directions and recommendations for developing them. In formulating a strategy, the following issues would need to be taken into account (OECD, 2016a):

- Building a sustainable procurement workforce is a long-term effort. The strategy needs to tackle both immediate and long-term issues.
- The strategy should aim to improve individual capabilities as well as the institution's capacities in the area of public procurement.
- The strategy is a planning exercise. It involves the development of a step-by-step roadmap with prioritised objectives and expected outputs.
- Building a sustainable procurement workforce mobilises time and resources. The strategy needs to include a budget.
- The development of a procurement capacity strategy should be inclusive. All relevant stakeholders should be gathered, in the framework of a task force or a steering committee.

The new procurement capacity strategy would need to be integrated into national efforts to build the capacity of the public sector workforce. It should also be in line with

the guidelines of SERVIR, which is responsible for the development of a national training policy as well as for the definition of common standards for entities' capacity development planning. For instance, Peruvian legislation foresees a Development Plan of Public Officials (Plan de Desarrollo de las Personas al Servicio del Estado, PDP) for each individual entity. Each entity needs to develop an annual PDP, which must be shared with SERVIR. The PDPs, which need to be linked with other strategies and instruments, should include information on the measurement of staff competencies; the entities' strategy with regard to the training offer; and information on funding. (The PDPs must be funded entirely by the entities).

This integration of the procurement capacity strategy with the PDPs requires strong co-ordination between SERVIR and OSCE. On the one hand, OSCE needs to ensure that SERVIR guidelines for planning, execution and evaluation of capacity building and training are taken into account in developing the strategy. This is also the reason why a task force or steering committee should be created for this specific purpose. On the other hand, SERVIR needs to ensure that the capacity development and training guidelines are being implemented by OSCE. SERVIR especially needs to monitor and certify the training proposed by OSCE and its strategic allies, in order to ensure that the OSCE offer matches the needs identified and respects certain national standards.

A procurement capacity strategy would address all issues related to the capacity of the public procurement workforce in one document. That would strengthen co-ordination among actors and the links between the different available tools, such as the diagnosis of capacity and knowledge gaps; public procurement jobs profiles; certification and performance management systems; and training offers. A procurement capacity strategy would also greatly help strengthen strategic workforce planning (SWP) in the area of public procurement. SWP means more than simply closing the capacity and knowledge gaps in the area of public procurement and developing training in order to do so. SWP is also deemed to have the potential for enabling an organisation to remain aware of and be prepared for future needs, related to the size of the workforce, its deployment across the country, and the knowledge, skills and competencies needed to pursue its missions.

5.2.2. Thorough diagnosis of capacity and knowledge gaps to respond to specific needs of the public procurement workforce

Peru has undertaken several diagnoses of the capacity and knowledge gaps of the public procurement workforce; those results should be taken into account when developing the new procurement capacity strategy.

A central step when developing a procurement capacity strategy is to assess current needs and problems. The evaluation should inventory bottlenecks, skills, knowledge, structures and the ways of working of specific staff categories as well as in specific geographical locations. It should ideally cover the institutions' capacities as well as staff competencies. Needs analysis can also be used in order to assess the procurement education system, including training institutions and availability. A precise assessment can help identify the specific issues that need to be tackled and refine the objectives of the procurement capacity strategy.

Since 2010, SERVIR has been undertaking diagnoses of capacity and knowledge gaps of the Peruvian public service. These diagnoses cover the following areas: human resources, accounting, public financial management, public investment, modernisation of public management, public procurement and strategic planning. These analyses aim at

providing a better overview of the characteristics of civil servants, measuring the knowledge gaps and guiding the development of capacity development strategies according to identified needs. The two last diagnoses developed by SERVIR covered cultural competencies in the social programmes of the Ministry of Development and Social Inclusion (Ministerio de Desarrollo e Inclusión Social, MIDIS) in 2015 and the Ministry of Education (Ministerio de Educación, MINEDU) in 2016.

SERVIR undertook two diagnoses of the capacity and knowledge gaps in the area of public procurement, in 2010 and 2014. The diagnosis of 2010, as seen above in Table 5.1, identified 3 646 public procurement practitioners, 78% of which participated in the evaluations. In 2014, SERVIR identified 6 158 public procurement practitioners, 78% of which participated in the evaluations. The public procurement system has been the area where the participation rate has been the highest.

The 2010 diagnosis, based on the scoring of a test of 30 questions, permitted a classification of the public procurement workforce into four categories:

- **From 0% to 50%:** Capacity building is needed for general as well as specific issues, in accordance with the functions of the public procurement staff (category 1)
- **From 51% to 70%:** Specific knowledge needs to be strengthened in order to carry out the functions of the public procurement staff (category 2)
- **From 71% to 85%:** Specific knowledge needs to be strengthened in order to advance the capabilities of the public procurement staff (category 3)
- **From 86% to 100%:** Optimal knowledge in order to carry out the functions of the public procurement staff (category 4).

The results from 2014 revealed that the majority of the workforce (almost 40% out of 4 793 public procurement staff evaluated) needed specific knowledge to be strengthened in order to carry out their functions (category 2). According to the 2014 results, only 9.62% had enough knowledge in order to carry out their function in an optimal way (category 4). The results showed that capabilities were stronger at national than at sub-national level. They also indicated that capabilities were weaker in staff without any academic level (36% in category 1) when compared with staff with a master's degree (almost 18% in category 1). Finally, the diagnosis makes it clear that professionalisation of the public procurement workforce is most needed at the beginning of the career (almost 50% of public procurement staff with less than one year of experience are not meeting the criteria).

These results need to be used as a basis when developing the procurement capacity strategy. They show the importance of improving the professionalisation of the public procurement workforce, in particular at sub-national level, and of focusing on staff without academic level and who have recently started their job. The country would also need to build on the results of 2010 that had shown the lack of capabilities with regard to regulatory issues (56% of the staff) and "ordinary procedures" (40% of the staff), as well as "irregularities in the contract" (59% of the staff). These categories refer to the basic functions in public procurement developed by SERVIR, in co-operation with OSCE, in 2010: 1) planning; 2) preparatory acts; 3) ordinary procedures; 4) cases not covered; 5) submission of appeals; 6) formalisation processes and 7) irregularities in the contract. Those were updated in 2014.

So far, no specific diagnosis of the capacity of suppliers has been undertaken, even though suppliers are central actors in the public procurement system: as in any other

country, they represent the other side of the equation, the offer side. OSCE, along with the chamber(s) of commerce, could therefore consider identifying the number of persons working on public procurement issues in the private sector and among potential suppliers. It could also undertake surveys in order to acquire a better picture of the specific training needs of suppliers in relation to public procurement processes. The specific needs of micro, small and medium-sized enterprises (MSMEs) should also be taken into account.

The results of these diagnoses of capacity and knowledge gaps not only should be taken into account in developing a procurement capacity strategy, but also should serve as the basis for developing specific job profiles and public procurement training curricula. The measurement of competencies foreseen in the performance management system of Peru should also be used, in order to identify training needs on a regular basis. So far, these measurements do not seem to have been taken into account in a systematic way to develop public procurement training, even though they are meant to influence the drafting of the PDPs.

5.3. Providing attractive, competitive and merit-based career options

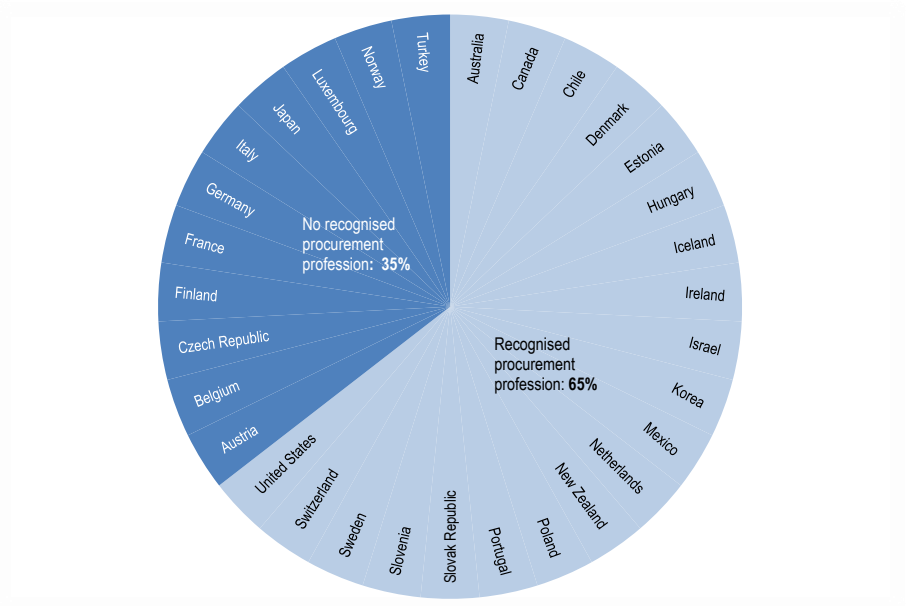
5.3.1. Recognising the singularity and specificity of the procurement function to make it more attractive

Recognise the singularity and specificity of the procurement function across its different employment regimes. Recognising procurement as a specific profession could help make it more attractive and more strategic.

Public procurement systems need to attract motivated and skilled individuals in order to ensure the effectiveness of these systems, but also their integrity. Efforts to encourage people to become involved in public procurement can be enhanced by recognising the singularity and specificity of the procurement function. It should be recognised that public procurement is not a purely administrative function, but rather a strategic function in the public service. The procurement function is important in terms of the size of goods, services and capital assets purchased by government, and in its use to achieve social, economic and other purposes. Public procurement is also a multidisciplinary profession that requires, among others, knowledge of law, economics, public administration, accounting, management, and marketing. These interdisciplinary skills are increasingly required given the growing complexity of public procurement processes, with their shift to strategic procurement. Competency frameworks, job profiles, certification systems and training should provide attractive, competitive and merit-based career options for public procurement professionals.

Public procurement is still handled as an administrative function in many OECD countries, with over one-third of countries (39%) reporting that procurement officials are not recognised as specific professionals (see Figure 5.1). Sixty-one percent have a formal job description for procurement officials and 44% have specific certification or licensing programmes in place (e.g. Australia, Canada, Chile, Ireland, New Zealand, the Slovak Republic, Switzerland and the United States). However, only 28% have integrity guidelines (e.g. codes of conduct) in place specifically for procurement officials (OECD, 2013a).

Figure 5.1. **Procurement is not recognised as a specific profession in more than a third of OECD countries**



Source: OECD (2013a), *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264201385-en.

In the case of Peru, many important efforts have been made by OSCE – formally in charge of the capacity development needs of the public procurement workforce – to recognise the singularity and the specificity of the procurement function. OSCE has for example developed a specific certification system for public procurement officials. There is however still room for improvement with regard to the development of formal job descriptions or job profiles. Furthermore, no specific competency model or framework has been developed. (See Section 3.2 for more information on competency models and frameworks.) Peru also lacks specific integrity guidelines and training. The performance management system in public administration is the same for all public service officers. Many different aspects of human resource management indeed need to be taken into account to recognise singularity and specificity, and to professionalise and empower the public procurement workforce, as shown in the example of New Zealand (Box 5.1).

The lack of unique civil servant systems and differing employment regimes were identified as important challenges by stakeholders during the interviews. According to public procurement officers, the staff turnover is very high, which can result in increased workloads for remaining staff, the hiring of inexperienced temporary employees, and loss of institutional knowledge. The high turnover also means that training needs are also high, given that new staff usually need the training quickly. Needs assessment realised in Peru shows that almost 50% of public procurement staff with less than one year of experience is not meeting the requirements for properly conducting their work. Also, some types of contracts, such as the CAS regimes, do not offer any stability to public procurement officers or any attractive long-term career options. Interviews have also shown that salaries differed under the different employment regimes. Some public procurement officials expressed the need to standardise the level of remuneration in order to avoid too many staff turnovers. Finally, public procurement staff members are promoted differently according to the employment regime. Some of the regimes do not offer the possibility of being promoted.

Box 5.1. **Key initiatives to professionalise and empower the public procurement workforce in New Zealand**

i) Develop a model to assess the capability of procurement in agencies.

ii) Assess agency procurement capability on site and provide action plans for development.

iii) Agencies not targeted for on-site assessment complete a self-assessment against the procurement capability model.

iv) Develop standard procurement role competency requirements and implement these in agencies.

v) Benchmark key agency procurement and price performance against the private sector.

vi) Increase migration of skilled and qualified procurement professionals to fill skill gaps.

vii) Ensure that government procurement salaries reflect market norms.

viii) Agencies are to allocate resources to reform procurement practice.

ix) Identify opportunities for procurement shared service centres.

x) Include procurement professionals in works project teams.

xi) Establish a small team of strategic procurement experts (commercial pool) to support high-risk/-value projects across government.

xii) Establish resources to support public-private partnership projects.

xiii) Determine procurement training needs and source providers.

xiv) Agencies are to use tools provided to assess procurement capability and capacity.

xv) Agencies are to ensure that procurement staff members are trained to fill skill gaps identified.

xvi) Provide e-learning to help procurers gain a professional procurement qualification.

xvii) Target key procurement personnel within agencies to fast-track their professional procurement education.

xviii) Develop and launch career development plans for procurement personnel.

xix) Develop New Zealand procurement academy.

xx) Encourage and subsidise public sector procurement professionals in gaining recognised procurement qualifications.

xxi) Launch procurement graduate programme to increase New Zealand capacity.

xxii) Facilitate secondments and career progression planning among agencies for procurement professionals.

xxiii) Establish and facilitate a Procurement Leaders Group (ages under 35 years) of future procurement leaders.

xxiv) Development of "Demystifying Procurement" as a two-day introductory course to procurement in a public sector context or alternatively for learning on line.

Source: OECD (2016b), *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252103-en.

5.3.2. A competency framework and specific job profiles for more effective recruitment

Consider developing comprehensive and coherent public procurement job profiles as well as a specific competency framework for public procurement. All public procurement entities should be encouraged to use these for their recruitment processes and human resource management.

Strengthening professionalisation of the public procurement workforce requires determining the specific functions, skills and competencies critical to achieving the agencies' missions and goals. Competencies should cover professional, technical and personal effectiveness skills, e.g. teamwork, communication, leadership and management of people, projects and resources. Integrity can also be listed as an important behavioural competency in the context of public procurement. Information technology (IT) competencies could also be required for specific procurement jobs. Skills and competencies for effective performance need to be specified for each job involved, and integrated into a competency model or framework. Competency management frameworks not only help to identify the capabilities needed in the workforce; they can also be used in different stages of the human resources processes, such as workforce planning, recruitment, promotion, training and performance assessment. In a competency-based selection process, the required competencies identified for a vacant position are used as the selection criteria.

The development of competency management, as well as the use of common job profiles, is a mid-term priority of SERVIR. OSCE has begun defining the skills and competencies public procurement officials should have. According to its website, OSCE has defined the following four types of competencies: 1) cross-cutting competencies (team work, results-based management); 2) general competencies (records management, office automation, mathematics and statistics, organisational and management skills); 3) legal and administrative competences (public procurement system, other administrative systems, public management and administrative procedures) and 4) technical competencies (planning and programming techniques, market analysis techniques, monitoring and control techniques, and supply chain management). The latter covers professional and technical effectiveness skills as well as personal effectiveness skills. The definition of required skills and competencies allows public procurement officials to know the requirements and helps them identify the areas on which they need to focus. But it does not clearly appear how these skills are included in the overall human resource management, including the recruitment processes and certification systems.

Peru could consider referring to other competency management frameworks for public procurement developed by OECD countries. In doing so, it could take into account the experiences of Australia, Belgium, Canada, Korea, Japan and the Netherlands – but also Scotland. For example, the government of Scotland introduced a framework that identifies the skills and competency levels required by all staff involved in the procurement process, and assists individuals in taking ownership of their personal development through skills assessments, identification of training and development needs, and career planning. The procurement competency framework nurtures the talent that already exists within government. The framework has 13 competencies that make reference to the technical skills needed at different levels to conduct procurement (Box 5.2). The development of such as framework needs to be enshrined in the overall reform of the Peruvian civil service, co-ordinated by SERVIR.

Box 5.2. **The Procurement Competency Framework in Scotland**

A Procurement Competency Framework was developed by the Cross-Sectorial People and Skills Working Group in response to recommendations from the Review of Public Procurement in Scotland (2006). The framework has been endorsed by each of the Centres of Expertise for use in their sectors – Advanced Procurement for Universities and Colleges (APUC) for Scotland's universities and colleges; NHS National Procurement, the centre of procurement expertise for health; and Scotland Excel for the local government sector. It is intended to complement, not replace, existing personal development tools in organisations.

This framework consists of 13 competencies, including:

i) *Procurement processes* – The person has sufficient knowledge and understanding of sourcing and tendering methods to carry out duties associated with the role.

ii) *Negotiation* – The person has the ability to negotiate within the scope of the role.

iii) *Strategy development and market analysis* – The person has the strategy development and market analysis skills necessary to carry out duties associated with the role.

iv) *Financial* – The person has the financial knowledge and understanding needed to carry out the duties associated with the role. Elements include appraisal of suppliers' financial positions, total costing, and the compliance frameworks that exist for public sector finance and procurement.

v) *Legal* – The person has sufficient understanding of legislative frameworks relating specifically to procurement to carry out the duties associated with the role.

vi) *Results focus* – The person is aware of how personal and team objectives contribute to the success of the organisation, and continually demonstrates commitment to achieving these.

vii) *Systems capability* – The person has the knowledge and understanding of systems and processes utilised in the procurement of goods and services. There may be specific system competencies.

viii) *Inventory, logistics and supply chain* – The person has the knowledge and understanding of materials management solutions to carry out the duties associated with role. Elements include inventory, logistics, warehouse management, etc., specifically in organisations that hold stock.

ix) *Organisational awareness* – The person clearly understands roles and responsibilities, how procurement should be organised, and where it should sit within.

Source: OECD (2016a) *Roadmap: How to elaborate a Procurement Capacity Strategy*, MENA-OECD Network on Public Procurement, www.oecd.org/governance/ethics/Roadmap-Procurement-Capacity-Strategy.pdf.

The skills and competencies identified can then be used in the development of job profiles, which combine a statement about what is expected from a job with a view of what the job-holder must bring in terms of skills, experience, behaviours and other attributes needed to do the job well. They focus on the outputs or results expected from the job rather the tasks or functions to be carried out, and they include a statement about the skills and personal attributes needed for the job. Job profiles can be used in the recruitment and selection processes, in relation to both external recruitment and internal recruitment or promotion. They can enable an organisation to achieve a more accurate match, and can also be an effective recruitment tool for attracting the right candidates (OECD, 2013b).

On the basis of the first diagnoses of the capacity and knowledge gaps (2010), SERVIR, in close co-operation with OSCE, has developed seven public procurement basic functions: planning; preparatory acts; ordinary procedures; cases not covered; submission of appeals; formalisation process; and irregularities in the contract. SERVIR then developed a more detailed description of public procurement functions, organised around the main public procurement cycle steps (pre-tendering, tendering and post-award); there are 20 functions in total. Even though the functions are well defined, it is not clear how these are used in human resource management, and if they are used as a basis for defining required competences and job profiles. Beyond the specific public procurement functions, in September 2013 SERVIR developed a specific guide to elaborate job profiles in the different public entities; as it stands though, it is unclear how the above-described functions are integrated into those job profiles, and if the job profiles already exist. According to this guide, job profiles are "structured information with regard to the location of one job in one given organic structure, to the mission, to the functions as well as all the prerequisites and expectations needed for one person to conduct and to perform a job adequately". A mission, functions and co-ordination functions as well as skills and competencies are attached to each job profile.

OSCE should consider using the SERVIR guide in order to identify or finalise specific public procurement job profiles corresponding to the requirements for occupying public procurement positions. At the time of preparing this review, the OSCE website listed four different job profiles or job levels: 1) public procurement assistant; 2) public procurement analyst; 3) public procurement co-ordinator/specialist; and 4) public procurement executive. It is unclear from the interviews with different stakeholders if they have been validated by SERVIR. Also, the OSCE website does not present more detailed descriptions of those job profiles/levels. The finalisation and proper dissemination of the job profiles/levels is crucial not only for the recruitment, but also for human resource management and continued training of the public procurement workforce. Profiling the procurement jobs should therefore be one of the outputs of the new procurement capacity strategy.

It is also important to consider how job profiles are integrated with other aspects of human resource management. For example, information about the expected outputs and result areas for a job must be consistent with what is to be measured and assessed in performance management. The skills and behavioural competencies identified as necessary should be reflected in the recruitment and selection criteria, and in the design of training and development (OECD, 2013b).

5.3.3. Improving staff certification and performance management to create incentives and merit-based career options

Peru has developed a specific certification for public procurement staff, but could consider strengthening performance management of the public procurement workforce in order to create incentives and merit-based career options.

In order to create a professional public procurement workforce, specific education, training and experience requirements for entry and advancement in the procurement field should be established. Threshold levels of knowledge and practice requirements should be defined, for instance in order to obtain senior procurement positions and other procurement responsibilities. These certifications or validation of experience could be defined in co-operation with the academic partners.

OSCE has introduced a certification system applicable to all professionals and technicians working in the public procurement area. Since 2011, more than 12 000 public procurement professionals have been certified by OSCE. The supervisory body has set the following prerequisites to access public procurement jobs: a training of at least 80 hours (in the area of public procurement or supply management); work experience of at least 3 years; and work experience in the area of public procurement or logistics in a private enterprise of at least 1 year. The public procurement official needs to be certified before being employed. Certifications are then given to public procurement officials on a yearly basis, based on one specific online test that each public procurement official needs to take. The online test is one hour long and the official needs to score 14 points of 20 in order to obtain the certification. In case the official fails, they have the possibility of taking the test again. The legislation does not specify how many tries the official can have in total, or what happens if the official is unable to score the 14 points. Therefore, the certification system cannot really be considered as ensuring the quality of the public procurement workforce.

The OSCE certification system has the potential to create incentives and merit-based career options, but it seems that this potential is not used in an optimal way. It remains unclear for example if the results of the test are used in order to decide on promotions. Also, there is no evidence on the use of diplomas and related grades (from 0-20) obtained in the course of training in the overall certification system. In order to create a coherent human resource management system, OSCE should make sure to include the job profiles yet to be developed as well as the related competencies in the current certification system. The certification systems should foresee certifications to "enter" each of the defined job profiles, and online tests should match the competencies needed for each of the job profiles.

Workforce capability can also be strengthened by implementing an efficient performance management system. Such a system would have the potential to improve productivity (the way people work and the outcomes they produce) and employee morale (resulting from on-time performance appraisals and rewards commensurate with employees' contributions); retain top performers (employees would feel accomplished in their work and have stronger career opportunities); and increase value for money. Performance management systems can be an even more powerful tool if they are correctly linked with the institutional goals and strategies of the entity and its performance budget, and contribute to strengthening the overall results-orientation of the entity.

Performance evaluation that was first introduced in Peru in 2009 was put back on the agenda by the new civil service law, and integrated into a large performance management system (Figure 5.2). According to Peruvian legislation (since 2009), performance evaluation is a compulsory, continuous, integral, systematic and objective process in the administrative human resource management system. With the new civil service law, performance evaluation needs to be undertaken on a yearly basis against measurable and verifiable goals. Performance evaluations lead to the classification of public procurement officials in four different groups: 1) staff with distinguished achievement; 2) staff with good achievement; 3) staff with achievements under observation; and 4) unsatisfactory staff.

Figure 5.2. **Performance management model developed by SERVIR**



Source: SERVIR.

As evidenced by the 2013 SERVIR diagnosis, performance evaluations were not yet systematically undertaken across the public procurement workforce under the former civil service law, and are still not performed under the new civil service law. Indeed, in 2015 performance evaluations are only undertaken in a systematic way in four pilot entities (Superintendencia Nacional de Control de Servicios de Seguridad, Arma, Municiones y Explosivos de Uso Civil, SUCAMEC; Instituto Nacional Penitenciario, INPE; Servicio Forestal y de Fauna Silvestre, SERFOR; and SERVIR), which have been expanded in 2016. Performance evaluations are scheduled to be implemented by all entities by 2021 only. In the past, performance evaluations were not always used for promotion decisions; they were still often being taken on the basis on seniority and/or the number of training hours. The new civil service law stresses that promotion can only be given to staff with distinguished achievement and staff with good achievement.

Also in the past, the administrative human resource management system did not yet foresee harmonised criteria for the performance evaluation processes in public administration. With the new law, SERVIR is tasked with establishing specific evaluation methodologies and criteria. Against that background, OSCE and public procurement entities should consider implementing performance evaluations in a systematic way and use the tools developed by SERVIR, including the SERVIR strategy on performance management. Performance evaluations should also be used by the entities to inform public procurement needs and influence the drafting of the PDPs. Moreover, the new performance management system in place should be used as a tool to strengthen results management in Peruvian public service.

5.4. Enhancing public procurement training availability and quality

5.4.1. Specific training curricula to address specific needs of the public procurement workforce and the suppliers

Consider developing specific and detailed training curricula for public procurement officials as well as suppliers in order to address their needs. The curricula should be aligned with public procurement job profiles and related skills and competencies.

Public procurement training should be developed on the basis of the specific needs of the public procurement workforce and the suppliers. They should match the job profiles of public servants working in the area of public procurement and be developed in such a way as to improve the necessary skills and competencies for conducting public procurement functions. The training should reflect the multidisciplinary nature of public procurement. It should cover the legislative aspects of public procurement, but it should also develop critical thinking skills, as navigating the requirements of a procurement system requires more than "simply" following the rules.

Laws and regulations are central to the public procurement function, and need to be adequately covered by the proposed public procurement training. Procurement professionals need to have an appreciation of the impact of procurement law on their daily duties, as well as an understanding and awareness of basic legal principles and their impact on both the award and administration of the contract. An understanding of procurement law also enables the procurement professional to understand their role in the process, so as to be proactive in taking steps to avoid problems that may lead to bid challenges and contract disputes. It therefore seems important to strengthen the training offers in the new public procurement law, including Legislative Decree No. 1341 of January 2017. The training offer should include, among others, public procurement planning and programming, preparation of market analysis, the management of risks as well as of the new tendering procedures. Training should also include practical cases, and public officials should be invited to learn from failures as well as from good practices.

Important efforts have been made to further develop training offers found in the new public procurement law. Due to the issuance of the new public procurement regulation, OSCE planned a 30-hour training programme, among other activities (such as training on the pre-tendering phase and on new procurement methods), but the programme needs to be implemented more widely. According to OSCE, 18 374 persons have participated in training events developed by OSCE and its strategic allies through the new public procurement law and related regulation. Since January 2017, training needs to be updated in order to include provisions of the Legislative Decree No. 1341. OSCE also developed online training offers, through its "virtual classroom" website. Other virtual training presenting the new law is being offered on the YouTube channel. Interviews with different stakeholders have nevertheless shown that the proposed training is far from being sufficient, and that many public procurement officers have not participated in any of this training.

Training is also being implemented in the framework of the PAS programme mentioned above. This training is meant to guide public procurement officers in implementing the public procurement regulatory framework, and in strengthening the management of their public procurement processes. The programme – which started in 2012 in Lima and which was implemented in 33 public entities by 2015 at all three levels of government (national, regional and local) – includes not only tailored advice to public

procurement entities but also specific workshops. Through PAS, 54 workshops have been implemented between 2012 and 2015, as well as 37 technical round tables.

At the time of this review, OSCE had not yet finalised the new curricula for public procurement training. Until now, the universities with whom OSCE has developed a strategic alliance have had to follow OSCE guidelines in devising the implementation of training (2012). Those guidelines distinguish three levels for the training programmes: the basic, intermediate and advanced levels. For each level, the guidelines specify the number of hours required and give a broad indication of the issues to be covered and competencies to be developed. The indications only cover professional and technical skills. They do not take into account necessary personal skills, nor do they necessarily reflect the multidisciplinary nature of public procurement. Finally, the indications do not correspond to the public procurement functions developed by SERVIR and OSCE. It will be important for OSCE to continue defining new study plans and curricula in accordance with the competency framework and the four job profiles/levels (public procurement assistants/analysts/co-ordinators and specialists/executives).

Given that there is no specific and detailed training curriculum in place, the training offers vary from one university to another. Interviews with representatives from different universities showed for example that there were important variations in terms of number of hours per level (and that the number of hours indicated in the OSCE guidelines was not always respected). This situation prevents the establishment of a standardised, homogenous and coherent training offer that perfectly matches public procurement job profiles and that can be used for managing the career advancement of the public procurement workforce. Also, the differences in the training offers prevent OSCE from monitoring the quality of the training delivered against specific criteria. OSCE should therefore consider revising those specific curricula on the basis of the public procurement competency framework and the four public procurement job profiles/levels, taking into account the specificities of the new public procurement law. OSCE should also make sure that the curricula are in line with SERVIR guidelines.

OSCE should also consider defining specific curricula for suppliers, including MSMEs, in close co-ordination with the Ministry of Production (PRODUCE) as well as the chambers of commerce. The proper occasions to do so are the monthly meetings between the MEF, PRODUCE and some MSMEs (begun in June 2016), aimed at disseminating information on the new public procurement law and related regulation and discussing the main challenges MSMEs have with applying the new legislation. Interviews do in fact show that MSMEs have difficulties in understanding and applying public procurement legislation. Training not only helps MSMEs overcome those difficulties but also helps suppliers access and use e-procurement systems, find business opportunities, develop economic proposals and read tender documents, including technical specifications. Strategic allies do not as yet have any specific or detailed indications on how to develop and implement public procurement for suppliers, even though suppliers represent approximately 20% of the total number of people trained in public procurement.

Public procurement training should cover other issues as well, namely integrity and the use of e-procurement systems. They should target both the public procurement workforce and suppliers. OSCE, together with the strategic allies, has developed face-to-face as well as online training (portals, videos and tutorials) on the e-procurement system SEACE (refer to Chapter 7 on e-procurement). According to OSCE, 5 651 public procurement officials nationwide have been trained in the use of the new version of SEACE (version 3) during 2013 and 2014. OSCE should also consider developing specific curricula for integrity training.

Such training should be in line with the code of ethics training co-ordinated by SERVIR, and should in particular cover conflict of interest issues (see Chapter 8 on transparency and integrity). New relevant issues, such as risk management in public procurement or the implementation of secondary policy objectives through public procurement, might also need to be included in the new curricula. It is worth noticing that Perú Compras is carrying out free training lectures named "Optimising public procurement in Peru" for public officials, suppliers and civil society, in order to explain the characteristics and benefits of public procurement through electronic catalogues of framework agreements, reverse auctions, centralised purchasing and purchases by request.

Finally, it would certainly be relevant to identify ways to include the issue of public procurement in initial/fundamental training in universities, particularly in law schools. Doing so would give more visibility to the public procurement function and help attract students to public procurement careers. It would also increase the number of recently graduated students, in particular lawyers, who have a solid grounding in public procurement issues. Interviews with different stakeholders have shown that there is a marked lack of lawyers specialised in public procurement, and that this affects the way public procurement processes are managed in the country.

5.4.2. Certifying training institutions and trainers to improve the quality of public procurement training

Peru has developed numerous strategic alliances with universities to implement public procurement training, but could consider assessing the training in a more systematic way. OSCE´s trainers should continue to be evaluated in order to ensure continued quality of training.

Needs analysis can also be used in order to determine the gaps in and weaknesses of the existing education system, including training institutions and training availability. Issues may for example arise with the fragmentation of training offers and disparities with regard to the quality of the curriculum and of the trainers. Therefore, training offers need to be assessed as well as their certification and accreditation mechanisms. In this framework, it is important to distinguish between professional/specialised training institutions and universities that deliver initial or fundamental training.

Public procurement training offers are developed and implemented by OSCE directly (in 2015, that body organised training events that were attended by 4 411 participants) as well by universities and other institutions with which OSCE has developed strategic alliances. (In 2015, these strategic allies trained 4 659 participants.) According to the OSCE website, 38 strategic alliances have been developed so far, mostly with private universities. OSCE has not yet arranged public procurement training by ENAP (Escuela Nacional de Administración Publica). The co-operation OSCE has developed with universities is in line with the OECD Recommendation on Public Procurement, which suggests that adherents promote collaborative approaches with knowledge centres such as universities, think tanks and policy centres to improve skills and competencies of the procurement workforce. According to the OECD Recommendation, the expertise and pedagogical experience of knowledge centres should be enlisted as a valuable means of expanding procurement knowledge and upholding a two-way channel between theory and practice, capable of boosting the application of innovation to public procurement systems (OECD, 2015).

According to the OSCE website, the prerequisites for becoming a strategic ally are having administrative, teaching and technical staff and adequate infrastructure. It is

important that the criteria cover quantitative as well as qualitative criteria. Possible criteria to measure the quality of a strategic ally may also relate to research, student opinion surveys, employability of graduates, etc. The duration of agreements are specific, usually 1-2 years. SERVIR is accrediting training centres and universities for 3 years. No later than 30 days after signature of the agreement between the strategic ally and OSCE, the ally needs to present an annual working plan based on OSCE guidelines for the implementation of training (2012). This plan needs to be approved by OSCE. Strategic allies must inform OSCE of new courses at least 30 days in advance of their implementation and share the format and further details on the course offered. The strategic ally also needs to undertake a satisfaction survey and prepare a report on the training results at the end of each training period, again based on OSCE guidelines for implementing training (2012).

As part of its mandate, OSCE is monitoring the number and quality of training offers undertaken by each of the strategic allies. The monitoring team of the OSCE sub-directorate on capacity development 1) verifies the quality of the training offers of the strategic allies; 2) evaluates the quality of the pedagogic offer, teaching materials, infrastructure, etc.; 3) selects, evaluates and monitors the trainers of OSCE; and 4) informs the strategic allies of results of the monitoring and evaluation operations. According to the OSCE website, "virtual medals" are distributed to strategic allies that have implemented the planned activities. There is even a prize for strategic allies that have implemented innovative training methodologies.

The OSCE monitoring team seems to have developed a specific methodology and specific instruments to implement monitoring and evaluation. It is nevertheless unclear if OSCE has sufficient capacity to apply this methodology in a consistent way, and what results have been achieved so far. Against that background, SERVIR could play a more prominent role in certifying the training offered by OSCE and its strategic allies. At the very least, SERVIR needs to ensure that the training is in line with the guidelines in terms of planning, implementation and evaluation of capacity development and trainings.

OSCE is also identifying and certifying trainers for public procurement. According to the OSCE website, 114 trainers have been certified (of which, 90 are based in Lima). Trainers must meet certain criteria, including a professional or technical degree, at least five years' experience in the area of public procurement, and at least some experience training. Candidates also have to take a test in order to be included in the trainers list. OSCE needs to ensure that the tests for being included in the trainers list are comprehensive, covering all the issues relevant to public procurement. The tests must also be up to date, meaning that they are aligned with the new public procurement law, regulation and directives. In order for the certification to be efficient, OSCE might consider introducing compulsory tests for trainers who are already on the list in order to make sure that the trainer's knowledge is still up to date (every three years, for example). For the moment, the only condition for being kept on the trainer's list is to undertake two training programmes a year.

5.4.3. Improving accessibility to training opportunities and information desks to ensure high professional standards

Continue improving the accessibility of public procurement training but while exploring different learning methods, including e-learning. Peru could also consider strengthening its information desks for public procurement officials and suppliers.

Ensuring high-quality public procurement training is as important as ensuring the accessibility of training opportunities. Accessibility can be promoted, by advertising training opportunities correctly; by making sure that the training offer is reaching out to public procurement officials at the national as well as sub-national level; by proposing free training and/or training at low cost (including scholarships); and by making use of new information technologies. Accessibility of information should also be ensured to those who are working on procurement processes in public entities as well as in businesses.

Training opportunities need to be advertised not only correctly but also well in advance. OSCE seems to be correctly advertising new trainings on its website, which provides comprehensive information on the target group, the prerequisites, the length of the training in terms of hours, the modality, the dates, the costs, the certificate delivered at the end of the training, and referrals to strategic allies. Information taken from interviews also seems to indicate that strategic allies send information related to new trainings directly to public procurement entities. Even if that may improve advertisement of trainings, public entities may rapidly be overwhelmed by e-mails coming from 38 different universities. This proactive advertising also reflects the fact that public procurement training has become a "business" for many private universities. If the training offerings are certified by SERVIR, they could also be advertised on the SERVIR website.

The diagnoses of capacity and knowledge gaps (in 2010 and 2014) clearly show regional disparities in terms of public procurement capacity, in particular between the national and sub-national levels. It is therefore crucial to ensure that the public procurement staff members of all regions, in particular regions with a weak public procurement workforce, have access to public procurement trainings. In addition to the SERVIR diagnoses, OSCE is monitoring demand for training, per region. The latest statistics available on the OSCE website relate to the 2014 diagnosis; they specify for each of 12 regions (out of 25) the number of strategic allies present in the region; how much strategic allies are needed; the number of training requests (monthly); and how many training events were organised. It is nevertheless unclear how OSCE is using this information, and if regions with specific needs are being proposed specific and/or additional trainings. The majority of trainers (almost 80%, according to the OSCE website) are located in Lima. Most of the courses also seem to take place in Lima. It is therefore important for OSCE to continue monitoring the training offer per region, and to take into account specific regional needs in the procurement capacity strategy. Against that background, it is also important that strategic allies continue to propose training in universities as well as in-house, which are both "face-to-face" training modalities.

OSCE has made considerable efforts to develop different training modalities (face-to-face as well as online), increasing access to public procurement information and training. OSCE has for example created a "virtual classroom" website (Aula Virtual de OSCE, AVO), which provides access to online courses developed by OSCE and trainers certified

by OSCE for public procurement officials as well as suppliers. Access to AVO is free and without any restriction, ensuring optimal accessibility to training opportunities. The AVO website also includes a online chat and opportunities to come in contact with trainers. OSCE should continue exploring different learning methods – such as e-learning (electronic learning), m-learning (mobile learning) and blended learning (which combines face-to-face instruction with online education) – and develop its training offers accordingly.

E-learning – the use of information and communications technology (ICT) to enhance and/or support learning in education, – may indeed relax time and place constraints and improve accessibility to training. Beyond that, e-learning makes it possible to adapt the pace of learning to the learner, in terms not only of the total time to complete a course or programme, but also of the route each learner takes to arrive at the end of the course (OECD, 2016c). Peru could consider referring to the Norwegian experience in developing e-learning courses on public procurement (Box 5.3). OSCE should also make sure the AVO website is working and continuously updated. OSCE may want to consider regular monitoring and evaluation of the website, in order to make sure users can easily access the information. In addition to the AVO website, the general OSCE website has links to relevant YouTube videos developed by the supervisory body's strategic allies and certified trainers.

Box 5.3. **E-learning public procurement in Norway**

Recognising the need for capacity building and training of personnel in the public sector – and the costs involved in traditional methods – Norway has developed a platform offering online training. In 2014, Difi, the Norwegian Agency for Public Management and eGovernment, was given the task of developing common digital training programmes and establishing a common platform for distributing and sharing such programmes.

The learning platform (læringsplattformen.difi.no), which was launched in June 2016, provides all public entities and their employees with e-learning courses, and offers them the possibility of sharing their respective digital learning resources with other public entities. The courses are available to everyone for free. They can be easily accessed on computers, tablets and smartphones with simple Internet access, and are compatible with most commonly used web browsers. Once users register and log in, they get an overview of courses begun and completed, and can download certificates from courses taken. The greatest learning effect is assumed to come from mixed forms of learning, e.g. by participation in reflection groups. Most courses come with implementation material for downloading. Surveys showed that the vast majority of participants (80%) liked this way of learning.

In establishing the learning platform the government was seeking to achieve several goals, including increased learning efficiency, increased flexibility and increased access to new and relevant knowledge. E-learning was chosen because it can be carried out regardless of time and place. By replacing local courses with joint training, facilitating content sharing, creating holistic learning pathways, and ensuring consistency between course development and common needs, the quality of training has been improved. Handling a large part of the digital learning through a central unit allowed for better skills management. The main economic benefits are better use of resources, reduced purchases of assistance for course development, fewer overlapping courses, and reduced licensing, administrative and operating expenses for administration and implementation.

Courses in public procurement

Since June 2016, Difi has released four different courses in public procurement available on the learning platform. The courses are normally divided into modules or short episodes, e.g. in the form of video snippets, that can be taken independently. The duration of the courses varies between 30 and 60 minutes in total. The modules are a combination of practical examples, multiple choice questions, and information and tips from experienced buyers and managers. Target groups are both new and experienced buyers as well as managers, and may also include university students.

Box 5.3. **E-learning public procurement in Norway** *(continued)*

The quest for good procurement – This course provides insight into all phases of public procurement, with useful examples and exercises. It is divided into five independent short episodes about the strategic use of public procurement and its planning, implementation and monitoring. The course also includes a module for managers.

How to avoid social dumping in public procurement – This course contains five short films on foreigner victim of social dumping. It examines how to identify contractors who are not legitimate, how to follow up a contract, and how to build a culture against social dumping.

Life cycle cost for constructions and buildings (LCC) – DIFI has developed three e-learning courses in LCC for constructions and buildings, providing an introduction to LCC; more advanced training and practical examples. Target groups are property managers; maintenance managers; suppliers of goods and services to public buildings, facilities and properties; and university students.

Guide to standard government contracts – Government standard contracts for the purchase of IT hardware and software, **operation and maintenance**, as well as development and consulting services, are drafted by Difi for the public sector, in co-operation with customers and suppliers. The course provides a quick introduction to the agreements, including the use of framework agreements, and guidance on which agreement to use for different purposes.

Source: Information provided by Difi, the Norwegian Agency for Public Management and eGovernment.

One final but central aspect to ensure the accessibility of training opportunities relates to financing modalities. Online training solutions are free of charge, but "face-to-face training" is not. The entities need to cover the costs of the training offers. Interviews with different stakeholders have shown that single entities are restricted in terms of training budgets; they therefore cannot afford diploma courses for example, but only short two- to three-day courses. According to a survey undertaken by SERVIR, the average budget for one person is USD 134[1] per year (USD 184 at central level and USD 66 at sub-central level). An 80-hour public procurement course runs USD 845. Their limited annual training budgets can be seen as an important hurdle to access to training, particularly in the context of changes in legislation that create additional training needs. Given the recent adoption of a new public procurement law, Peru might consider offering more free training to public procurement officials and suppliers, to ensure efficient implementation. All training programmes about the new public procurement legislation offered by OSCE were free of charge, but those proposed by the strategic allies are not. More free classes on the specificities of the new law would ensure greater awareness within the public procurement workforce. OSCE could also identify if specific scholarships, such as SERVIR scholarships, could be introduced or used.

In addition to making training opportunities accessible, information related to public procurement, in particular the new public procurement law, needs to be accessible, for free and at all times. Interviews with several stakeholders have shown that public procurement officers (as well as suppliers) need explanations and guidance outside training as well, and that they cannot always access relevant information in an efficient way. OSCE could consider reviewing the way it assists public procurement officers throughout the year, and propose more efficient and accessible information desks, portals and systems. Public procurement officers shared their difficulties getting in touch with OSCE experts (through the "consultation centre") and accessing relevant information in a timely fashion. They also mentioned during the interviews that advice given by OSCE differed sometimes with that provided by the MEF, causing uncertainty and lack of

clarity. OSCE has made the effort to develop a specific advice portal on public procurement legislation in order to provide relevant information. It has also developed a FAQ section to cover issues related to the legislative framework, SEACE and the National Registry of Suppliers (*Registro Nacional del Proveedores del Estado*, RNP) that can be further expanded.

5.5. Proposals for action

In order to enhance the capabilities of the public procurement workforce and the suppliers, the following actions could be undertaken by the Peruvian authorities:

5.5.1. Engage in strategic workforce planning

- Peru has identified an institution in charge of the capacity development needs of the public procurement workforce, but could also consider developing a new procurement capacity strategy in order to professionalise public procurement staff.
- Peru has undertaken several diagnoses of the capacity and knowledge gaps of the public procurement workforce; those results should be taken into account when developing the new procurement capacity strategy.

5.5.2. Provide attractive, competitive and merit-based career options

- Recognise the singularity and specificity of the procurement function across its different employment regimes. Recognising procurement as a specific profession could help make it more attractive and more strategic.
- Consider developing comprehensive and coherent public procurement job profiles as well as a specific competency framework for public procurement. All public procurement entities should be encouraged to use these for their recruitment processes and human resource management.
- Peru has developed a specific certification for public procurement staff, but could consider strengthening the performance management of that workforce in order to create incentives and merit-based career options.

5.5.3. Enhance public procurement training availability and quality

- Consider developing specific and detailed training curricula for public procurement officials as well as suppliers, in order to address their needs. Curricula should be aligned with public procurement job profiles and related skills and competences.
- Peru has developed numerous strategic alliances with universities to implement public procurement training, but could consider assessing the training in a more systematic way. OSCE's trainers should continue to be evaluated in order to ensure the continued quality of training.
- Continue improving the accessibility of public procurement training while exploring different learning methods, including e-learning. Peru could also consider strengthening its information desks for public procurement officials and suppliers.

Note

1. The exchange rate of USD 1 = PEN 3.314 (at 9 August 2016) is used for all amounts in Peruvian soles in this chapter.

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Chapter 6

Implementing effective internal control mechanisms and risk management framework to safeguard the Peruvian procurement system

This chapter describes the Peruvian National Control System as well as the dedicated control mechanisms introduced for public procurement. Against the framework of the 2015 OECD Recommendation on Public Procurement, it analyses the way internal controls – including financial control and management are co-ordinated, resourced and integrated in Peru. The chapter also discusses how the country has developed specific internal control and risk management frameworks, strategies and tools to identify and address threats to the proper functioning of the public procurement system. In addition it highlights the importance of ensuring the implementation of these mechanisms and systems, for instance by raising the awareness of public procurement entities and strengthening their capacities. Finally the chapter analyses the tools and mechanisms available to monitor implementation of the internal control system and risk management function, as well audit reports. The experience of various OECD countries is presented to illustrate how the mechanisms in place could be strengthened.

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

Public procurement is one of the government activities most "at risk" of waste, mismanagement and corruption. The size, volume and the regularity of transactions, the close interactions between the public and private sectors and – progressively – the complexity of procedures are the main reasons for the strong potential for corruption in the public sector. Internal control mechanisms and risk management systems help to address the risks and support accountability throughout the public procurement process.

Internal control is an integral process that is carried out by an entity's management and personnel. It is designed to address risks and to provide reasonable assurance that in pursuit of the entity's mission, the following general objectives are being achieved: 1) the operations carried out are orderly, ethical, economical, efficient and effective; 2) accountability obligations are fulfilled; 3) there is compliance with applicable laws and regulations; 4) resources are safeguarded against loss, misuse and damage. In order to achieve those objectives, internal control consists of five interrelated components: a control environment; risk assessment; control activities; information and communication; and monitoring (INTOSAI, 2004; COSO, 2013).

In recent years, Peru has developed a National Control System (Sistema Nacional de Control, SNC) as well as an internal control and risk management framework. Yet, according to the 2014 implementation report of the internal control system, prepared by the General Comptroller of the Republic (Contraloría General de la Republica, CGR), only 25% of public entities (from a sample of 655 entities) have a mature internal control system in place. Among the internal control components, risk assessment is one of the weakest: 68% of public procurement entities indicated in the survey that they had no risk assessment policy in place, and 71% of the entities are not implementing risk assessment activities.

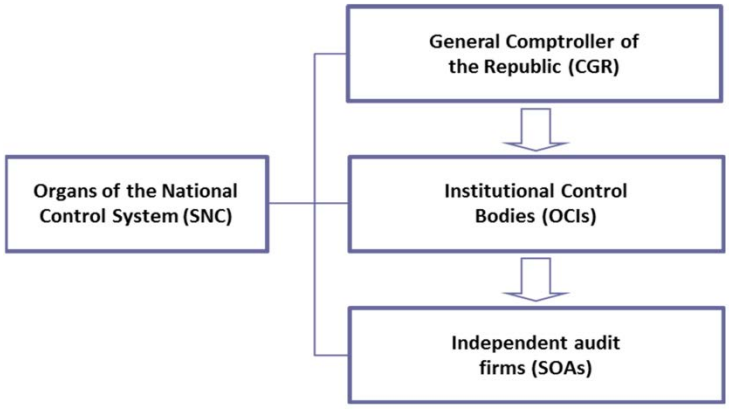
This chapter assesses how Peru has developed and implemented effective internal control mechanisms as well as risk management in procurement activities, and provides recommendations on strengthening the supervision of risks and on the assessment and mitigation of risks in the framework of public procurement.

6.1. Peru's internal control and risk management system

6.1.1. The Peruvian National Control System

The SNC is built on the basis of the Peruvian Political Constitution from 1993 (article 82) and regulated by Law No. 27785, first published in July 2002, as well as by Law No. 28716, published in March 2006 and related to internal control. The General Comptroller of the Republic heads the SNC. The other important actors of the SNC are the Institutional Control Bodies (Órgano de Control Institucional, OCIs), in charge of evaluating the internal control and audit within a specific entity. The OCIs report directly to the CGR, and the heads of the OCIs are appointed by the CGR. Finally, the SNC also covers independent audit firms (Sociedades de Auditoria, SOA), legal entities of private law providing external control and audit services.

Figure 6.1. **Peruvian National Control System**



- The CGR is in charge of defining the legal and regulatory framework related to internal control, and evaluating the internal control mechanisms implemented by the entities. The CGR is undertaking *ex ante* and *ex post* audits as well as financial and performance audits. As stated in the introduction, risk assessment is one of the five components of internal control.
- The principal functions of OCIs are the supervision, monitoring and verification of the entities' actions and performances – with a specific focus on effectiveness, efficiency and transparency in the use of public resources and value for money – as well as verification of compliance with the legal framework. OCIs are undertaking three types of controls: ex ante, financial and performance audits. These controls and audits are done according to the annual control plans of the OCIs, which should be in line with the strategic guidelines for government control planning, issued by the CGR on a yearly basis. The role of OCIs also involves follow-up on the findings and recommendations by the CGR. OCIs report to the CGR twice a year.
- Under the supervision of the CGR, the SOAs too are realising financial audits on a sample of the most relevant procurement operations.
- The entities themselves are also key actors when it comes to control, given that they are in charge of implementing, executing and maintaining internal control, including risk management, on a daily basis.

6.1.2. The supervision role of OSCE

In addition to the CGR, the OCIs and the SOAs, the Government Procurement Supervising Agency (OSCE) plays a central role in the supervision of public procurement processes. According to article 52 of the new public procurement law (No. 30225), OSCE has the following functions:

- To undertake *ex officio* supervisory actions, random and/or selective, with regard to the procurement methods established by the law, except for the exceptions established in the regulation. This supervision also applies to the cases excluded from the scope of application of the regulation detailed in article 5 of the legislation.
- To undertake supervisory actions upon request, with regard to the provisions included in the Consolidated Text of Administrative Procedures (TUPA) and current directives. This supervision also applies to the cases excluded from the scope of application of the regulation detailed in article 5 of the legislation.

These functions are specified in the latest regulation on the organisation and functions (Reglamento de Organización y Funciones, ROF) of OSCE, issued in April 2016. One main function of the organisation is to supervise public procurement processes with regard to the relevant methods laid down by the law. The ROF specifies that OSCE can undertake *ex officio* supervisory actions regarding: i) direct awards and exceptions under OSCE´s supervision; ii) macro supervision reports. The supervisory actions undertaken upon request are specialised, thematic, and related only to certain stages of the procurement process.

Following adoption of the new public procurement law, its regulations and the ROF, a new risk management directorate was created to manage the supervising strategy of OSCE towards the activities of the country's public procurement entities. The concept of risk has been incorporated in the ROF, given the nature of the supervisory function. The regulation focuses on specific risks: 1) those affecting competition, 2) those related to the use of direct awards and exceptions under OSCE´s supervision, and 3) those related to obstacles at the different stages of the public procurement cycle. By August 2016, 57 persons were effectively working for the risk management directorate, including 3 technicians (9 positions were vacant at the time this report was prepared). The new directorate is composed of three sub-directorates:

- The sub-directorate for the identification of risks related to competition is in charge of undertaking actions upon request in two cases established by TUPA: i) when participants request that responses to consultations and observations be raised with OSCE; and ii) barriers to access to selection procedures. This sub-directorate counts 27 officials including, one technician (August 2016).
- The sub-directorate for the identification of risks related to direct awards and exceptions is in charge of executing *ex officio* supervisory actions or supervisory actions upon request with regard to the reasons for using direct awards and/or exceptions under OSCE´s supervision. This sub-directorate counts 11 staff and one vacant position (August 2016).
- The sub-directorate of risk assessments is in charge of organising, executing and controlling the macro supervision of the preparatory acts, risks related to partitioning the contracts, and excessive requirements and deficiencies in the contract execution. OSCE only intervenes in contract execution if citizens are being affected (due to delays or interruptions) and the controversy has not been submitted to arbitration or conciliation. In August 2016, the sub-directorate of risk assessments counts 19 staff, including one technician and five vacant positions.

Also, at any time OSCE can receive complaints about other transgressions. These are addressed from a risk management perspective and, if applicable, communicated to the SNC for the eventual determination of functional responsibilities. Finally, the new supervision strategy foresees the elaboration of pattern reports (macro reports) to improve knowledge management.

Table 6.1. **Scope and functions of the CGR, the OCIs and OSCE**

	CGR	OCIs	OSCE
Scope	Audit of the use of public resources at all levels of government	Audits of one entity (900 OCIs throughout the country)	Supervision of the contracting procedures at all levels of government
Staff	2 500 approximately	On average 25 per OCI	66 staff in the OSCE risk management directorate (May 2016)
Types of controls	Ex ante and ex post audits, financial and performance audits	Ex post audits, financial and performance audits	Supervision and control only; no audits
Focus	Execution of public procurement processes	All public procurement cycle steps	Tendering processes

Source: Information provided by OSCE.

6.2. Defining the roles of, and strengthening co-ordination among, the major control bodies

6.2.1. Specifying and consolidating the roles and responsibilities in terms of internal control

In order to develop effective internal control mechanisms and risk management in public procurement, the Peruvian authorities could specify and consolidate the roles in and responsibilities within the internal control system, in particular within public entities

In Peru, many different stakeholders are undertaking control functions and supervising public procurement processes. Clear lines for oversight of the public procurement cycle should be established to ensure that the chains for responsibilities are clear, that oversight mechanisms are properly in place, and that the delegated levels of authority for approval of spending and approval of key procurement milestones are well defined. The different stakeholders also need to ensure that internal controls – including financial and management controls – and external controls are sufficiently resourced, and integrated. Controls need to be in place for: 1) monitoring the performance of the public procurement system; 2) reliable reporting and compliance with laws and regulations, as well as clear channels for reporting credible suspicions of breaches of those laws and regulations to the competent authorities, without fear of reprisals; 3) consistent application of procurement laws, regulations and policies; 4) a reduction of duplication and adequate oversight in accordance with national choices; 5) independent *ex post* assessment and, where appropriate, reporting to relevant oversight bodies (OECD, 2015a).

When it comes to the internal control system specifically, management and personnel at all levels have to be involved to address risks and to provide reasonable assurance that the entity's mission and general objectives have been achieved. Internal control is effected by people, and people must know their roles, their responsibilities, and the limits of authority (INTOSAI, 2004).

The SNC has been continually strengthened since adoption of Law No. 27785 in 2002 and Law No. 28716 in 2006, as well as the publication of the guide for

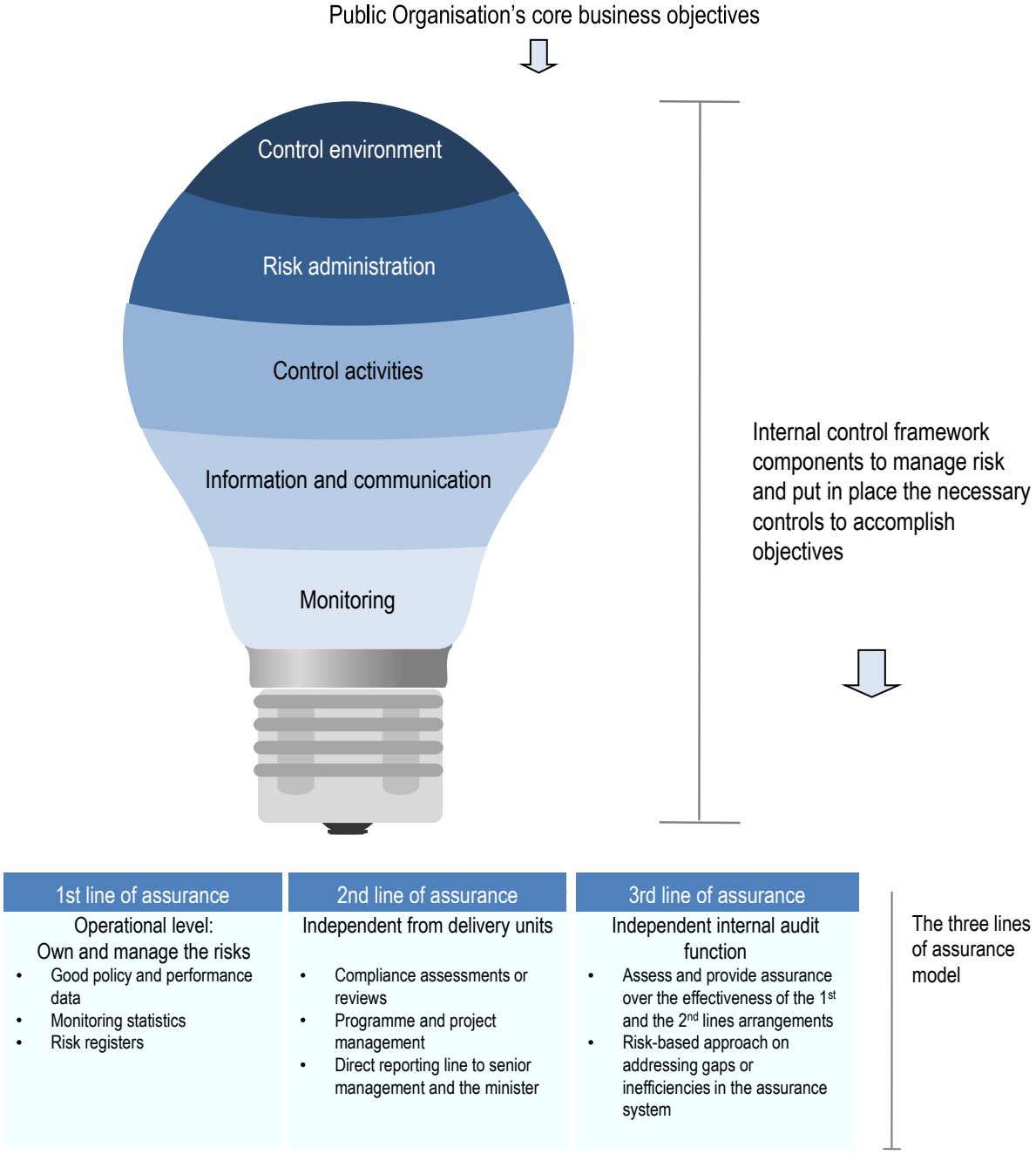
implementing the internal control system (Resolución de Contraloría General No. 458-2008-CG). One main reform aiming at strengthening and modernising the SNC is the CGR project "New Model of Operation of the Institutional Control Bodies", which aims at enhancing control services. The CGR also issued a new resolution (No. 163-2015-CG) regulating the competences and activities of the OCIs; the duties of the head of the OCIs and the rest of the staff; and the institutional and operational relations between the OCIs and the hosting entity and the CGR. This significant modernisation and reform programme basically aims at incorporating internal controls into the structure of the CGR.

In order for the reform to be effective however, a few challenges need to be tackled relating to budget as well as human resource management. Given the budget constraints, OCIs' heads and staff are still often administratively linked to the hosting entities (appointed and/or remunerated). In April 2016, only 50.74% of OCIs' heads (375 in total) were remunerated by the CGR. According to the CGR, this situation is breaching the principle of independence of the controller-auditor, limiting the improvement of the control services and the empowerment of the CGR. This situation is also addressed in the Report of the Presidential Integrity Commission published in December 2016, which recommends guaranteeing the necessary resources to OCIs in order to ensure their autonomy and independence from the hosting entities.

Specification of the roles and responsibilities of the OCIs in terms of internal audit (IA) should come with details of the roles and responsibilities of the entities' staff, in terms of financial and managerial control (FMC) at different organisational levels and among specific individuals. This is a prerequisite for avoiding duplication, overlaps and gaps, and for developing effective internal control mechanisms as well as risk management – in government activities generally, and certainly in procurement activities. This was one of the main objectives of the new CGR directive No. 013-2016-CG/GPROD related to implementing the Peruvian internal control system (Sistema de Control Interno, SCI). The new directive makes it clear that the civil servants of the public entities are in charge of implementing, executing and maintaining the SCI.

Moreover, it is important to ensure that public entities understand the relationships and linkages among the entities' core business objectives, the components of internal control, and the Three lines of Defence model (see Figure 6.2). In the first line, mid-level managers are supposed to design and implement arrangements aimed at verifying how well objectives are being met and risks managed and supervise the proper execution of these activities. The responsibilities of individuals within the second line, directly reporting to senior management, include compliance assessments or reviews. The third line aims to provide top management with an independent and objective judgement on the framework of governance, risk management and control. This third line is the role of the OCIs. Given that the separation of the three lines of assurance is not yet clear to all the entities, the Peruvian authorities could consider implementing a pilot project in the area of public procurement, in order strengthen the internal control mechanisms and risk management in public procurement.

Figure 6.2. **Relationship among organisation's objectives, the internal control components and the Three Lines of Defence model**



Source: OECD (2017), *OECD Integrity Review of Peru: Enhancing Public Sector Integrity for Inclusive Growth*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264271029-en.

In addition to specifying the roles and responsibilities of public entities, including OCIs, it is important to consolidate and communicate on the supervision function of OSCE, given its central role in the public procurement landscape. Its supervision activities based on risks indeed have the potential to develop into an effective internal control and risk management system in public procurement. These activities are

undertaken on the basis of specific criteria approved by the risk management directorate, which are included in an electronic system that selects random samples of the public procurement processes to be supervised. The system will be integrated to the version 3 of the country's Electronic System for Government Procurement and Contracting (Sistema Electrónico de Contrataciones del Estado, SEACE).

Since the reform in April 2016, the supervisory actions of OSCE have been based on the identification of three types of risk: those affecting competition, those related to the use of direct awards and exceptions under OSCE´s supervision, and those related to obstacles at different stages of the public procurement cycle. The recent reform of April 2016 covering supervision of the three types of risk noted above is a response to the new law. It aims at simplifying public procurement processes by for instance excluding all purchases under 8 Peruvian Taxation Units (*Unidades Impositivas Tributarias*, or UIT), but also by including new public procurement methods, the possibility for any person to submit a bid and not just the legal representative, etc. Given that this change may lead to more direct purchases and budgets excluded from the scope of application of the public procurement regulation, the supervision of risks by OSCE related to inadequate use of direct awards and exceptions under OSCE´s supervision (called evasion risks) have been strengthened. The new strategy of OSCE foresees not only supervision of individual processes, but also the identification of patterns of action in the different entities through the publication of thematic reports. The latter activity can contribute to strengthened knowledge management. In 2015, the supervisory body's activity included 2 105 judgements; 262 monitoring activities; 52 exonerations and 903 complaints.

6.2.2. Enhancing communication, co-ordination and harmonisation among the major control bodies

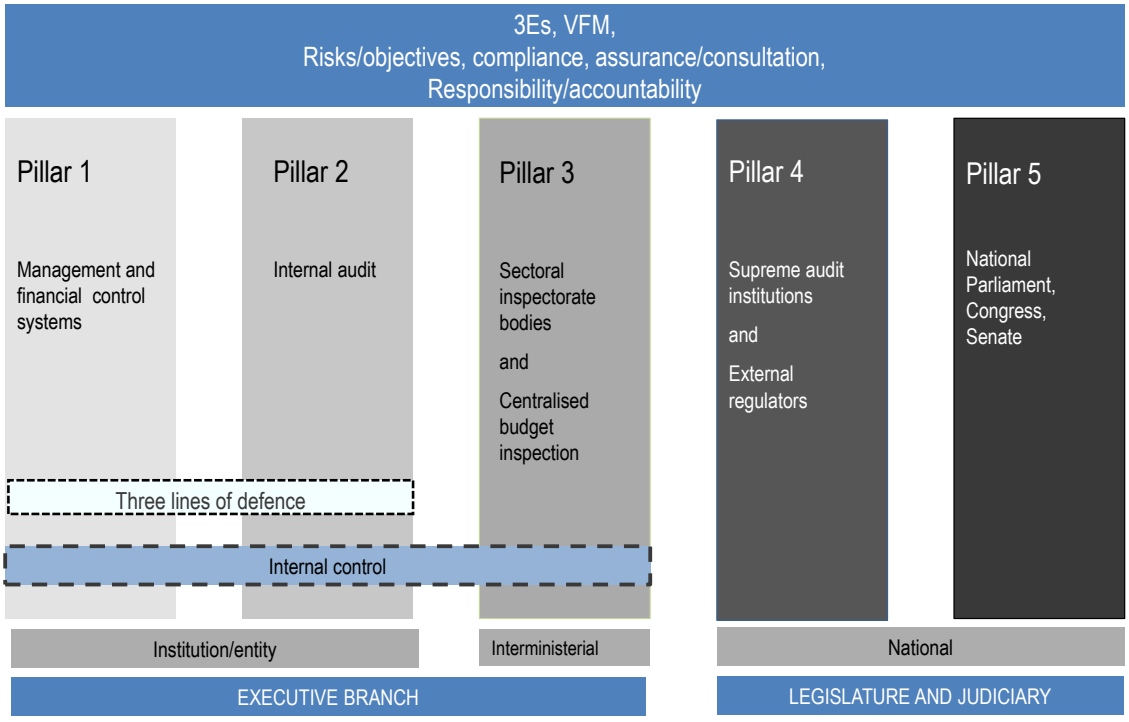
The Peruvian authorities need to strengthen the communication, co-ordination and harmonisation of processes between the control bodies and the supervising agency. Closer co-operation may lead to strengthened trust among the stakeholders, and more effective control activities

Specifying the roles and responsibilities of each stakeholder is of the utmost importance in improving effective internal control mechanisms and risk management, including in public procurement. In order for the mechanisms to be truly effective however, the government of Peru needs to ensure proper communication, co-ordination and harmonisation among the major control and supervision bodies, including OSCE and the CGR. The major control bodies and related roles and responsibilities are depicted in Figure 6.3. The five Pillars show that an effective accountability system involves all three powers of government: executive, legislature and judiciary. The first two Pillars relate to the three lines of assurance referred to in Figure 6.3. In order to promote effective internal control mechanisms and risk management in public procurement, co-operation between the OCIs and the rest of the entities (corresponding to pillars 1 and 2 of the framework) needs to be improved.

The analysis and interviews undertaken during the fact-finding mission have shown not only that the communication and co-ordination between the OCIs and the public procurement entities are weak, but also that there is a lack of trust. This situation is hampering the implementation of control activities, but also implementation of recommendations issued by the OCIs, and OSCE, the CGR and SOAs (representing pillars 3 and 4 of the framework). Co-operation among the pillars in terms of the

verification and monitoring of implementation related to audit reports has been recently clarified in the CGR directive (No. 302-2015-CG) which describes how the entities, the OCIs and the CGR should communicate. In order to strengthen this communication and co-ordination, Peru could make use of Internal Control Committees, which need to be set up by the entities in the framework of the new directive aiming at strengthening the implementation of internal control.

Figure 6.3. **The basic pillars of an accountability system**



Source: OECD (2017), *OECD Integrity Review of Peru: Enhancing Public Sector Integrity for Inclusive Growth*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264271029-en.

Communication and co-ordination also need to be ensured beyond pillar 1 and pillar 2 in the accountability system. OSCE needs for instance to make sure it communicates and co-ordinates with the CGR. The co-operation between OSCE and the CGR is framed by a co-operation framework signed in 2012 that aims at facilitating the collaboration between the two institutions in terms of control and supervision actions related to public procurement. It seems that neither party has implemented specific mechanisms to facilitate joint actions in the four years since the signature of the agreement. The institutional operative plan of OSCE, which includes the control and supervisory actions of the agency, is still not harmonised with the plan of the CGR and not proactively shared with the CGR (although posted on line). Both institutions nevertheless committed to revamping their collaboration with a recently signed Letter of Intention, that sets out the conditions for a new agreement, including joint plans, activities and exchanges of experience and information.

Following the signature of the letter, OSCE and CGR developed a Competence Boundaries Matrix and an action plan that foresees joint action in five areas, including in the area of internal control. The action plan includes 1) regular meetings in order to

exchange information and so strengthen relevant tools; 2) the transfer of information linked to implementation of those tools, and 3) identification of good practices and assessment of dissemination. Those joint activities will need to complement the provisions foreseen in the new public procurement law, which specifies that one of the functions of OSCE is to inform the CGR in case of transgressions. In 2014 and 2015, OSCE forwarded a total of 32 complaints to the CGR, based on indications of crimes or infringements. Finally, co-operation between the OCIs and the entities is not mentioned in the new public procurement law or in the directives related to the supervisory role of OSCE.

At the same time, the new public procurement law introduces a new actor in terms of supervision of public procurement processes: the Multi-sectoral Public Procurement Monitoring Council (*Consejo Multi-sectorial de Monitoreo de las Contrataciones Publicas*), composed by a representative of the Ministry of Economy and Finance (MEF), a representative of OSCE, a representative of INDECOPI (National Institute for Protection of Competition and Intellectual Property) and one representative from the Anti-Corruption Directorate of the National Police of Peru. The mission of this Council is to analyse and inform the competent authorities of the cases of fraud, collusion and corruption in public procurement processes.

The creation of an additional oversight body in the control and audit landscape of Peru (even though the Monitoring Council does not officially belong to the SNC) can be considered an additional burden to the existing stakeholders. It can also be seen as an opportunity, as it provides a tool to strengthen communication and co-ordination among the institutions dealing with supervising public procurement processes and aiming to reduce risks. The Peruvian authorities need to make sure that the activities of the Monitoring Council, which can range from undertaking studies and analysing cases to lodging complaints related to fraud and corruption, are not duplicating existing mechanisms and are being communicated and co-ordinated with other relevant bodies. (For further recommendations on the Multi-sectoral Public Procurement Monitoring Council, refer to Chapter 8, "Enhancing integrity and managing conflict of interest in public procurement".) Peru may also consider introducing similar co-ordination mechanisms among OSCE, the Public Prosecutor's Office and the CGR, to discuss pertinent issues.

6.3. Strengthening the control and risk management frameworks and developing tailored guidelines, tools and templates

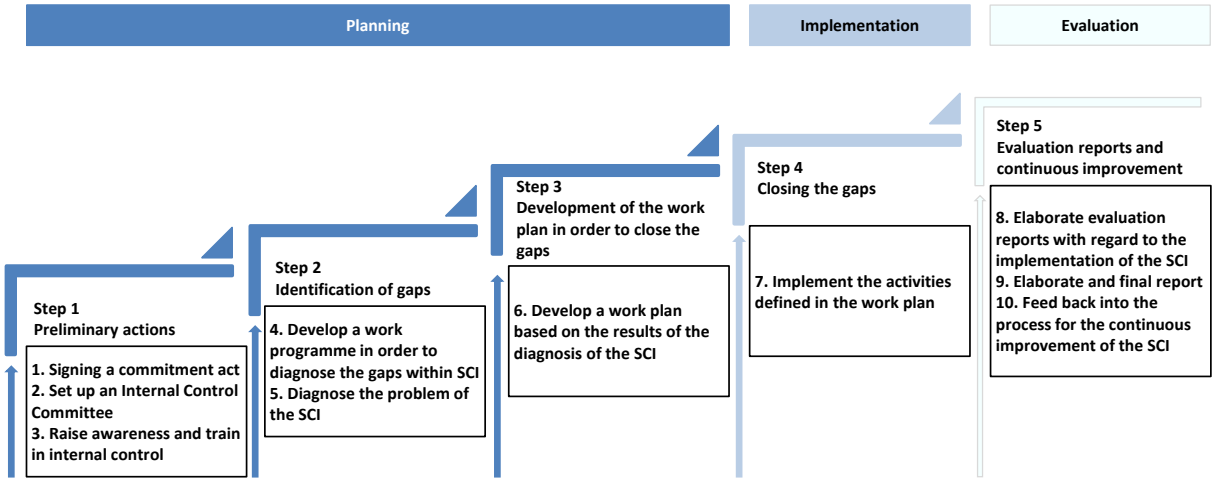
6.3.1. Strengthening the internal control framework and implementation guidelines

Peru has developed a solid internal control and risk management framework, structured according to relevant international standards, but the authorities should make sure that public procurement entities have the necessary implementation guidelines and tools

Peru has a solid conceptual internal control framework. The Conceptual Internal Control Framework, of the CGR, published in 2014, is structured according to the relevant international standards (INTOSAI, COSO). The framework follows the 2008 publication, Guide for the implementation of the internal control system. In May 2016 the CGR issued a new directive, No. 013-2016-CG/GPROD, aimed at strengthening the

implementation of internal control. This new directive follows adoption of the budget law for the year 2016 (Law No. 30372), which includes a specific provision on internal control and obliges each entity of the country to implement its own internal control system within 36 months. The aim of the latest directive by the CGR is to specify the model and timelines for the implementation of the SCI at the three levels of government, and measure the level of maturity of the SCI on the basis of the information registered by the entities in a specific software application. The benefit of the latest directive is that it introduces the practical steps needed to implement the SCI (see Figure 6.4). The directive calls on the head of the entities to set up an Internal Control Committee for implementation of the SCI. It specifies that the committee be in charge of developing a programme of work to identify and fill the gaps of the SCI. The development of these guidelines is part of a strategy elaborated by the CGR (in the Internal Control Department) in January 2015 to strengthen the internal control in the public entities.

Figure 6.4. **Implementation model of the internal control system**



Source: Resolución de Contraloría, 2016.

Specific implementation guidelines and assistance seem to be necessary for entities that encounter difficulties and show weak results, such as entities at sub-national level. The CGR self-assessment shows that the regional and local governments perform below the average of entities from central government (only 20 points out of 100, against 36 points for the central level). It also reveals that municipalities seem to have particular difficulties in understanding and implementing their roles and responsibilities with regard to internal control, including risk management (only 15 points). Guidelines and assistance also seem relevant for areas with a high risk of corruption, such as public procurement (see Table 8.1 on the "Corruption risks associated with the different phases of the procurement cycle" in Chapter 8). This is the reason why the CGR developed a specific component in the above-mentioned strategy to incentivise strengthening of internal control systems. This component includes two initiatives: support to pilot entities as they implement internal control systems, and an incentive plan for municipalities. The initiatives developed by the CGR are a good example on how weak entities and entities at risk can be supported in the implementation of internal control and risk management:

- *Support to pilot entities (public procurement)* – In 2015, over a period of eight months, the CGR has been implementing a pilot project to accompany 15 internal control entities of the three levels of government (central, regional, local) in the implementation of internal control in public procurement processes. According to the CGR, public procurement has been chosen as a pilot area, given that: 1) public procurement is an area at risk with regard to wrongdoings and corruption; 2) approximately 50% of national public expenditures corresponds to public procurement, and 3) public procurement processes are a priority area in institutional policy of the CGR. The pilot project also aimed at institutionalisation of the SCI in their entities while generating good practices and successful experiences replicable in other entities with similar characteristics. The CGR furnished the pilot entities with implementation guidelines that were specific (see Table 6.2). Preliminary results of these pilots show that: management has a greater awareness of internal control; that staff have been trained in internal control; that public entities developed their formalisation documents for implementing internal control (including Internal Control Committees); that they identified their risks and gaps related to their public procurement processes (using the tool developed by the CGR – see Table 6.2) and developed guidelines for their mitigation; and that entities began gaining experience and building an internal control culture. Although this initiative targets public procurement, there was no involvement on the part of the MEF, OSCE or Perú Compras in its development or implementation.

Table 6.2. **Tools for internal control**

Tools for Internal Control	
Awareness	Key message addressed to senior management regarding the importance and benefits of having a strong internal control system
Training	Training of officials and employees of the entity in the conceptual and methodological issues of internal control in the public management cycle
Guidelines	Guidance for the entity on the different aspects of the public procurement process, enabling the entity to identify risks and implement controls. The entity shall prepare its work plan (diagnostic tool, report model, work plan model).
Monitoring	To oversee and monitor implementation of the entity's work plan
Evaluation	Through the Institutional Control Body, evaluation of the internal control system for the procurement process is carried out

Source: General Comptroller of the Republic of Peru (Internal Control Department).

- *Support to municipalities (public procurement)* – In 2016, the pilot project has been enlarged to 250 other entities at sub-national level, in the framework of the Incentive Programme for the Improvement of the Management at Municipal Level. The CGR defined specific steps for implementation of the SCI in public procurement entities (planning phase, execution phase, evaluation phase). It has also organised training workshops for the 250 entities in 15 regions from January to May 2016 and, along with the MEF and with support from the German Development Cooperation, developed a number of specific guidelines for the entities. The implementation guidelines include general information on the legal framework as well as the objectives of the initiative, step-by-step guidance on the activities to be implemented by the entities, and specific templates to help the entities in implementing those activities. This second initiative aims at being implemented by December 2016.

6.3.2. Developing tailored internal control and risk management tools and templates for the area of public procurement

The authorities should develop internal control and risk management guidelines, tools and templates specifically tailored for the area of public procurement. Those tools and materials should be developed by OSCE in co-operation with other relevant ministries and actors

According to the OECD Recommendation, governments should integrate risk management strategies and assessments for identifying, analysing and mitigating risks throughout the public procurement cycle. Where possible, tools should be developed to identity risks of all sorts – including potential mistakes in the performance of administrative tasks and deliberate transgressions – and bring them to the attention of relevant personnel, providing an intervention point where prevention or mitigation is possible (OECD, 2015a). Public procurement entities should ensure compliance with existing laws and regulations, thus mitigating the risks of potential litigation, fines and even reputational risks. Another core objective of public procurement entities should be to minimise the opportunity for fraud and corruption as much as possible, through developing a sound control environment and putting in place the proper control activities to mitigate the relevant risks.

Taking this into consideration, OSCE should develop specific risk assessment tools for the Peruvian public procurement system. Even if the new public procurement law and regulation do not mention the importance of internal control and risk management in the different stages of public procurement processes, there is still a need to ensure that public procurement entities establish relevant internal control and risk management mechanisms.

Against this background, the Peruvian authorities should consider developing tools and templates tailored to public procurement, which would describe the practical steps closely linked to day-to-day business. These should be developed by OSCE, and should take into account the pilots recently undertaken by the CGR as well as the tools already developed. The CGR indeed developed and made available to the 15 pilot entities a diagnostic tool for internal control in the procurement process. The tool, made of six different steps, provides advice to the entities on how to apply internal control, how to identify the risks related to public procurement processes, and how to strengthen their SCI by introducing additional controls to their public procurement processes. It also includes basic guidance on identifying and prioritising risks. This diagnostic tool for internal control has been made available to 250 local governments nationwide in 2016, and will gradually expand its application to other entities in other areas. According to the available brochures, the public procurement entities have been given four months to apply the tool and to forward the results to the CGR. The CGR shared this tool with OSCE in the framework of the intention letter signed between both entities mentioned above, and OSCE commented on it before it became available to public entities. The results obtained by the information registered by the entities in the Internal Control Assessment and follow-up system will be shared with OSCE and the MEF for decision making. In general, the CGR and OSCE, along with other relevant stakeholders, should consider developing a joint approach and tools on the basis of the experience and results of these pilots.

The following tools could be developed by Peru in order to strengthen internal control and risk management in public procurement entities:

- The internal control and risk management tools tailored to public procurement should for instance explain how the five internal control components (control environment, risk assessment, control activities, information and communication and monitoring) could link with the public procurement process. A checklist could be included for public procurement entities to verify that the five components are being taken into account in their daily activities, and that the risks are evaluated and mitigated (see Table 6.3).

Table 6.3. **Leveraging internal control over the procurement cycle**

Internal control components	Tailor-made linkages with the procurement process
Control environment	Are there clearly defined ethics requirements and professional certifications for those employed in the procurement units?
Risk assessment	Has the entity assessed vulnerable areas in the procurement procedures?
Control activities	Are there in place effective controls to mitigate the procurement risks identified?
Information & communication	Are deficiencies in the procurement process communicated and remediation activities shared?
Monitoring	Is the procurement process linked with indicators and a monitoring system to document its efficiency and effectiveness as well as the implementation of corrective actions?

Source: Information provided by CGR.

- Peru could also develop a specific checklist of risks linked to public procurement activity. Risks can be identified at all stages of the cycle, and include: 1) risks of errors and anomalies in all aspects of the procurement process, due to a lack of awareness on the part of the stakeholders involved or due to difficulty in the case of complex projects; 2) financial risks, particularly during periods of severe economic and financial uncertainty; 3) risks of fraud, misuse of public funds or corruption, in case of misappropriation; 4) reputational risks/potential damage to the image of the contracting authority. These risks should be actively managed, particularly in the framework of large events and large infrastructure projects, where such risks are increased. Peru could base its guidance on the checklist of potential risks in the public works, goods and services procurement process carried out by the government of Tasmania in Australia (see Box 6.1 below).

Box 6.1. **Tasmania' (Australia)'s checklist of potential risks in the goods and services procurement process**

The Tasmanian Government developed a checklist of potential risks in the procurement cycle that is composed of 11 parts:

1. identifying the need and planning the purchase
2. developing the specification
3. selecting the purchasing method
4. purchasing documentation
5. inviting, clarifying and closing offers
6. evaluating offers
7. selecting the successful tenderer
8. negotiations
9. contract management
10. evaluating the procurement process
11. disposals.

For instance, these are the risks identified for the first phase:

Risk	Likely consequences	Action
Understatement of the need	Purchase of unsuitable product or service Money wasted Need not satisfied	Analyse need accurately
Overstatement of the need	Greater expense Poor competition	Analyse need accurately Use functional performance requirements
Misinterpretation of user needs	Totally unacceptable purchase or not most suitable product or service Time lost Increased costs Possible downtime	Improve consultation with users Obtain clear statement of work and definition of need
Insufficient funding	Delay in making the purchase Additional costs for re-tender	Obtain appropriate approvals before undertaking process Improve planning
Impractical timeframe	Inadequate responses from tenderers Reduced competition Delivery schedule not met	Improve forecasting, planning and consultation with users Improve communication with potential tenderers
Probity issues	Increased procurement costs Misuse of resources Most suitable product not obtained Unethical conduct	Implement best practice policies, guidelines and practices Maintain ethical environment Improve training of personnel Put suitable controls and reviews in place Consider using a probity adviser Improve communication with potential tenderers

Source: OECD (2015b), *Effective Delivery of Large Infrastructure Projects: The Case of the New International Airport of Mexico City*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264248335-en.

- Finally, the internal control and risk management tools for the area of public procurement should include specific guidance on establishing a red flag system. Red flags are warning signals or hints of something that needs extra attention, to exclude or confirm potential fraud and corruption for instance. Red flags may be person- or organisation-related (Box 6.2). A red flag system could be piloted in OSCE in the framework of its new supervision strategy based on risks, in order to identify the inherent risks more effectively. Those tools should be accompanied by specific templates to facilitate their implementation in the daily business of the public procurement entities, and should use digital solutions and technologies to the extent possible. The red flag system could be included for instance in the new Business Intelligence Tool CONOSCE.

Box 6.2. **Examples of red flags for corruption in procurement**

World Bank red flags for fraud and corruption in procurement:

1. Complaint from bidders or other parties
2. Multiple contracts below procurement threshold
3. Unusual bid patterns
4. Seemingly inflated agent fees
5. Suspicious bidder
6. Lowest bidder not selected
7. Repeated awards to the same contractor
8. Changes in contract terms and value
9. Multiple contract change orders
10. Poor quality works and/or services

Chartered Institute of Public Finance and Accountancy red flags:

i) Physical losses
ii) Unusual relationship with suppliers
iii) Manipulation of data
iv) Photocopied documents
v) Incomplete management/audit trail
vi) IT controls of audit logs disabled
vii) Budget overspends
viii) IT login outside working hours
ix) Unusual invoices (e.g. format, numbers, address, phone, VAT number)
x) Vague description of goods/services to be supplied
xi) Duplicate/photocopy invoice
xii) High number of failed IT logins
xiii) Round sum amounts invoiced
xiv) Favoured customer treatment
xv) Sequential invoice numbers over an extended period of time
xvi) Interest/ownership in external organisation
xvii) Non-declaration of interest/gifts/hospitality
xviii) Lack of supporting records
xix) No process identifying risks (e.g. a risk register)
xx) Unusual increases/decreases.

Source: OECD (2015b), *Effective Delivery of Large Infrastructure Projects: The Case of the New International Airport of Mexico City*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264248335-en.

6.4. Improve the perception and capacities of public procurement entities with regards to internal control and risk management and promote the participation of other relevant stakeholders in control activities

6.4.1. Raising awareness regarding internal control and risk management among the public procurement entities

The Peruvian authorities need to improve public procurement entities' perception of internal control and risk management and the overall internal control environment, by making them aware of the importance and impact of these functions on achieving organisational objectives

A solid conceptual internal control framework and tailored guidelines, tools and templates are not enough to ensure effective internal control and risk management functions. Those frameworks, strategies and tools need, above all, to be properly implemented in order to prevent waste, mismanagement and corruption. Implemented should be first and foremost by the public entities, which should own and implement these processes and tools. In order to do so, those stakeholders need to understand their roles and responsibilities as well as the importance and impact of internal control and risk management on their daily work. This is the reason why raising awareness among public entities, including public procurement officials, of internal control and risk management is crucial. According to the OECD Recommendation, countries should "publicise risk management strategies and raise awareness and knowledge of the procurement workforce and other stakeholders about risk management strategies, their implementation plans and measures set up to deal with the identified risks". This recommendation also applies to internal control generally.

In Peru, internal control and risk management seem to be considered an administrative routine and/or additional burden by public entities. Public officials often consider the OCIs to be in charge of internal control and risk management activities, while the involvement of operational units seems to be limited, even if internal control and risk management need to be considered integral parts of management processes. This perception shows that there is no internal control culture within public entities (or among public procurement officers) as yet, and that awareness is strongly needed. It seems important, for instance, that operational units understand that they are in charge of undertaking internal control and risk management.

It also seems crucial that the benefits of effective internal control and risk management processes be explained to staff (and not just to senior and middle management), and that incentives be developed in order to ensure proper implementation of the tools. Awareness campaigns or events on the importance of integrating internal control and risk management activities should be developed into daily business as a tool. Periodic messages (e.g. newsletter, videos, etc.) can be used to demonstrate the linkages between a sound internal control environment and achievement of the entity's objectives. In that sense, the CGR has developed an internal control webpage in order to disseminate information on the topic. It includes information on the roles of the different actors and legislation relating to internal control, as well as videos and FAQs.

Peru has recently highlighted the importance of informing public officials on internal control and risk management, and of creating an internal control culture with public entities by strengthening communication. The new CGR directive No. 013-2016-CG/GPROD calls on the public entities to publish all the activities, good

practices and achievements related to the implementation of the SCI (through web and other tools such as internal newsletters). It invites public procurement entities to create specific internal control sections in their respective institution webpages. The new directive also calls on public entities to elaborate awareness campaigns and capacity development plans (within the 90 days following publication of the directive). In addition to the new directive, specific guidelines for the dissemination of internal control inside the public entity have been developed by the CGR. The guidelines suggest for example publishing news on the state of play of implementation of the pilot projects. The entities may choose to communicate particularly on cases related to public procurement, and OSCE may support public entities' efforts in that area.

6.4.2. Strengthening the capacity of public entities in terms of internal control and risk management applied to public procurement

The capacity of public entities needs to be strengthened in terms of internal control and risk management related to public procurement: public officials need to understand the available strategies and tools, implement internal controls and risk assessments, and take action accordingly

Awareness raising is the first step towards effective implementation of the frameworks, strategies and tools developed by the SNC and OSCE. Interviews undertaken during the fact-finding mission have shown that public procurement officials' knowledge of internal control issues and risk management is still very low, and that they have not participated in any specific training on the importance of internal control and risk management in the framework of public procurement processes. As previously mentioned, the results of the 2014 implementation report on the internal control system confirm that internal control is being poorly implemented. These poor results can be explained by the relatively recent introduction of internal control and risk assessment implementation guidelines and tools. The lack of capacity-building programmes on those issues for public officials (other than those working for the CGR and the OCIs) also explains the poor performance.

In order to support implementation of the legal framework and guidelines related to internal and external control (such as the guidance note for implementing the SCI), the CGR created the National School of Control (Escuela Nacional de Control, ENC). The ENC is in charge of the training and capacity building of public servants on issues related to control and public management, as well as the knowledge transfer and control methods resulting from investigative actions. The ENC provides regular training programmes on internal control, mainly oriented to public officials in charge of implementing the SCI. It has also developed a specific programme on public procurement that includes 80 hours of training, which is proposed twice a week for 2.5 hours (16 weeks in total). The training proposed by the ENC on public procurement is composed of three different modules covering public procurement selection processes, contract management, and audit of public procurement processes. It seems that the course is not primarily dedicated to public procurement officials but to auditors who wish to strengthen their knowledge of internal control and management related to public procurement processes.

This is the reason why OSCE should consider developing specific courses on this topic (either face-to-face courses implemented by its strategic allies, or online courses). Those courses should include a thorough presentation of the specific frameworks, guidelines, tools and templates available as well as a presentation of the roles and responsibilities of public procurement officers in the overall Peruvian SNC. The courses

should moreover help public procurement officers to use their judgement. An effective system of internal control indeed demands more than rigorous adherence to policies and procedures. Management uses judgement to determine how much control is enough and to select, develop and deploy controls across the entity (COSO, 2013).

To start with, OSCE may want to consider strengthening the capacities of its own staff by developing specific courses for their personnel, as a means of introducing the new supervision approach of OSCE based on risks. Understanding the risks related to public procurement processes and including the risk factors in the daily work of the directorates can indeed contribute to developing effective internal control and risk management processes in public procurement. OSCE staff therefore needs to be made aware of the new approach and trained on the related tools for identifying and mitigating the risks. Also, OSCE (particularly its sub-directorate on capacity development) should ensure the use of the knowledge and experience collected by the new risk management directorate in developing its internal and external training programmes. The judgements delivered by the staff of the risk management directorate can indeed offer valuable insights into the specific issues and challenges that public procurement practitioners face in these areas.

6.4.3. Improving civil society participation in control activities

Peru has made significant efforts to expand civil society participation in control activities of public procurement processes, but the authorities need to ensure that audit reports are being published and made easily accessible to the public

Beyond strong internal control, risk management and external audit systems, governments should involve citizens in the scrutiny of the use of public resources, in particular public procurement projects such as works. The importance of promoting transparent and effective stakeholder participation is stressed by the OECD Recommendation, which invites adherents to provide opportunities for the direct involvement of external stakeholders in the procurement system. The objectives are to increase transparency and integrity while assuring an adequate level of scrutiny, provided that confidentiality, equal treatment and other legal obligations in the procurement process are maintained (OECD, 2015a). In the past, several OECD countries have involved stakeholders in the procurement process, including anti-corruption offices, private sector organisations, end-users, civil society, the media and the public at large. More recently, some countries have introduced direct social control by involving citizens at critical stages of the procurement process (OECD, 2016a).

In recent years, Peru has started involving external stakeholders in the scrutiny of the use of public resources. In 2012, the CGR developed an information system on public works (Sistema de Información de Obras Públicas, INFOBRAS) that provides access to information related to public works at national level, encouraging civil society to participate in the controlling the use of public resources. In 2016, INFOBRAS already contains more than 48 000 public works at national level. The system is interconnected with other relevant information systems, including the Integrated Financial Management System of Peru (Sistema Integrado de Administración Financiera, SIAF), SEACE, the Public Investment National System (Sistema Nacional de Inversión Pública, SNIP) and the National Identification and Civil Status Registry (Sistema Nacional de Identificación y Estado Civil, RENIEC). INFOBRAS includes a geographic search that allows the tracking of georeferenced public works according to different filters, such as the stage, the contractor and the invested amount, among others. The system has been awarded twice in Peru, by the

private sector as well as by the NGO CAD (Ciudadanos al Día). INFOBRAS has also been qualified as international good practice for transparency and citizen participation in the framework of the United Nations Convention Against Corruption (UNCAC) and replicated in other countries, in particular in Chile (Box 6.3). Interviews with stakeholders have shown that many cases of corruption were detected by citizens and/or journalists through INFOBRAS and followed up by the OCIs of several entities.

Box 6.3. **The GEO-CGR portal of the Chile's Supreme Audit Institutions**

Based on the Peruvian experience, in December 2014 the Office of the Comptroller General of the Republic of Chile (CGR) launched the GEO-CGR portal that stores and allows for the publication, articulation and consultation of geo-referenced information on the investment of resources in public works. The aim is to promote social control by providing citizens and other users with the tools to monitor reliable and timely information categorised by territory. Users can lodge complaints and make suggestions, facilitating the more active participation of citizens in ensuring control in the public sector. Sixty-four public entities are involved in the current pilot; the monitoring system is now fully operational. By January 2016, the Chilean online platform has received more than one million visits and allowed the identification of 813 works at standstill across the country, representing an amount equivalent to more than PEN 4 000 million.

Source: OECD (2016b), *Progress in Chile's Supreme Audit Institution: Reforms, Outreach and Impact*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264250635-en and CGR, 2016.

Some efforts to provide information to external stakeholders and involve them in the scrutiny of the use of public resources can also be identified in the framework of performance auditing, implemented since 2012 by the Performance Audit Department of the CGR. When the CGR is undertaking performance audits, it makes sure that the results of the audits carried out are disseminated through a communication plan that mainly seeks to promote accountability, improve transparency and encourage public administrations and citizens to perceive the benefits of governmental control through these audits. In addition to the information provided by INFOBRAS and communication efforts around performance auditing, the Peruvian authorities need to ensure that audit reports are being published and made easily available to the public. So far, reports are not being published automatically. This recommendation is also included in the Report of the Presidential Integrity Commission published in December 2016, which develops several proposals to fight corruption. The Presidential Integrity Commission even suggests publishing the reports 24 hours after they are generated.

6.5. Monitor implementation of the internal control systems and audit reports

6.5.1. Monitoring implementation of the internal control and risk management systems

Peru has recently developed tools to monitor implementation of the internal control systems and risk management function. The authorities need to ensure that new monitoring tools, such as the software application Monitoring and Evaluation of the Internal Control System, are being used

Monitoring implementation of the internal control system and risk management function is key to make sure that the framework, strategies and tools are properly applied by entities, in particular in the public procurement area. The monitoring gets even more important when implementation, targets and deadlines are being set by the legal framework. In the case of Peru, it is worth noting that the CGR had initially established a maximum period of 24 months for implementation of the internal control system by public entities as of the publication date for the Guide for implementing the internal control system, in 2008. That Resolution, No. 458-2008-CG, also called on the entities to issue an implementation report to their respective OCIs or to the CGR within 12 months and after the 24 months. More recently, the Budget Law No. 30372 for the year 2016 obliges each entity of the country to implement its SNC within 36 months after publication of the law.

In order to assess the implementation of the frameworks, strategies and tools developed in recent years, the CGR has conducted two major self-assessment exercises in 2013 and 2014, which included an Index on the Implementation of the Internal Control System. In 2014, 655 public entities (out of 741) responded to the survey of 51 questions related to implementation of the Conceptual Framework for Internal Control. As previously mentioned, the results showed that implementation is very weak. The report also highlighted the weak implementation of risk assessments: 68% of the entities indicated in the survey that they had no risk assessment policy in place, and 71% are not implementing risk assessment activities. The weak results of this self-assessment published in 2015 were followed by the introduction of a specific disposition on internal control in the Budget Law 2016 (No. 30372) and publication of a new CGR directive, No. 013-2016-CG/GPROD.

This new CGR directive introduced another monitoring tool to measure the level of maturity of the SCI: a specific software application called Monitoring and Evaluation of the Internal Control System (Seguimiento y Evaluación del Sistema de Control Interno). It also calls on the public entities to prepare and publish diagnostic reports of their SCI as well as an evaluation report, which have to be registered in the software application mentioned above. According to the directive, the reports need to refer to all the steps included in the implementation model of the SCI (Figure 6.4). The OCIs of the respective public entities have the task of validating information included in the reports. The new monitoring tool has the potential to strengthen the focus of public entities on issues related to internal control and risk management. The tool also aims at helping improve the available information related to the implementation of the systems. However, in order for this tool to be used efficiently, the CGR needs to ensure that all the public entities have access to the software application; that they receive information on the use of the new application; and that they are using the application according to the guidelines included in the latest directive.

6.5.2. Monitoring implementation of the recommendations included in the audit reports and in the supervisory actions of OSCE

Peru has recently laid out procedures related to verification and monitoring of the implementation of the recommendations related to audit reports. The authorities need to make sure that those procedures are being correctly implemented, particularly in the area of public procurement

In addition to monitoring implementation of the SCI by public entities, the SNC, as well as OSCE, needs to ensure that the recommendations formulated in the framework of their control and supervision activities are being taken into account by public entities, in particular in the area of public procurement. Internal control systems can only be considered effective if they are accompanied by robust monitoring tools to ensure that public entities are taking corrective actions following the finalisation of audit reports.

The directive of the CGR mentioned above clarifies the roles and responsibilities of each of the stakeholders: the information that needs to be provided as well as the timelines that need to be respected. The directive specifies for instance that public entities need to inform the OCI of the entity each time they receive an audit report (within 15 days). It stresses the fact that the head of the entity is in charge of implementing the recommendations included in the reports and informing the OCI of the actions undertaken. The reports need to specify the level of implementation of the recommendation according to a specific coding system defined by the law. The directive also specifies that the OCI is the unique body in charge of registering this information and monitoring the recommendations of the audit report, and that the CGR is "only" in charge of supervising the work of the OCIs. It is not specified in the directive if registration of the information related to the implementation of the recommendation can also be performed through the new software application Seguimiento y Evaluación del Sistema de Control Interno, or if it will be inserted through another software application linked to the Government Control System, which was developed to register and monitor the corrective measures arising from reports of control actions. Nor does the directive specify what actions the CGR and/or the OCIs can take in case the public entities are not following the recommendations included in the audit reports.

The monitoring of recommendations linked to the supervisory actions of OSCE is ensured through the establishment of specific reports by the supervised entities. Also, OSCE communicates its recommendations to the OCIs in case there is a transgression in the application of the public procurement regulation affecting competition. According to article 52 of the public procurement regulation, OSCE communicates the transgressions observed on the exercise of its roles when there are reasonable signs of economic prejudice for the government, or risks of felonies or serious misdemeanours relating to functional administrative responsibilities. In addition to the procedures specified in the legal framework, the new risk management directorate of the OSCE has developed a specific project aimed at verifying implementation of the recommendations formulated by OSCE through the latter's regional offices. The new project, which has been developed in co-operation with the German development cooperation, introduces a warning system on the basis of which OSCE (including its decentralised offices) can verify compliance with its judgments and notify compliance or lack thereof through the SEACE system. According to OSCE, this warning system is particularly useful to monitor implementation of provisions issued by OSCE at sub-central level. According to figures from OSCE, 45% of the provisions need to be implemented by public entities at sub-national level.

Similarly to the monitoring systems put in place by the CGR to monitor implementation of SCI, the guidelines and tools developed to monitor implementation of the recommendations of audit reports are very recent. The SNC as well as OSCE needs to make sure that those new guidelines and tools are properly implemented.

6.6. Proposals for action

In order to develop effective internal control mechanisms and risk management in public procurement, the following actions could be undertaken by Peru:

6.6.1. Define the roles of, and strengthen co-ordination between, the major control bodies

- In order to develop effective internal control mechanisms and risk management in public procurement, the Peruvian authorities could specify and consolidate the roles in and responsibilities within the internal control system, in particular within public entities.
- The Peruvian authorities need to strengthen the communication, co-ordination and harmonisation of processes between the control bodies and the supervising agency. Closer co-operation may lead to strengthened trust among the stakeholders, and more effective control activities.

6.6.2. Strengthen the control and risk management frameworks and develop tailored guidelines, strategies, tools and templates

- Peru has developed a solid internal control and risk management framework, structured according to relevant international standards, but the authorities should make sure that public procurement entities have the necessary implementation guidelines and tools.
- The authorities should develop internal control and risk management guidelines, tools and templates specifically tailored for the area of public procurement. Those tools and materials should be developed by OSCE in co-operation with other relevant ministries and actors.

6.6.3. Improve the perception and capacities of public procurement entities with regard to internal control and risk management, and promote the participation of other relevant stakeholders in control activities

- The Peruvian authorities need to improve public procurement entities' perception of internal control and risk management and the overall internal control environment, by making them aware of the importance and impact of these functions on achieving organisational objectives.
- The capacity of public entities needs to be strengthened in terms of internal control and risk management related to public procurement: public officials need to understand the available strategies and tools, undertake internal controls and risk assessments, and take action accordingly.
- Peru has made significant efforts to expand civil society participation in control activities of public procurement processes, but the authorities need to ensure that audit reports are being published and made easily accessible to the public.

6.6.4. Monitor implementation of the internal control systems and audit reports

- Peru has recently developed tools to monitor implementation of the internal control systems and risk management function. The authorities need to ensure that new monitoring tools, such as the software application Monitoring and Evaluation of the Internal Control System, are being used.
- Peru has recently laid out procedures related to verification and monitoring of the implementation of the recommendations related to audit reports. The authorities need to make sure that those procedures are being correctly implemented, particularly in the area of public procurement.

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Chapter 7

Building on recent digitisation efforts for more effective communication in Peru

This chapter assesses to what extent Peru's e-procurement system meets the principles set in the 2015 OECD Recommendation on Public Procurement. The system – SEACE – is analysed in terms of its contribution to increasing transparency, efficiency and accountability. The chapter also analyses the mechanisms of other IT systems for public finance and budget management in Peru and their integration with SEACE so as to identify room for improvement. The experience of other OECD countries is presented to illustrate potential measures Peru could consider in order to enhance public procurement through electronic mechanisms.

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 use of digital technology to support public procurement can improve automation and standardisation of the procurement processes while reducing the time needed for tasks and the room for human error. Increasing use of e-procurement – defined as the integration of digital technologies to replace or redesign paper-based procedures throughout the procurement process – allows efficiency gains by facilitating market access, thereby increasing competition and decreasing administrative burdens and information costs. It can in addition be a strategic driver of policy effectiveness by creating a more open, transparent, innovative, participatory and trustworthy government. The 2015 OECD Recommendation of the Council on Public Procurement (hereinafter "the 2015 OECD Recommendation") recognises the significant role of e-procurement (Box 7.1).

Box 7.1. **The OECD Recommendation on Public Procurement**

VII. **RECOMMENDS** that Adherents improve the public procurement system by harnessing the use of digital technologies to support appropriate **e-procurement** innovation throughout the procurement cycle.

To this end, Adherents should:

i) *Employ recent digital technology developments that allow integrated e-procurement solutions covering the procurement cycle.* Information and communication technologies should be used in public procurement to ensure transparency and access to public tenders, increasing competition, simplifying processes for contract award and management, driving cost savings and integrating public procurement and public finance information.

ii) *Pursue state-of-the-art e-procurement tools that are modular, flexible, scalable and secure in order to assure business continuity, privacy and integrity, provide fair treatment and protect sensitive data*, while supplying the core capabilities and functions that allow business innovation. E-procurement tools should be simple to use and appropriate to their purpose, and consistent across procurement agencies, to the extent possible; excessively complicated systems could create implementation risks and challenges for new entrants or small and medium-sized enterprises.

Source: OECD (2015), "Recommendation of the Council on Public Procurement", www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf (accessed 23 April 2017).

A single portal for public procurement with information-sharing capabilities in Peru began with an implementation plan based on Supreme Decree No. 031-2002-PCM, which declared an interest of the State in implementing the Electronic Procurement System of the State (Sistema Electrónico de Contrataciones del Estado, or SEACE) on 8 May 2002. Two subsequent Supreme Decrees on 29 November 2004 made the use of SEACE mandatory for public entities.[1] SEACE[2] is the main electronic procurement platform in Peru; it allows for exchange and dissemination of information on state contracts and for conducting of electronic transactions. The State Procurement Law[3] and its regulations stipulate that the Government Procurement Supervising Agency

(Organismo Supervisor de las Contrataciones del Estado, OSCE) will develop, manage and supervise SEACE.

Implementation of well-designed and integrated e-procurement solutions offers diverse potential benefits, including a reduced risk of corruption. "Nevertheless, the establishment of e-procurement as a stand-alone reform is unlikely to bring about positive transformational results. Countries have to invest in coherent legal frameworks, training and oversight capacity to ensure that the potential benefits of e-procurement in terms of reducing corruption are exploited to their maximum (TI, 2014)." This chapter therefore assesses the current status of e-procurement solutions in Peru, and discusses different ways through which Peru could further enjoy the benefits of such transformation.

7.1. E-procurement to enhance transparency

7.1.1 Snapshot of Peru's e-procurement system

Peru has experienced important progress in electronically recording information and rendering the public procurement process transparent

Transparency has been at the centre of e-procurement developments in Peru. The Secretariat of Public Management (Secretaría de Gestión Pública, or SGP) of the Presidency of the Council of Ministers (Presidencia del Consejo de Ministros, or PCM) is responsible for formulating, co-ordinating, supervising and assessing policies dealing with access to public information and transparency. With the national consensus on the policy directions that Peru should take, set in the National Agreement[4] (Acuerdo Nacional) in 2002, access to information on public procurement and projection or execution of public expenditure has been made available gradually. In line with national commitment on these principles, transparency and access to information are part of the major principles that govern public procurement system. LaThe consolidated text of Law No. 27806 for Transparency and Access to Public Information, was approved by Supreme Decree No. 043-2003-PCM. Its regulation, approved by Supreme Decree No. 072-2003-PCM, includes publicity as a base principle of the procurement function, whose objective is to promote free and effective competition and provide supervision and control of the procurement.

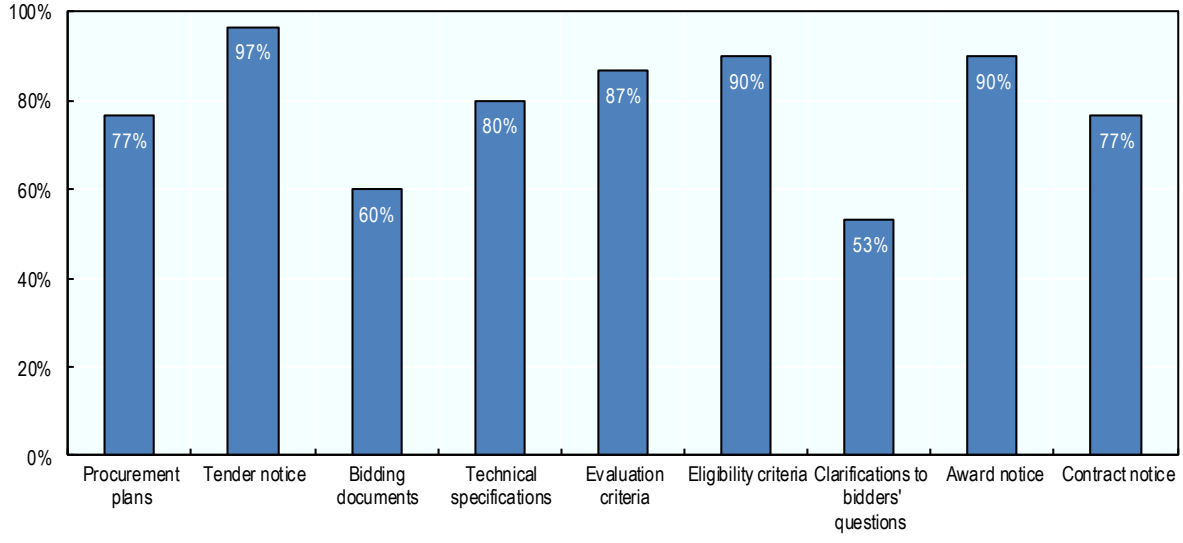
The development of SEACE in the past decade stands as a major achievement in the pursuit of transparency and facilitating access to public procurement information. As specified in article 47 of Law No. 30225, SEACE allows for exchange and dissemination of information pertaining to the different stages of the public procurement cycle. All public entities, at the central level as well as the regional and local levels, are obliged to publish information and documents specified by the law, which are accessible free of charge. In 2015, a total of 2 859 public entities registered information regarding their public procurement processes on SEACE.

The current version of the e-procurement system is a result of a series of developments. Migration to version 3.0, the current version of SEACE, began in June 2013 and the modified system became operational in November of the same year. Migration to the new version of SEACE is still ongoing – for instance, the module for the annual public procurement plan still operates on version 2.9 of the platform; migration of the contract module to version 3.0 has yet to come.

All public entities in Peru are required to use SEACE in carrying out public procurement regardless of the scope of the law or the amount or source of funding, in accordance with directives issued by the OSCE. The public entities are obliged to record the following information through different modules provided on the electronic platform:

- *Annual Procurement Plan* (Plan Annual de Contratación, or PAC).
- *Pre-tendering activities* – This module records details relating to the tender dossier, including general information, links to the PAC, and the executive summary, budget, schedule and approval database.
- *The tendering process* – The following are published: the call for tenders, registration of electronic participants, formulation of queries and observations, statement of answers to queries and observations, judgements of the OSCE, integrated tendering documentation, tender submission, qualification and evaluation of bids, award, cancellation announcement, appeal to the entity or Administrative Tribunal on public procurement (Tribunal de Contrataciones del Estado) and the decision on appeals, amendments, postponement or extension of steps.
- *Contracts and contract execution* – The following information is recorded; the contract, guarantees, addenda, reduction, complementary contracts, term extension, invalidity, resolutions, penalties, settlements and/or conformity, disputes, arbitration judgements and economic intervention.
- Records of purchase orders and services.
- Procurement through the catalogues of framework agreements.[5]

Figure 7.1. **Availability of public procurement documents to the general public in OECD 27**



Source: 2016a OECD Survey on Public Procurement.

7.1.2. Access and secure storage

In order to ensure the sustainability of SEACE in providing access to public procurement opportunities and securely recording and storing public procurement information, policy makers need to meet increasing demands on the technical capacity of the system

The e-procurement platform in Peru is highly accessible, with SEACE providing both public entities and suppliers with information and the modules. The platform can be accessed through the Internet and is compatible with common web browsers, including Internet Explorer, Google Chrome, Mozilla Firefox and Safari; some functions of SEACE favour particular web browsers. Accessing SEACE does not incur any additional cost even though suppliers who want to participate in procurement processeses need to pay to register on the National Registry of Suppliers (Registro Nacional del Proveedores, RNP).

The information registration and disclosure functions of SEACE helps ensure an adequate degree of transparency of the public procurement system, which is underscored in the 2015 OECD Recommendation. The Recommendation advises "promoting fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency in each phase of the public procurement cycle" and allowing "free access, through an online portal, for all stakeholders including potential domestic and foreign suppliers, civil society and the general public to public procurement information" (OECD, 2015).

One thing needs to be considered in order to keep developments in this direction sustainable. SEACE stores all the information that is recorded on the platform. The vast amount of archived information requires the OSCE, as proprietor of the system, to pay constant attention to that information's security. Additionally, the e-procurement platforms need to be scalable and their technical capacity ensured to cope with storing and managing the increasing volume of information.

7.1.3. Reliable and timely data

Devoting efforts to checking the reliability and timeliness of the data would enable Peru to enjoy more benefits of transparency from the data recorded and disclosed on the e-procurement platform

The information that is available and accessible through SEACE differs depending on the stakeholder due to concerns over competition and privacy. In order for the transparency made possible by the system to contribute to other benefits – such as increased efficiency and accountability – the information needs to be reliable.

For the most part, the reliability of the information recorded with SEACE is the responsibility of the stakeholders who register the data. All entities are obliged to register their procurement-related information with SEACE, and in doing so they are held responsible for the information recorded in the system. The State Procurement Law requires that this information be identical to the information in the final documentation and actions contained in the contract file; the official who requested activation of the SEACE certificate and the one who recorded the information are held responsible for ensuring that the consistency of the information.[6]

Relying on each stakeholder to record the information has raised concerns of omission and mistakes. For instance, under the current system the participants in the

selection process could appeal before the tribunal or to the public entity. The recording of this process in the selection module is under the responsibility of the body to which the appeal has been made. When this information is recorded, the system notifies different suppliers about the submission of appeal via email. When the decision is made, either the entity has to record it with SEACE, or – in the case of the decision made by the Administrative Tribunal, it is recorded on the tribunal's own system, Sistema de Tribunal, and additionally with SEACE when the register on the Tribunal's system does not automatically forward the information to SEACE. During the fact-finding mission, some stakeholders raised concerns about the omission or delay in registration of appeals that are made before the entity. Furthermore, as Table 7.1 shows, there has been an increase in the number of appeals made to the entities that are registered with SEACE in recent years. This could either mean an actual increase, or indicate that there had previously been omissions of recording by the entities. In this light, the OSCE could consider additional checks on validity and timeliness in order to address the concerns. For instance, the participants who file the appeal could themselves perform an additional check and verify that all the required records have been made and are valid. A move towards a transactional platform in particular would greatly aid in reducing time delays and data recording errors.

Table 7.1. **Number of appeals on public procurement decisions, 2013-16 and total**

Year	2013		2014		2015		2016		Total general	
	Number of appeals	In %	Number of appeals	In %	Number of appeals	In %	Number of appeals	In %	Number of appeals	In %
Entity	277	21%	274	22%	742	45%	108	29%	1 401	31%
Tribunal	1 034	79%	960	78%	903	55%	266	71%	3 163	69%
Total	1 311	100%	1234	100%	1 645	100%	374	100%	4 564	100%

Source: Data provided by OSCE.

Ways to achieve this could include having key information regarding each stage clearly appear on the e-procurement platform and not solely in downloadable documents. Suppliers could be informed of each amendment and expected timelines, through emails or notification systems. It would be essential to actively make suppliers aware of channels available to them through which they could raise concerns or questions that would be addressed swiftly.

In this regard, Peru could consider applying additional checks on the validity and timeliness of data that are to be registered on the system. That could include identifying the risk areas and embedding automatic red flag functions in the system.

7.2. E-procurement for greater efficiency and accountability

7.2.1. Improving the provision of information

Peru could consider effective communication strategies on public procurement information while rendering that information more reusable to all stakeholders and promoting the use of it to evaluate and monitor the system

A well-implemented e-procurement system enables and facilitates timely collection of comprehensive and reliable data. Statistical information on procurement using these

data is essential in evaluating the policies and functioning of the system. The 2015 OECD Recommendation underlines that countries should 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. It further details that in order to achieve this end, the countries should "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" (OECD, 2015).

SEACE stores all the information registered by entities, providers, arbitrators, OSCE-authorised workers and the Administrative Tribunal. The reliability and timeliness of the information are supported by the requirements set forth by the regulation of the State Procurement Law regarding the consistency of the information between that recorded on SEACE and that contained in the documents related to public procurement processes.

Procurement information is always available through the SEACE public portal, and is used by diverse public entities that perform judicial investigation and administration (national police, the attorney's office, the judiciary, the office of the General Comptroller of the Republic), the National Superintendence of Customs and Tax Administration (SUNAT) for the tax follow-up of natural and legal persons, and the National Institute for Protection of Competition and Intellectual Property (INDECOPI) for analysing competition behaviour. Additionally, many of the documents are available to the general public.

At the same time, it is important to consider improvements in the overall information and related pages that are available to the general public. They also are important stakeholders in public procurement system, especially in monitoring the performance and identifying irregularities. Consequently, information needs to be effectively communicated to the general public in order to actively involve them. Recognising the limitations of the current web pages, and not just those available to the public, the report prepared by Presidential Integrity Commission published on 4 December 2016 proposes modernising and redesigning the SEACE website.

On the main web portal of SEACE (www2.seace.gob.pe/), the pages that are accessible through the tabs on the top are outdated and need to be replaced by new ones. On this web portal, the statistics on annual procurement plans and selection processes are available only up to 2012. Even if there exist pages that display that information for later years, the path to them needs to be clearly indicated in the main portal of the system. In particular, the annual procurement plan has significant implications for potential suppliers who are yet to be part of the national registry. They are even more crucial when considering the large share of registered suppliers who do not receive any orders or obtain any contract with any entity. In this regard, the authorities in Peru could consider communicating their public procurement information in a strategic way to provide potential but unregistered suppliers with the business opportunities with the state; the information could be filtered by, for instance, product categories or region. Furthermore, by effectively communicating the procurement information in a standardised and clear way to all stakeholders, Peru could not only enhance competition, but also promote accountable public procurement by enabling

civil societies and citizens to act as additional watchdogs of the system (a matter discussed further in Chapter 8).

The OSCE has devoted efforts to assessing the public procurement system and its results based on the data recorded on SEACE. Through its Economic Studies office, the OSCE publishes monthly statistical reports on various public procurement activities – including information on, among others, the general procurement regime, other procurement regimes, processes declared void, exceptions, state suppliers and consortiums, administrative appeals, and the duration of selection processes. These reports are in turn compiled into annual reports, which are also published on its website.[7] The OSCE could consider providing the dataset files to make the information and data more reusable; they could be made available, for instance, in formats such as xls, csv, and dta.

The OSCE utilises the information recorded on SEACE, and has carried out economic studies providing a basis for reviewing the public procurement rules and suggesting improvements.[8] Past economic studies have included analysis of the level of competition; the estimated cost of and participation in selection processes; duration of preparatory acts; factors that determine a process lasting more than 60 working days; the participation of micro and small enterprises at the regional level; qualitative assessment of reverse auction module; and access barriers and other state market (2014).

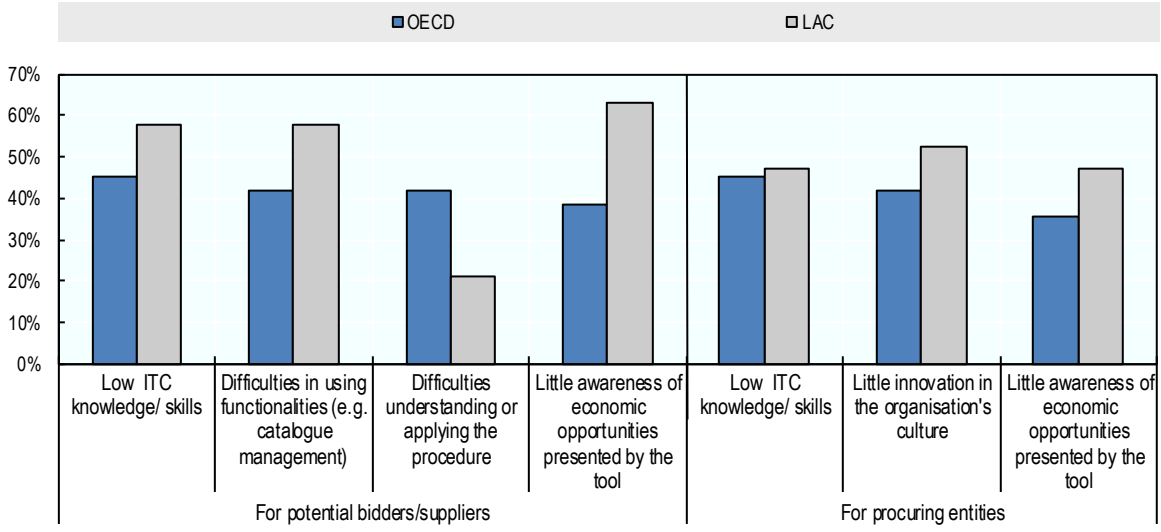
One important development to highlight regarding provision of statistical information and analysis in the system is the launch of the CONOSCE[9], a Business Intelligence and Transparency module, in June 2016. This is a tool that anyone can access; it displays a dashboard showing different indicators of public procurement market and various kinds of information on suppliers and contracting authorities. Some data, including total procurement volume, can be disaggregated into regions, but the disaggregation function could be further developed for factors other than region, such as contract types or supplier types, and the dashboard broadened to include other indicators.

7.2.2. Technical guidance, queries and complaints

Peru could benefit from devoting additional efforts to providing timely guidance and advice on the use of the electronic mechanisms based on regular assessment and analysis of the queries and complaints

Achieving the benefits of the IT developments in public procurement processes requires careful attention paid to their practical, everyday use by the stakeholders. Almost half of the OECD countries identified limited knowledge/skills relating to information and communication technology (ICT) as a major challenge faced by both procuring entities and suppliers in 2014 (Figure 7.2). Similar challenges are faced by more countries in Latin America and the Caribbean (LAC), including Peru, when compared to the OECD countries. This issue should be addressed through training and development of the workforce sufficient to equip all involved with the right ICT skills, an issue further discussed in Chapter 5. In addition to training the procurement workforce, OSCE could devote efforts to providing additional guidance to the suppliers who, especially in Peru, face challenges in their use of e-procurement functionalities (OECD, 2016b).

Figure 7.2. **Main challenges to the use of e-procurement systems in 31 OECD and 19 LAC countries**



Source: Based on the 2014 OECD Survey on Public Procurement and OECD (2016b), *Government at a Glance: Latin America and the Caribbean 2017*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264265554-en.

OSCE does provide assistance to SEACE users through an established query assistance procedure; its headquarters and 20 decentralised offices offer help through phone calls, via email and in person. Queries requiring technical analysis of the system are communicated to the SEACE co-ordinator (*coordinador*) for an answer. Additionally, as with other public entities, OSCE has a Complaints Book, established by Supreme Decree No. 42-2011-PCM. Providers and others can register their complaints regarding the diverse functions performed by OSCE, including SEACE administration.

Information contained in the complaints constitute a valuable basis upon which the OSCE can analyse just how well the e-procurement system is working, and identify potential irregularities or malfunctioning. In this light, the OSCE should develop regular assessments of the complaints received in order to set priorities and strategically plan improvements to the system.

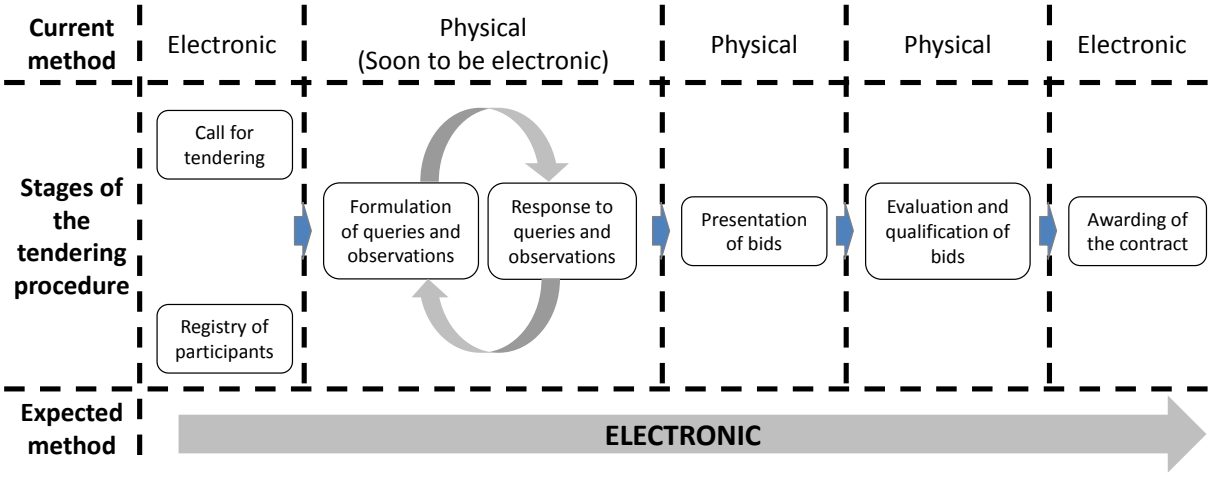
7.2.3. Rendering the system more transactional

The e-procurement system could be rendered more transactional in order to increase efficiency and strengthen the integrity of the public procurement system

Important benefits derive from the enlarged coverage of the system made possible by e-procurement. Automation of the process replaces face-to-face interaction by placing it on electronic platforms; this increases the system's efficiency by reducing transaction and administrative costs as well as time. Furthermore, replacement of processes requiring the physical presence of public procurement officials by automated electronic processes reduces the room for integrity breaches. Transactional e-procurement platforms that allow interaction with the system are thus highly useful to both contracting authorities and suppliers.

The e-procurement system in Peru is progressively developing transactional functions in a move toward rendering all stages of public procurement electronic (Figure 7.3). For instance, the current version of SEACE provides for reverse auctions and ordering from catalogues of goods and services under framework agreements. Use of these functions has been strengthened by the introduction of the Law No. 30225 on State Procurement. Furthermore, registering of participants is carried out in all selection processes on SEACE from October 2015. Currently, Peru is in the process of rendering the formulation of queries and observations – as well as the response to them – electronic.

Figure 7.3. **Methods applied to different stages of public procurement in Peru**

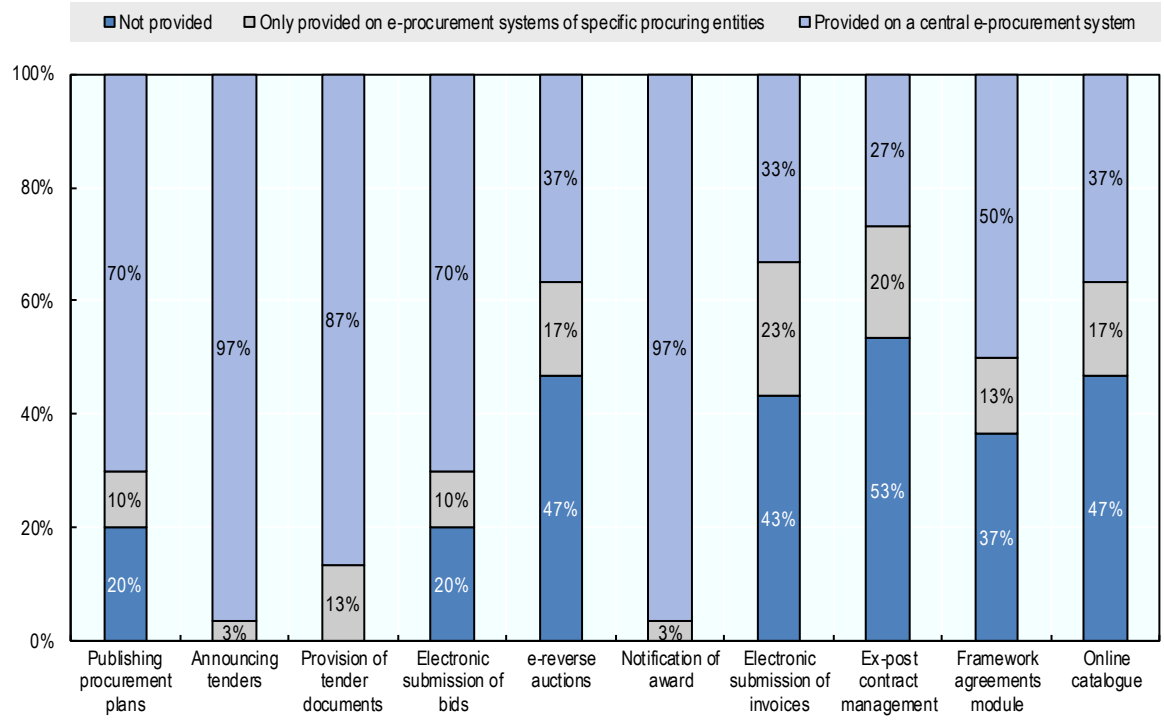


Source: Information provided by Ministry of Economics and Finance, Peru.

Furthermore, article 48 of Law No. 30225 on State Procurement stipulates that reverse auctions and price comparisons are to be carried out only electronically; any exception is to be decided by OSCE. The article further stipulates that OSCE is to determine how other electronic methods will be progressively and obligatorily applied to public procurement processes.

Under this regulatory framework, OSCE could consider implementing more transactional functionalities in the e-procurement system and expanding their use in public procurement processes. This change would increase efficiency and the integrity of the system. The recent reforms to the public procurement system have enabled digital recording of information related to public procurement processes. Yet, Peru's e-procurement system does not allow for electronic submission of bids or invoices, even though it does accept electronic bids for electronic reverse auctions. In comparison, almost 80% of the OECD countries reported having electronic submission of bids, and almost 60% electronic submission of invoices. Face-to-face interaction between suppliers and officials still takes place in Peru during submission of the bid or when the provider furnishes documentation on contract performance.

Figure 7.4. **Use of e-procurement functionalities benchmarked against that in OECD countries**



Source: 2016a OECD Survey on Public Procurement.

In the long term, further automation of the public procurement processes will free up both resources and personnel who would have been necessary for managing the processes. In turn, these additional resources and personnel could be assigned to more strategic functions.

7.3. Integrating SEACE with other IT systems for better management

7.3.1. Integrating e-procurement with other systems

Consideration could be given to further integrating the e-procurement system with other IT systems for effective management and monitoring of public procurement and public funds spending

Integrating public procurement into overall public finance management, budgeting and services delivery processes can lead to greater efficiency and effectiveness in public resource utilisation. These benefits come from various channels – to name a few, improved information-transmitting channels; the timeliness of information and data and their quality; enhanced accountability through stronger potential for control; and more efficient management through standardisation and automation, which reduce redundant and unnecessary tasks and activities. Recognising the aforementioned potential benefits, the 2015 OECD Recommendation underscores the importance of integration of public procurement.

E-procurement systems facilitate integration of public procurement with other public finance management and service delivery processes, thanks to the degree of standardisation and automation achieved during implementation of the e-procurement in the first place. SEACE is integrated with many IT systems (see Box 7.2 for a current list), though the degree of integration differs.

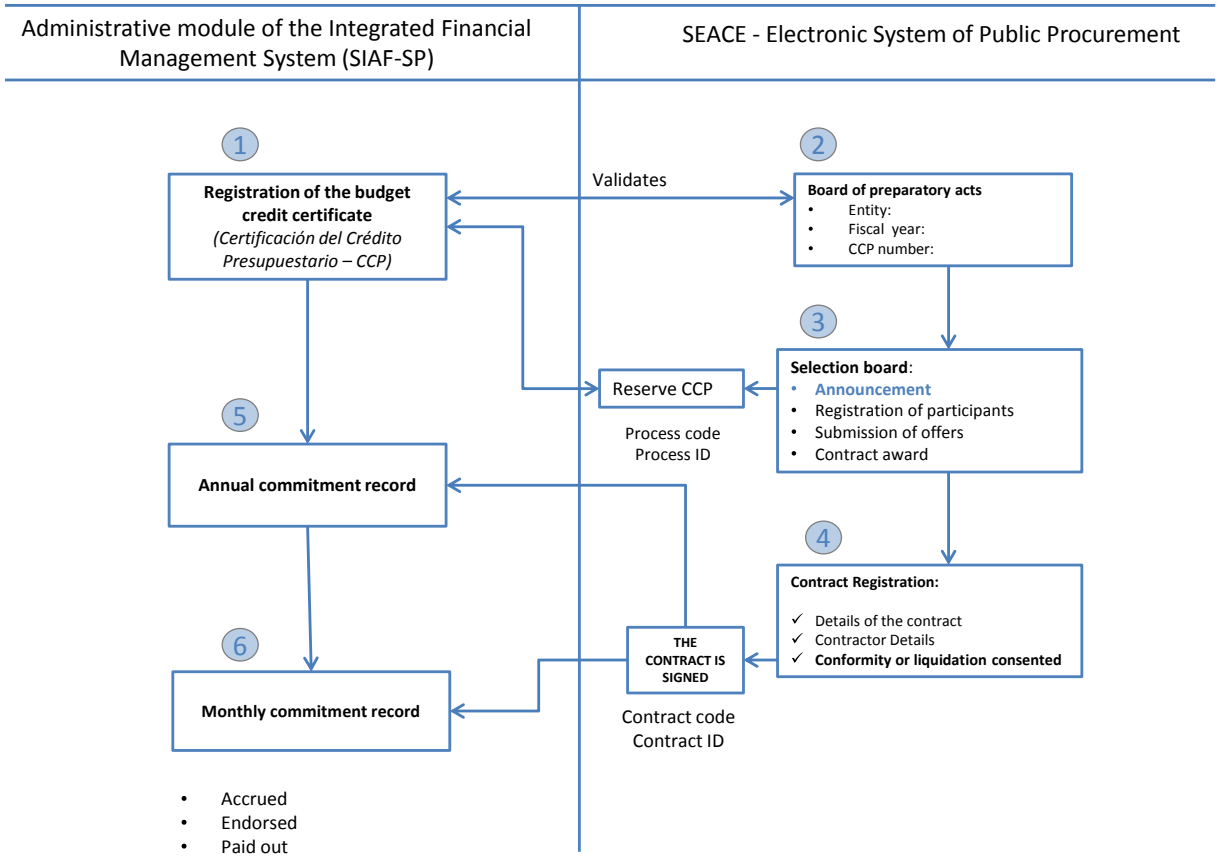
Box 7.2. **Integration of the SEACE with other IT systems**

1. The Integrated Financial Management System (SIAF) of the Ministry of Economy and Finance (MEF) allows direct online linking for certifying the budgetary credit, which enables the procuring entities to publish their procurement notices. SIAF also allows online direct linking for transferring information and contract data (suppliers' RUC, amounts, etc.), which enables incomes and payments.
2. The National Public Investment System (SNIP) of the Ministry of Economy and Finance (MEF) allows indirect linking through the activity or the public investment project of the Certification of Budgetary Credit.
3. The INFObras System of the Office of the General Comptrollership of the Republic allows direct online linking with procurement related to public works, which enables publication of the procurement notice.
4. The National Registry of Suppliers (RNP) of the OSCE allows direct online linking in order to verify if the suppliers are registered in the RNP. That registration enables the suppliers to participate, present their bids, and be awarded with and sign the contract.
5. The Single Register of Contributors (RUC, Registro UÚnico de Contribuyente) of the National Superintendence of Customs and Tax Administration (SUNAT), is directly linked with SEACE in order to obtain the denomination of the natural or judicial person that will be paid as a result of the procurement.
6. Portal of Standard Transparency of the Presidency of Council of Ministers (PCM).
7. Mirror copy provided to the Office of the General Comptrollership of the Republic.

Source: Information provided by OSCE.

Peru has continually and progressively implemented measures to integrate IT systems with SEACE. In particular, the progress made on integrating SEACE with SIAF contributed to better budget management. This process is still ongoing. May 2012 saw implementation of the interface between SEACE and SIAF contract modules; this involved transfer of data on contracts of public entities to contracts at the local government level. Under the current system, several validity checks and reservations are being carried out on the Budget Credit Certificate (Certificación del Crédito Presupuestario, or CCP) through the connection between SEACE and SIAF. For instance, the entity must declare the CCP when registering pre-tendering activities on SEACE; consulting SIAF then confirms the validity of the CCP. When the entity launches a selection process on SEACE, the SEACE sends data on CCP and the procedure to SIAF, on the basis of which the SIAF reserves or freezes the amount used on the CCP. Based on the results of the selection process – which is communicated to SIAF from SEACE – the amount held on the CCP is released or remains reserved. When the contract is registered on SEACE, information related to any additions to the initial contract, extensions of it or supplementary contracts is sent to SIAF to enable the entities to register commitments, accruals and payments. Figure 7.5 describes this process between SIAF and SEACE.

Figure 7.5. **The SIAF-SEACE Process**



Source: Based on Ministerio de Economía y Finanzas del Perú (2015), "Integración SIAF & SEACE; Sistema Integrado de Administración Financiera", www.mef.gob.pe/contenidos/ogie/capacitacion/reg_SIAF_SEACE_052016.pdf (Accessed 23 April 2017).

Along with the improvements in budget and procurement planning foreseen in the new law on public procurement, Peru could consider further integration between SEACE and other budget and public finance management systems in order to better monitor the consistency of the plan and its actual execution. OSCE has developed plans to expand integration between the SEACE and among others, the Standard Transparency Portal of the PCM; doing so responds to new requirements related to reporting contract awards, penalties, the annual procurement plan, purchase orders and reconciliations. OSCE also plans further integration between SEACE and SIAF, so as to have all actions pertaining to contract execution – as well as information on each contract payment – shared between the two systems. The plan additionally includes integration and registration on SIAF of data regarding the Institutional Opening Budget (Presupuesto Institucional de Apertura, PIA), the Modified Institutional Budget (Presupuesto Institucional Modificado, PIM), the executing units, and purchase orders of goods and services.

The case of Korea demonstrates the efficiency to be gained by integrating the public procurement system and its data with other systems (Box 7.3).

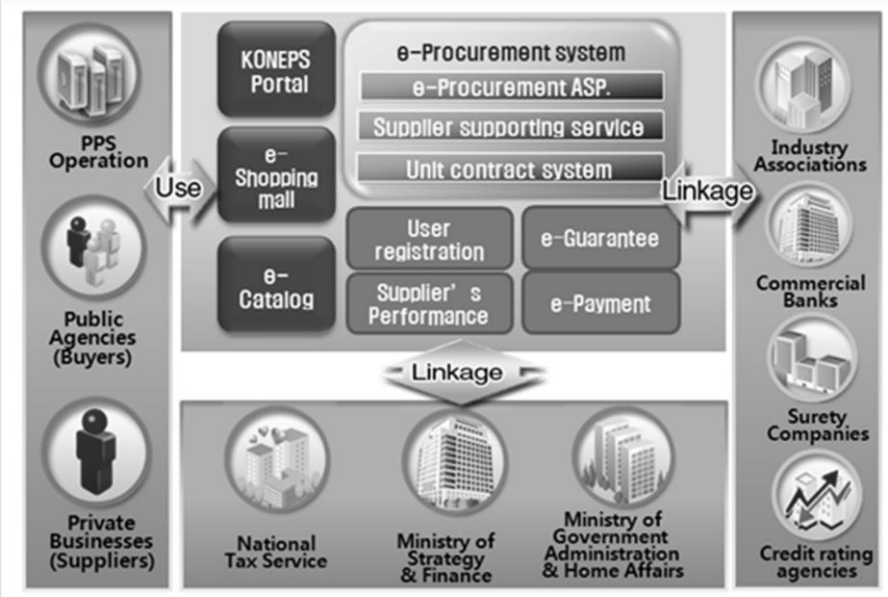
Box 7.3. **Greater efficiency through data connections in KONEPS**

KONEPS (Korea ON-line E-procurement System) is interconnected with over 160 diverse electronic systems, both within and outside the government's reach, which has resulted in increased efficiency, reduced duplication and cost savings.

Connection with 19 surety companies allows automated verification of 4 types of sureties, including bid bonds and performance bonds. Interfaces with 12 private sector associations and 9 credit ratings companies allows for the automatic collection of credit and past performance data, which is used to verify qualifications and evaluate bids. Fifteen commercial banks are connected for e-payment through electronic funds transfer, and also for processing loans that are available to support government contract holders. Business registration certificates and tax payment certificates are transmitted through appropriate data exchange interfaces. In addition to collecting information from external sources, information from KONEPS is shared with 28 public entities and 34 private sector information systems.

As a result of this integration, 477 document forms used in public procurement – including bid forms, contract forms, inspection requests and payment requests – have all been converted to digital equivalents. In addition to the increased efficiency of processing all these transactions and procurement steps electronically, bidders are no longer required to visit public authorities to collect or submit – to each public buying entity separately – the documentation necessary for participation in public procurement. This results in increased transparency, as the information is available on line through KONEPS, as well as greater access for new entrants and small and medium-sized enterprises, as the burden to participate in public procurement is much smaller.

Figure 7.6. **The KONEPS e-procurement system**



Source: OECD (2016c), *The Korean Public Procurement Service: Innovating for Effectiveness*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264249431-en.

7.3.2. Improving the National Registry of Suppliers

The National Registry of Suppliers could be improved in responding to the needs of the users through better management of potential supplier and promoting their participation in public procurement processes

The RNP complements the electronic public procurement system of Peru as "the single official information system of the Public Administration, purpose of which is to register and keep updated – during its permanence in the registry – the relevant general information of those suppliers interested in taking part in the State procurements".[10] RNP contains updated information on suppliers regarding their legal and technical capacity and financial solvency, depending on whether they supply goods, services, works or work consultancy. The modifications made to Public Procurement Law No. 30225 by Legislative Decree 1341 state that registration to the RNP is for indefinite term. While it could greatly simplify the process and lessen administrative burdens for potential suppliers to register, this provision needs strategic implementation, especially on (among others) the frequency of updated information and the registry's technical capacity. Of particular relevance here are the measures proposed in the Presidential Integrity Commission's report on veracity verification by the OSCE on the information provided to the RNP.

Registration in the RNP is mandatory for suppliers wishing to participate in public procurement procedures of the state, as articulated in article 46 of Law No. 30225 on public procurement. The registration incurs fees for the suppliers, according to the Single Text of Administrative Procedures. It should be noted that mandatory registration covers all purchases exceeding 1 UIT. That implies that the suppliers registered under RNP represent all the suppliers participating in the tendering processes as established in the public procurement law, as well as in those whose purchase value is under 8 UIT but exceeds 1 UIT.

The current version 4.0 of the RNP was implemented in 2002; developments since then have been to meet regulatory changes.[11] The new version of the registry is being designed to address the limitations of its current version, which include limited interaction with suppliers, old architecture and language, and limited conditions for traceability. The newly designed registry is expected to improve response times, reliability and safety, and include new services for various users of the information system.

With the new design of the registry scheduled to be implemented in the coming years, the OSCE needs to ensure that suppliers are provided with the value-added when registering on the RNP. The legal mandate of the registry indeed is to register and maintain general information on potential suppliers of the state. However, it also needs to provide suppliers with timely information on public procurement opportunities as well as updating suppliers-related information to the SEACE. In many countries, for instance, registered suppliers could sign up for RSS feeds or email alerts on newly published opportunities and tender notices in their business area or regions in which they operate; this is the case in New Zealand (Box 7.4). At the same time, the RNP could gather information on potential suppliers in order to facilitate qualification, understand the markets, and eventually reduce the tendering cost for both suppliers and contracting authorities. This information could include for instance minimum but essential compliance levels, including for health and safety requirements, financial capacity and management capacity as well as company experiences and performance history. This would help promote competition in the public procurement market as well as in the private sector, and facilitate delivery of the goods and services that provide the best value for money.

Box 7.4. **GETS (Governments Electronic Tenders Service) user guides in New Zealand**

The New Zealand Government Procurement website (www.procurement.govt.nz) provides user guides on Government Electronic Tenders Service (GETS) for suppliers. Topics include creating a supplier account and RealMe login; selecting codes and/or regions to receive automatic GETS notifications; code matching; and a quick guide on responding to tenders. These guides provide potential suppliers with step-by-step instructions to help them register and familiarise themselves with the new system.

The "Guide on selecting codes and/or regions to receive automatic GETS notifications" provides information on how suppliers can be informed of new business opportunities on GETS. The guide has two sections. Suppliers can first select the areas of business interest through the United Nations Standards Products and Services Code (UNSPSC). They can then express interest in opportunities in specific regions.

Source: New Zealand Government Procurement (2015), "GETS user guides", www.procurement.govt.nz/procurement/for-suppliers/gets/user-guides (accessed 23 April 2017).

As shown in Table 7.2 below, only a small share of the registered suppliers receives orders or enters into a contractual relationship with the state – approximately 25% in 2015. This number poses even more concern when considering the fact that the number of suppliers is identified with their unique tax registration number, and with the unique tax number they could have multiple supplier registrations under different types of contracts, i.e. for work consultancies, works, goods and/or services. Indeed, when looking at the number of suppliers that received orders or was awarded contracts according to SEACE based on registries of different types of contracts, the share is only around 15% on average for goods and services suppliers.

Table 7.2. **Number of suppliers registered on RNP that received orders/contracts**

Year	Number of suppliers	Number of valid registries					Active suppliers	
		Work consultancies	Works	Goods	Services	Total	Number	Share
2011	137 268	7 998	11 321	80 762	124 649	224 730	20 866	15.20%
2012	134 643	7 936	9 972	82 077	123 305	223 290	35 035	26.02%
2013	134 765	9 795	13 664	82 749	120 511	226 719	38 804	28.79%
2014	117 326	9 101	12 442	75 260	104 090	200 893	36 272	30.92%
2015	136 744	12 526	16 449	94 107	121 839	244 921	33 914	24.80%

Year	Number of active suppliers					Share of active suppliers				
	Work consultancies	Works	Goods	Services	Total	Work consultancies	Works	Goods	Services	Total
2011	1 533	2 918	8 733	9 476	22 660	19.17%	25.78%	10.81%	7.60%	10.08%
2012	3 296	5 675	14 628	15 948	39 547	41.53%	56.91%	17.82%	12.93%	17.71%
2013	3 695	5 737	15 175	19 008	43 615	37.72%	41.99%	18.34%	15.77%	19.24%
2014	3 312	5 580	13 780	18 018	40 690	36.39%	44.85%	18.31%	17.31%	20.25%
2015	2 927	4 053	12 523	18 196	37 699	23.37%	24.64%	13.31%	14.93%	15.39%
Average						31.64%	38.83%	15.72%	13.71%	16.54%

Source: Data provided by OSCE.

Given the worryingly small average number of bids received for public tenders as discussed in Chapter 3, the country's policy makers should consider strategic directions on increasing competition and providing potential suppliers registered under the RNP with opportunities to participate in public procurement processes. In this light, the various functions to be incorporated in the new design should enable storing, processing and transmitting data and information for the entities as well as for suppliers, to promote higher access to public procurement processes by qualified suppliers.

7.4. Proposals for action

7.4.1. Use of electronic mechanisms in public procurement – the SEACE – to enhance transparency

- In order to ensure the sustainability of SEACE in providing access to public procurement opportunities and securely recording and storing public procurement information, policy makers need to meet increasing demands on the technical capacity of the system.
- Devoting efforts to checking the reliability and timeliness of the data would enable the country to enjoy more benefits of transparency from the data recorded and disclosed on the e-procurement platform.

7.4.2. Directing the benefits of the e-procurement system to further enhance efficiency and accountability

- Peru could consider effective communication strategies on public procurement information while rendering that information more reusable to all stakeholders and promoting the use it to evaluate and monitor the system.
- Peru could benefit from devoting additional effort to providing timely guidance and advice on the use of the electronic mechanisms, based on regular assessment and analysis of the queries and complaints.
- The e-procurement system could be rendered more transactional in order to increase efficiency and strengthen the integrity of the public procurement system.

7.4.3. Integrating SEACE with other IT systems for better management

- Consideration could be given to further integrating the e-procurement system with other IT systems for effective management and monitoring of public procurement and public funds spending.
- The National Registry of Suppliers could be improved in responding to the needs of the users through better management of potential suppliers and promoting their participation in public procurement processes.

Notes

1. Supreme Decree No. 083-2004-PCM and Supreme Decree No. 084-2004.
2. http://www2.seace.gob.pe/ (accessed 23 April 2017).
3. Article 59 of Public Procurement Law No. 30225.
4. The "National Agreement" is the set of State policies developed and approved on the basis of dialogue and consensus, following a series of workshops and consultations at the national level, in order to define a roadmap for the sustainable development of the country and affirm its democratic governance. acuerdonacional.pe (accessed 23 April 2017).
5. Directive No. 006-2016-OSCE/CD, accessible at http://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/Legislacion%20y%20Documentos%20Elaborados%20por%20el%20OSCE/Directivas2016/con_resolucion/Directiva%20006-2016-OSCE-PRE.pdf.
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7. http://portal.osce.gob.pe/osce/content/estadisticas (accessed 23 April 2017).
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9. CONOSCE Indicadores del Mercado Estatal: http://bi.seace.gob.pe/pentaho/api/repos/%3Apublic%3ACuadro%20de%20Mando%3Acuadro_mando.wcdf/generatedContent?userid=public&password=key (accessed 1 August 2016).
10. Article 46 of Law 30225 on public procurement.
11. Article 8 of Law 28 267 (July 2004); Resolution No. 169-2005-CONSUCODE/PRE (May 2005); Directive No. 009-2007-CONSUCODE/PRE (May 2007); Legislative Decree No. 1017 (June 2008); Supreme Decree No. 184--2008-EF (January 2009); and Law No. 29 873 (June 2012).

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Chapter 8

Instilling integrity throughout the whole procurement cycle in Peru

This chapter assesses the dimensions of the integrity system for public procurement in Peru, against the 2015 OECD Recommendation on Public Procurement and the 2017OECD Recommendation on Public Integrity. The existing framework is analysed to establish how it helps provide a consistent and coherent integrity system. The chapter underlines the importance of promoting a culture of integrity in public procurement, and recommends measures that could be added to the current framework so as to improve it. Finally, measures to increase transparency and encourage the participation of stakeholders in public procurement are discussed, with the emphasis on their role in enhancing integrity and promoting accountability. The experience of other OECD countries is presented to illustrate potential improvements to the integrity framework in Peru.

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

Public procurement is regarded as one of the government activities most vulnerable to corruption and integrity breaches. As a major nexus between the public and private sectors, public procurement involves a large sum of money and a complex and close interaction between actors from the two sectors, with different interests. The high stakes of the economic interests involved and the complexity of the processes involved make corruption and integrity breaches common potential risks during the different phases (Table 8.1). Bid evaluation and contract award in particular are often regarded as "the most vulnerable phases of the procurement process due to the high level of expertise required and the specific features of awarding and monitoring committees" (TI, 2013). Conflict of interest – one of the major risks during these phases – especially endangers the integrity of public procurement system.

Table 8.1. **Corruption risks associated with the different phases of the procurement cycle**

	Phase	Corruption risks
Risks of the pre-tendering phase	Needs assessment	Lack of adequate needs assessment Influence of external actors on officials decisions Informal agreement on contract
	Planning and budgeting	Poor procurement planning Procurement not aligned with overall investment decision-making process Failure to budget realistically or deficiency in the budget
	Development of specifications/ requirements	Technical specifications are tailored for a specific company Selection criteria are not objectively defined and not established in advance Requests for unnecessary samples of goods and services that can influence Purchase of information on the project specifications.
Risks of the tendering phase	Choice of procurement procedure	Lack of proper justification for the the use of non-competitive procedures Abuse of non-competitive procedures on the basis of legal exceptions: contract splitting, abuse of extreme urgency, non-supported modifications
	Request for proposal/bid	Absence of public notice for the invitation to bid Evaluation and award criteria are not announced Procurement information isn't disclosed and isn't made public
	Bid submission	Lack of competition or cases of collusive bidding (cover bidding, bid suppression, bid rotation, market allocation)
	Bid evaluation	Conflict of interest and corruption in the evaluation process through: • familiarity with bidders over time • personal interests such as gifts or future/additional employment • no effective implementation of the "four eyes principle"
	Contract award	Vendors fail to disclose accurate cost or pricing data in their price proposals, resulting in an increased contract price (i.e. invoice mark-ups, channel stuffing[1]) Conflict of interest and corruption in the approval process (i.e. no effective separation of financial, contractual and project authorities) Lack of access to records on the procedure
Risks of the post-award phase	Contract management/ performance	Abuses of the supplier in performing the contract, in particular in relation to its quality, price and timing: • substantial change in contract conditions to allow more time and/or higher prices for the bidder • product substitution, sub-standard work, or service not meeting contract specifications • theft of new assets before delivery to end-user or before being recorded • deficient supervision from public officials and/or collusion between contractors and supervising officials • subcontractors and partners chosen in a non-transparent way or not kept accountable
	Order and payment	Deficient separation of financial duties and/or lack of supervision of public officials, leading to: • false accounting and cost misallocation or cost migration between contracts • late payments of invoices • False or duplicate invoicing for goods and services not supplied, and for interim payment in advance entitlement

Source: OECD (2016), *Towards efficient public procurement in Colombia: Making the difference*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252103-en.

Corruption and integrity breaches in public procurement have major consequences of various kinds. They result not only in economic loss due to misappropriation of public funds and deterioration of competition, but also in corrosion of the citizens' trust in public institutions and in public officials mandated to use the taxpayers' money in the public interest. Accordingly, the OECD Recommendation underscores the importance of preserving the integrity of the public procurement system (Box 8.1).

Box 8.1. **The OECD Recommendation on Public Procurement**

III. **RECOMMENDS** that Adherents preserve the **integrity** of the public procurement system through general standards and procurement-specific safeguards.

To this end, Adherents should:

i) *Require high standards of integrity for all stakeholders in the procurement cycle.* Standards embodied in integrity frameworks or codes of conduct applicable to public sector employees (such as on managing conflict of interest, disclosure of information, or other standards of professional behaviour) could be expanded (e.g. through integrity pacts).

ii) *Implement general public sector integrity tools and tailor them to the specific risks of the procurement* cycle as necessary (e.g. the heightened risks involved in public-private interaction and fiduciary responsibility in public procurement).

iii) *Develop integrity training programmes for the procurement workforce*, both public and private, to raise awareness about integrity risks, such as corruption, fraud, collusion and discrimination, develop knowledge on ways to counter these risks, and foster a culture of integrity to prevent corruption.

iv) *Develop requirements for internal controls, compliance measures and anti-corruption programmes for suppliers, including appropriate monitoring.* Public procurement contracts should contain "no corruption" warranties, and measures should be implemented to verify the truthfulness of suppliers' warranties that they have not and will not engage in corruption in connection with the contract. Such programmes should also require appropriate supply-chain transparency to fight corruption in subcontracts, and integrity training requirements for supplier personnel.

Source: OECD (2015), "Recommendation of the Council on Public Procurement", www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf (accessed 24 April 2017).

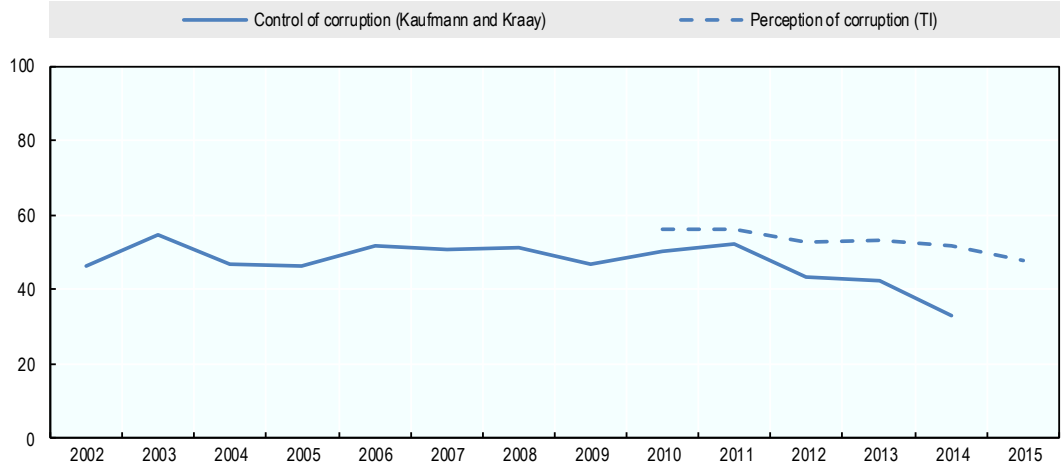
While integrity is often subject to different definitions, the OECD Recommendation on Public Integrity (2017a) defines public integrity as "the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector". In the context of public procurement, integrity of the system implies that (and this is not an exhaustive list):

- Procurement procedures are transparent and promote fair and equal treatment for bidders.
- Public resources linked to public procurement are used in accordance with the intended purposes.
- Procurement officials' behaviour is in line with the public purpose of their organisation.
- Systems are in place to challenge procurement decisions, ensure accountability, and promote public scrutiny (OECD, 2007).

Fighting corruption is a major issue in Peru, and a battle echoed in many international indicators as well as national studies. Global corruption indices show a recent increase in

the perceived level of corruption in Peru. According to Kaufmann and Kraay (2017), Peru ranked 141 out of 209 countries in terms of control of corruption. Figure 8.1 shows Peru's ranking in relative terms, where 100 represents the highest rank and the 0 the lowest.[2] The country's relative ranking has experienced a decrease in recent years: it ranked 88 out of 168 countries in 2015 according to Transparency International's Corruption Perception Index (CPI), and experienced a decrease in terms of score as well.

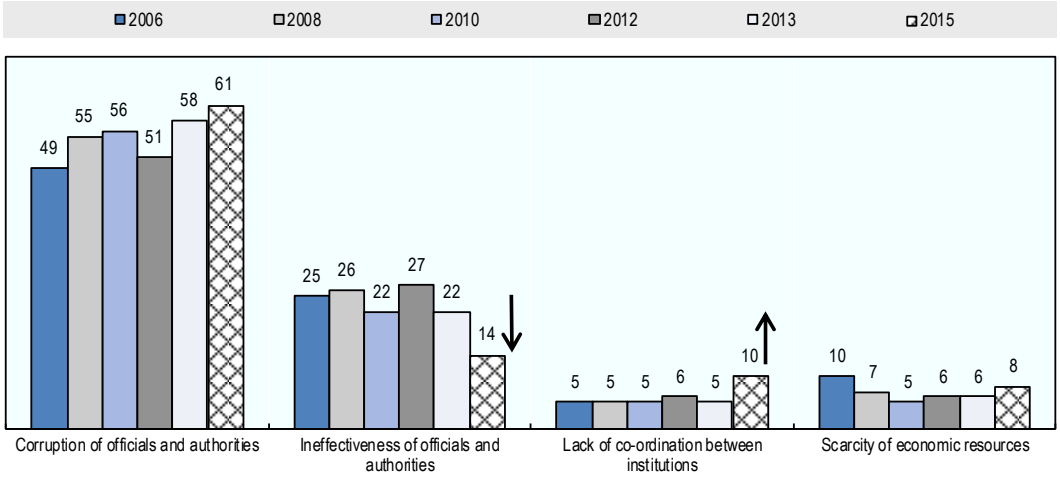
Figure 8.1. **Recent decrease in the ranking of Peru in perceived levels of corruption**



Source: Based on TI (2014a), "Corruption Perceptions Index 2014: Results", www.transparency.org/cpi2014/results (accessed 24 April 2017) and Kaufmann, D. and A. Kraay (2017), "World Governance Indicators", The World Bank Group, http://info.worldbank.org/governance/wgi/#home (accessed 24 April 2017).

The public procurement system in Peru is not exempt from the risks of corruption and integrity breaches. According to a study published by the Ministry of Justice of Peru in 2008, the cases of corruption related to public procurement represent up to 30% of the total amount spent in public procurement (OECD, 2010). Furthermore, the result of the general population survey by Proética, the Peruvian chapter of Transparency International, showed that corruption of officials and authorities is by far the main problem perceived in the Peruvian state, and citizens are increasingly concerned (Figure 8.2).

Figure 8.2. **Major problems of Peru**



Source: Proética (2015), "Novena encuesta nacional sobre corrupción-2015", www.scribd.com/document/292794637/Novena-Encuesta-nacional-sobre-percepciones-de-la-corrupcion-2015 (accessed 24 April 2017).

8.1. Providing a more consistent and coherent national integrity system – and stronger management of conflicts of interest – in public procurement

8.1.1. Strengthening high-level commitment to fighting corruption

Peru can strengthening its high-level commitment to fighting against corruption by developing a specific integrity strategy for public procurement

Recognising the gravity of corruption in Peru and its negative impacts of various kinds, Peru has undergone a series of reforms and shown important progress in enhancing its integrity framework in the past decennium. In particular, the reform process advanced with the creation of the High-Level Anti-Corruption Commission (Comisión de Alto Nivel Anticorrupción, CAN) in 2010 by Supreme Decree No. 016-2010-PCM. The creation of CAN was later confirmed by Law No. 29976 in 2016.

The National Anti-corruption Plan of the Government (Plan Nacional de Lucha contra la Corrupción 2012-2016) envisaged building a country free of corruption with an effective, honest and inclusive public administration, and citizenry where a culture of ethical values prevails. This vision of the plan also envisaged a general objective – a transparent state that promotes probity in public and private acts, and ensures prevention, investigation, control and effective sanctioning of corruption at all levels (Box 8.2). The principles, ethical duties and prohibitions outlined in the National Anti-Corruption Plan are highly relevant for public procurement function and thus should be applied consistently to its activities and officials.

Box 8.2. **Brief summary of the National Anti-Corruption Plan of Peru**

Objective 1. Inter-institutional co-ordination in the fight against corruption

Objective 2. Effective prevention of corruption

Objective 3. Timely and effective investigation and sanctioning of corruption in the administrative and judicial field

Objective 4. Promotion and articulation of the active participation of citizens, civil society and the business sector in the fight against corruption

Objective 5. Placing Peru on the international scenes of the fight against corruption

Source: CAN (2013), *Plan Nacional de Lucha Contra la Corrupción 2012-2016*, http://can.pcm.gob.pe/planes-anticorrupcion/plan-nacional-de-lucha-contra-la-corrupcion-2012-2016/ (accessed 24 April 2017).

Public procurement is complex; it involves large amount of contracts, in terms of number and value, and numerous actors at different stages with different interests. The new regulatory framework[3] could raise concerns about integrity breaches coming from the increased room for procurement officials' discretionary power; moreover, such concerns may not be assuaged by the fact that provisions related to conflict of interest management are applicable to all public procurement contracts regardless of value. The new framework provides for direct contracting along with an increase in the threshold for application of the Law, from procedures above 3 UIT (Unidad Impositiva Tributaria, or Peruvian Taxation Units) to those above 8 UIT. The threshold increase could indeed contribute to improving efficiency of procedures, by allowing the contracting authority to carry out their work in a shorter time frame and with less administrative cost, but discretion could also be applied to keep the size of the purchase or contracts arbitrarily lower than the threshold to avoid open procedure. Some studies, such as Coviello, Guglielmo and Spagnolo (2014) and Palguta and Pertold (2014), provide empirical evidence of such manipulation around the threshold.

A study carried out in 2014 by the Government Procurement Supervising Agency (Organismo Supervisor de las Contrataciones del Estado, OSCE) has shown that contracts under 8 UIT during 2011-13 represented only a small share in terms of procurement volume in Peru; these were carried out predominantly by public entities at the local level. Yet, the study also concluded that there were 320 public entities in 2013 that had between 50% and 100% of their contracts whose reference values were equal to or less than 8 UIT (OSCE, 2014). In this sense, the threshold increase introduced by the new regulatory framework would necessitate assessment and management of possible ensuing risks.

The recent modifications made to Public Procurement Law No. 30225 by Legislative Decree 1341 reflect the nation's commitment to preserving a high level of integrity in the public procurement system. The principles governing procurement that are stated in article 2 of the law now include a principle of integrity: "The conduct of the participants at any stage of the contracting process is guided by honesty and veracity, avoiding any improper practice, which, if it occurs, must be communicated to the competent authorities in a direct and timely manner."

Developing a national anti-corruption plan specific to public procurement would affirm the national high-level commitment to fighting against corruption in public procurement, recognising the specific areas and activities vulnerable to risks of

corruption and integrity breaches. The country's policy makers could consider developing a national plan or strategy to curb corruption and uphold a high level of integrity in public procurement in line with the National Anti-Corruption Plan. For instance, the UK Anti-Corruption Plan includes specific action plans related to public procurement; these reflect the priorities and the risks of public procurement system in the country (Box 8.3).

Box 8.3. **UK Anti-Corruption Plan – Procurement**

4.35 Through the process of awarding public sector contracts, government and its officials, both locally and nationally, are at risk of being targeted by criminals seeking to corrupt procurement systems for financial gain. The Government is committed to preventing, identifying and tackling corruption in public procurement. Prevention and detection of irregularities is not only part of wider governance and public administration, but is also necessary in order to protect public finances.

Transparency

4.36 The Government's requirement for transparency, publication of awarded contracts, discourages opportunities for corruption, among its other benefits.

Obligations to advertise requirements and contracts (for example the "Contracts Finder" portal), as well as improvements to encourage competition, innovation, and SME access to public contracts, aids transparency and discourages malpractice.

Exclusion of suppliers

4.37 The European Public Procurement Directives have specific rules requiring the exclusion of suppliers who have been convicted of various offences including fraud, bribery and corruption. This exclusion extends to persons with "powers of decision, representation or control" over the supplier concerned. Suppliers may be excluded for other matters, including grave professional misconduct and offences which do not oblige exclusion. The offence of failure to prevent bribery (s7. Bribery Act 2010) is a discretionary ground for exclusion. The new, modernised public procurement directive updates the grounds for mandatory and discretionary exclusion, and also provide for ending exclusion if a supplier effectively "self-cleans". Government will consider whether further steps might be useful to ensure that information is readily available to procurers if and where suppliers have been convicted of offences attracting exclusion from public contract.

4.38 Model contract terms issued by the Cabinet Office in March and April 2014 (as with previous model contracts) have specific provisions, including contract cancellation, to deal with corruption and related issues.

Action 22. Cabinet Office to lead implementation of the new modernised European Public Procurement Directives. Planned transposition of the public procurement directive (in Q1 2015) and the "utilities" and "concessions" directive (thereafter) – Protect

Action 23. Cabinet Office to consider what further steps are required to make information available on suppliers excluded from public contracts, including the feasibility, potential advantages, and disadvantages of a register of excluded suppliers (by August 2015) - Protect

Source: Government of the United Kingdom (2014), *UK Anti-Corruption Plan,* www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf (under the terms of the Open Government Licence v3.0) (accessed 24 April 2017).

In developing a national plan, the Multi-sectoral Public Procurement Monitoring Council (Consejo Multi-sectorial de Monitoreo de las Contrataciones Publicas) – whose composition as well as mandate is described in Chapter 6 – could contribute to analysing risks and identifying national priorities related to public procurement. While its activities need to be carefully defined so as not to add additional burden coming from duplication of tasks, the council could work together with relevant authorities to link existing databases so as to further utilise the information available. This could support a holistic and comprehensive approach to detecting and analysing potential cases of fraud, collusion and corruption in public procurement processes. In its development, Peru could especially benefit from seeking out the systemic causes of the unfair treatment of business and corruption, and share the findings with the public and the appropriate public authorities.

8.1.2. A code of ethics for public procurement officials

Peru could consider developing code of ethics for public procurement officials to guide their behaviours

Standards of conduct are recognised as essential for guiding the behaviour of public officials in line with the public purpose of the organisation in which they work. The Recommendation of the OECD Council on Public Integrity acknowledges the critical role of setting integrity standards that "not only focus on minimum standards, but that also encourage high standards of conduct, good governance, adherence to public service values and an open culture that facilitates and incentivises learning" for a cleaner public administration. Thanks to their concise focus, flexible nature and straightforward language, codes of conduct have proved to be instrumental in promoting integrity. They provide a clear benchmark for acceptable behaviour, and ethical standards against which personnel and the institution itself can be held accountable.

In Peru, the Public Administration Code of Ethics Law (Law No. 27815) was enacted in 2002 establishing a set of principles, ethical duties and prohibitions applicable to civil servants of public administration agencies at all levels. The law regulates management of conflict of interest situations – in particular, article 8 prohibits maintaining relationships or situations in which personal, labour, economic or financial interest may be in conflict with fulfilment of the official duties and functions of the public officials.

In addition, Law No. 30057 on civil service and its regulation also contribute to defining the boundaries of civil servants' behaviour regarding conflict of interest situations. In particular, article 39 of the law defines their duties, which include, among others:

b) holding the state's interest over their own interests

g) acting with impartiality and political neutrality

h) not participating or intervening, directly or with the help of other persons, in contracts with the entity or any other public entity in which the civil servant, spouse or relative until the fourth degree of consanguinity or second degree of affinity has any interest.

Furthermore, Supreme Decree No. 040-2014-PCM, approving Law No. 30057 on civil service, includes the following prohibitions:

b) intervening in topics where the civil servant's personal, labour, economic or financial interests might be in conflict with the accomplishment of their duties and competencies

c) obtaining or looking for any incorrect benefits or advantages, for themselves or others, by using their position, authority, influence or signs of influence.

Public officials in Peru are bound by the Public Administration Code of Ethics, defined by the aforementioned law. In addition to this code, public entities in Peru could develop their own codes of conduct. For instance, OSCE has its own code of conduct[4] to align the values and principles that its staff should abide by, reflecting the specificities of the entity's functions while adhering to the Public Administration Code of Ethics.

Procurement officials in Peru are subject to the Public Administration Code of Ethics and, where they exist, the codes of ethics of their respective entities. In addition to limiting the behaviour of public officials against felonies such as collusion, misappropriation of funds, corruption and bribery (as defined in Peru's Criminal Code), the code of ethics for procurement officials in particular could set common values and standards of conduct that they would adhere to and apply in their daily work. This would require defining those common values in accordance with national public service values, as well as the intrinsic risks of the Peruvian public procurement system. For instance, Australia has defined the principle of probity in public procurement as the following (Box 8.4).

Box 8.4. **Ethics and probity in procurement in Australia**

Principles

Probity decisions should be:

i) *Helpful* – Probity should be used to facilitate discussion of current approaches to marketing with suppliers, in order to promote genuine engagement.

ii) *Inclusive* – Probity processes should be designed to enable innovative approaches to be adopted if required.

iii) *Tailored* – Probity roles can be tailored to business needs and range from using internal expertise to engaging external specialist advice.

iv) *Sensible* – Each individual process may require a different approach; one size will not fit all.

Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.

1. The principles underpinning ethics and probity in government procurement in Australia are:

i) Officials must act ethically, in accordance with the Australian Public Service Values (set out in section 10 of the Public Service Act 1999) and Code of Conduct (set out in section 13 of the Public Service Act 1999), at all times in undertaking procurement.

ii) Officials must not make improper use of their position.

Box 8.4. **Ethics and probity in procurement in Australia** *(continued)*

iii) Officials should avoid placing themselves in a position where there is the potential for claims of bias.

iv) Officials must not accept hospitality, gifts or benefits from any potential suppliers.

v) Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.

vi) All tenderers must be treated equitably. This means that all tenderers must be treated fairly – it does not necessarily mean that they are treated equally.

vii) Conflicts of interest must be managed appropriately.

viii) Probity and conflict of interest requirements should be applied with appropriate and proportionate measures informed by sound risk management principles.

ix) Value for money outcomes are best served by effective probity measures that do not exclude suppliers from consideration for inconsequential reasons.

x) Confidential information must be treated appropriately during and after a procurement process.

xi) External probity specialists should only be appointed where justified by the nature of the procurement.

2. Mechanisms for assuring probity should be applied sensibly in procurement processes, with the management of probity issues tailored to each individual process.

3. Importantly, probity should not be used to justify avoiding reasonable discussion with potential suppliers during a tender. Officials are able to discuss current tenders in the market with potential suppliers. The level of detail and formality in providing information should be appropriate to the risk of the procurement. The procurement's level of risk will inform how officials engage with potential suppliers:

i) For lower risk (typically low cost and complexity procurements run via limited tender), in line with the probity principles above, officials can discuss the procurement. This process can reasonably be dealt with by the tender contact officer with limited requirements for formalised or rigid probity processes. Information can be discussed in a meeting or over the telephone, or where necessary, via written correspondence (e.g. email). Any information provided to the potential supplier that would be useful for other potential suppliers should be de-identified and provided to them also.

ii) For higher risk (typically higher cost and complexity procurements run via open tender), it is appropriate to implement more rigour in dealing with suppliers. This may include formalised approaches to handling requests from suppliers, specified probity roles and utilising additional expertise where necessary.

Source: Australian Government Department of Finance (2014), "Ethics and probity in procurement", www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/accountability-and-transparency/ethics-and-probity/principles.html (accessed 24 April 2017).

As the profession of public procurement official is exposed to common integrity risks when they prepare, design, implement and/or monitor procurement procedures, Peru could benefit from developing a code of ethics for public procurement officials (see also OECD, 2017b). It would help to streamline the behaviour of public procurement officials against risks of integrity breaches in exercising their profession.

Furthermore, Peru could maximise the benefits of doing so by extending the Code of Ethics to all stakeholders of public procurement – as in the case of the Code of Conduct for Procurement in Canada, which is applicable to public servants and vendors alike (Box 8.5). The Code of Practice for Procurement of the New South Wales Government of Australia provides another example of such a code; it is not limited to ethical behaviours but outlines how the government will conduct its procurement activities when interacting with the private sector (Box 8.6). It not only establishes standards of behaviour but also provides specific practice requirements as well as guidance on reporting and dealing with code breaches.

Box 8.5. **Code of Conduct for Procurement in Canada**

The government of Canada is responsible for maintaining the confidence of the vendor community and the Canadian public in the procurement system, by conducting procurement in an accountable, ethical and transparent manner.

The Code of Conduct for Procurement will aid the government in fulfilling its commitment to reform procurement, ensuring greater transparency, accountability and the highest standards of ethical conduct. The code consolidates the government's existing legal, regulatory and policy requirements into a concise and transparent statement of the expectations the government has of its employees and its suppliers.

The Code of Conduct for Procurement provides all those involved in the procurement process – public servants and vendors alike – with a clear statement of mutual expectations to ensure a common basic understanding among all participants in procurement.

The code reflects the policy of the government of Canada and is framed by the principles set out in the Financial Administration Act and the Federal Accountability Act. It consolidates the federal government's measures on conflict of interest, post-employment and anti-corruption as well as other legislative and policy requirements relating specifically to procurement. This code is intended to summarise existing law by providing a single point of reference on key responsibilities and obligations for both public servants and vendors. In addition, it describes vendor complaints and procedural safeguards. The government expects that all those involved in the procurement process will abide by the provisions of this code.

Source: PWGSC (2016), "The Context and Purpose of the Code", www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html (accessed 24 April 2017).

Box 8.6. **Code of Practice for Procurement of New South Wales Government, Australia**

The NSW Government wants its procurement activities to achieve best value for money in the expenditure of public funds while being fair, ethical and transparent.

In achieving this objective, the Government

i) has set the responsibilities and standards of behaviour expected of the parties undertaking procurement activities as outlined in this Code of Practice;

ii) will award contracts to those service providers that meet the requirements outlined in the Code; and

iii) calls on other industry stakeholders, such as employer associations, industry associations and unions, to support and uphold this Code of Practice.

Box 8.6. **Code of Practice for Procurement of New South Wales Government, Australia** *(continued)*

Standards of Behaviour

Honesty and fairness: Parties will conduct all procurement and business relationships with honesty and fairness.

Accountability and transparency: The process for awarding contracts on government projects will be open, clear and defensible.

No conflict of interest: A party with a potential conflict of interest will declare and address that interest as soon as the conflict is known to that party.

Rule of law: Parties shall comply with all legal obligations.

No anti-competitive practices: Parties shall not engage in practices that are anticompetitive.

No improper advantage: Parties shall not engage in practices that aim to give a party an improper advantage over another.

Intention to proceed: Parties shall not seek or submit tenders without a firm intention and capacity to proceed with a contract.

Co-operation: Parties will maintain business relationships based on open and effective communication, respect and trust, and adopt a non-adversarial approach to dispute resolution.

Source: Excerpt from Government of New South Wales (2016), *Code of Practice for Procurement*, www.procurepoint.nsw.gov.au/system/files/documents/gc21_edition_2_conditions_of_tendering_updated_2016_04_21.docx (accessed 25 April 2017).

8.1.3. Adopting a balanced approach to managing conflict

Peru could benefit from adopting a balanced approach to managing conflict of interest in public procurement in order to drive efficiency while enabling a culture of integrity

The growing and constantly changing nature of the relationship between the public sector and the business and non-profit sectors draw close attention to conflict of interest situations. In the context of public procurement especially, such situations have significant implications for the backbone principles of public procurement, such as transparency, fair competition and equal treatment of bidders.

Conflict of interest is not *ipso facto* corruption; however, it could result in corruption if it is not appropriately identified, prevented and managed. The OECD member countries have implemented different approaches to reflect their respective country environments, but two major approaches can be distinguished that are usually used simultaneously – the descriptive approach and the prescriptive approach. The descriptive approach defines conflict of interest in general terms and provides public officials with the general features of the phenomenon, whereas the prescriptive approach defines a range of specific situations that are considered incompatible with public office or in conflict with the public interest and official duties.

In Peru, the provisions regulating conflict of interest of public officials are diverse and embedded in different laws and regulations (Table 8.2), while the National Code of Ethics Act accompanied by CAN manuals defines what constitutes a conflict of interest through general features of the phenomenon.

Table 8.2. **Key primary legislation stating the conflict of interest policy in Peru**

Legal provision	Description
Peruvian Political Constitution, article 126	Ministers are prohibited from holding other public office except legislative posts. Ministers are banned from engaging in gainful activity or interfering in the management of companies or private partnerships in which they have a personal interest.
Law No. 27815, Public Administration's Code of Ethics Act, article 8	All public officials are prohibited from maintaining a conflict of interest: keeping relationships or accepting situations in which context personal, labour, economic or financial interests may conflict with the fulfilment of the duties and functions of their office
Law No. 26771, establishing the prohibition of exercising the faculty to appoint and recruit in the public sector in cases of kinship, article 1	Officers, directors and public servants, and/or trusted staff of institutions and public agencies, are prohibited from appointing or employing – or inducing someone else to appoint or employ in their entity – their relatives.
Law No. 27588, establishing prohibitions and non-compatibilities of public officials and public servants, as well as those who provide services to government under any contractual arrangement	Up to one year after the conclusion or end of the link, directors, owners, senior officials, members of consultative councils, administrative courts, committees and other bodies that perform a public function or government custom, directors of state-owned enterprises or representatives of board of directors, as well as advisors, officials which have had access to privileged or relevant information, or whose opinion is determinative in decision making, for companies or private institutions included in the specific area of its civil service, are prohibited from the following: 1) providing services therein in any modality 2) accepting remunerated representation 3) forming part of the board of directors. 4) acquiring directly or indirectly shares or units thereof, or of its subsidiaries that could have an economic link 5) having any civil or commercial contracts therewith 6) participating as lawyers, attorneys in fact, advisors, sponsors, arbitrators or individual experts in the processes related to the distribution of government in which they serve, while holding office or fulfilling the task conferred; except on his own behalf, or that of his spouse, parents or minor children. These restrictions will permanently subsist with respect to specific causes or matters in which they have directly participated.
Law No. 28024, lobbying regulation in the public administration	Law 28024 contains a range of provisions concerning conflicts of interest situations and incompatibilities that impedes being active as a lobbyist. Public officials are not allowed to undertake lobbying activities while in office and during the 12 months after leaving office. Exclusions also include: individuals and legal persons that are participating in collegial bodies of the public administration; owners and directors of national or international media; and relatives of public officials, if the lobbying activity concerns an area of competence of the public official.
Law No. 30225, government procurement	The law regulates the procurement process and prohibits certain public officials, ex-public officials after leaving office for up to 12 months, relatives, and suppliers who are at risk of a conflict of interest situation from participating in a procurement process.

Source: Adapted from OECD (2017b), *OECD Integrity Review of Peru: Enhancing public sector integrity for inclusive growth*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264271029-en.

Furthermore, the new Public Procurement Law and its regulation identified the situations where conflict of interest poses a threat to the integrity of the public procurement processes, and accordingly established prohibitions (Box 8.7).

Box 8.7. **Conflict of interest provisions initially listed in the Government Procurement Law (Law No. 30225) and its regulation**

The Government Procurement Law (Law No. 30225) in its article 11 forbids the following categories of legal/natural persons from being participants, bidders and/or contractors regardless of the public procurement regime applicable to them:

a) The President and the Vice-Presidents of the Republic, the Congressmen of the Republic, the ministers and vice-ministers of state, the Judges of the Supreme Court of Justice of the Republic, the heads and members of the collegiate entity of the autonomous constitutional entities, in all public procurement processes, up to 12 months after having left office

b) The presidents, vice-presidents and advisors of the regional governments, in the country's regions, up to 12 months after having left office

c) The judges of the supreme courts of justice, the mayors and aldermen within their jurisdiction, up to 12 months after having left office

d) The heads of public institutions or entities of the executive branch, the directors, managers and workers of state companies, public functionaries, trusted employees and public servants, according to the special law on the matter, within the entity to which they belong

e) The natural or legal persons who have a direct intervention in determining the technical characteristics and those of estimated value; crafting of tender documentation; selection and evaluation of bids in a tendering process; and the authorisation of payments for the contracts derived from said process, save for supervision contracts, in the corresponding procurement process

f) The spouse, partner-in-law or family members up the fourth degree of consanguinity and second degree of affinity, within the scope and period established for the persons specified in the preceding paragraphs

g) The legal persons in whose capital or social equity they may have or may have had a participation higher than 5% within the 12 months preceding the notice of intended procurement, within the scope and period established for the persons specified in the preceding paragraphs

h) The non-profit legal persons in which they may participate or may have participated as partners or members of their boards of directors, within the 12 months preceding the notice of intended procurement, within the scope and period established for the persons specified in the preceding paragraphs

i) The legal persons whose members of its administrative bodies, proxies or legal representatives are the persons specified in the preceding paragraphs. The same prohibition extends to the natural persons who have as proxies or representatives the persons specified in the preceding paragraphs, within the scope and period established for the persons specified in the preceding paragraphs.

j) The natural or legal persons who are currently administratively sanctioned with temporary or permanent disqualification for exercising their right to participate in tendering processes and to contract with entities, in accordance with the provisions contained in this regulation and its rules of application.

k) The legal persons whose partners, shareholders, equity holders, heads, members of the administrative bodies, proxies or legal representatives are or may have been part, within the last 12 months from the sanction being imposed, of legal persons who are currently administratively sanctioned with a temporary or permanent disqualification for participating in tendering processes and for contracting with the state; or who, having acted as natural persons, may have been sanctioned for the same infraction, in accordance with the criteria specified in this legislative decree and its rules of application. In the case of partners, shareholders, equity holders or heads, this impediment shall be applied so long as the participation is higher than 5% of the capital or social equity and for the duration that the sanction is in force.

Box 8.7. **Conflict of interest provisions initially listed in the Government Procurement Law (Law No. 30225) and its regulation** *(continued)*

The regulations on the Government Procurement Law (Law No. 30225) in article 24 establishes additional limits on the public officials that cannot sit on the selection committee due to high risks of conflict of interest that may arise with participation:

a) the head of the entity

b) all the public officials that have control and audit functions, such as councillors, regional councillors, heads of public enterprises and auditors, except for the institutional control body

c) public officials that have, by statutory provision or by delegation, approved procurement records, designated members of the selection committee, approved the tender documentation or have the authority to resolve appeals.

Article 248 of the same regulation adds the following limitations on being participants, bidders or contractors:

a) persons convicted through consented or executed sentences for extortion, embezzlement, corruption of public servants, illegal enrichment, influence peddling and illicit acts in auctions, open tendering and public tendering as well as legal persons which legal representatives are convicted through consented or executed sentences for the same felonies

b) legal persons that have two or more shareholders with stocks, shares or contributions that exceed 5% of the social capital in each one of those participating in the same tendering process

c) the same provision is applied when a natural person registered in the Suppliers National Registry (RNP) has stocks shares, or contributions that exceed 5% of the social capital in one or more legal entities registered in the RNP

d) natural or legal persons that, for the persons that represent them, constitute them or any other verifiable circumstance; are a continuation, branch, succession or front man of other impeded person, independently of the legal form used to elude that condition; as well as the merger, demerger, reorganisation, transformation or similar ones.

The twelfth Final Disposition of the Regulation of the Law No. 30225 details aspects about section (k) of article 11 of the Law No. 30225. It establishes the following as the legal persons prohibited from being a participant, bidder or contractor:

a) legal persons whose members are sanctioned with disqualification from participating in tendering processes and contracting with public entities

b) legal persons whose members are or were part, by the moment of the sanction or 12 months before it, of a legal person sanctioned with disqualification from participating in tendering processes and contracting with public entities.

The term "members" above refers to the members of the management boards, representatives or legal representatives, as well as associates, shareholders or titleholder, whenever the participation exceeds 5% of the capital or assets.

It also extends to the natural and legal persons that, by the time of the sanction or during 12 months prior to the date, acted as members of the legal persons sanctioned with disqualification from participating in tendering processes and contracting with public entities.

The thirteenth Final Disposition of the Regulation of the Law No. 30225 details aspects about section (d) of article 11 of the Law No. 30225, by establishing that the workers of public enterprises and the public officials included in that prohibition case are the ones that, by their position or the functions they develop, have any influence, decision power or privileged information about the procurement process.

Source: Law No. 30225 on public procurement and its regulation, modified by Legislative Decree No. 1341 in January 2017.

The modifications that were made to article 11 of Public Procurement Law No. 30225 by Legislative Decree No. 1341, adopted in January 2017, both rendered certain provisions less restrictive and included some additional prohibitions. In particular, the new literal (h) based on the old literal (f) of the said article limited family members only up to the second degree of consanguinity that formerly was the fourth degree and the new literal, based on old literal (g), puts on the participation of the legal persons with participation superior to the 30% of the capital, which previously was set at 5%. In addition to lowering the participation limit, the aforementioned new prohibitions included new literals (m), (n) and (o) that state the inability to participate of natural or legal persons or their subsidiaries (through the participation of their legal representatives or other related persons) who have committed or have confessed their commission in crimes such as embezzlement or trafficking of influences, whether in the country or abroad. Indeed the provisions listed in the laws and regulations contribute to managing conflict of interest situations in public procurement in Peru by prohibiting certain persons from participation in public procurement.

These situations are identified as posing risks for public officials serving the public interest. Yet, the complexity of the interaction between the public and the private sectors and its evolving nature give rise to new situations and relationships that involve conflicts of interest with potential threat to the public interest. In that light, the list of prohibitions could never be exhaustive.

The OECD Guidelines for Managing Conflict of Interest in the Public Service offer policy options for resolution or management of a continuing or pervasive conflict (Box 8.8). In fact, many OECD countries are using several of the following options according to the situations and the seniority or decision-making power of different positions. Disclosure of private interests, which is an effective proactive tool for managing conflict of interest, will be discussed later in this chapter.

Box 8.8. **OECD Guidelines for Managing Conflict of Interest in the Public Service**

The OECD Guidelines for Managing Conflict of Interest in the Public Sector set the international benchmark to help governments review and develop comprehensive conflict of interest policies for the public sector.

The guidelines highlight the importance of setting clear rules on what is expected of public officials in dealing with conflict of interest situations, in order to provide a coherent and consistent approach to managing those situations. They also list options for positive resolution or management of a continuing or pervasive conflict. These options could include one or more of several strategies as appropriate, such as for example:

i) divestment or liquidation of the interest by the public official
ii) recusal of the public official from involvement in an affected decision-making process
iii) restriction of access by the affected public official to particular information
iv) transfer of the public official to duty in a non-conflicting function
v) rearrangement of the public official's duties and responsibilities
vi) assigning of the conflicting interest in a genuinely "blind trust" arrangement
vii) resignation of the public official from the conflicting private capacity function
viii) resignation of the public official from their public office.

Source: OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264104938-en.

Peru has elaborated ethical principles for all public officials, and provides guidelines on their application. Furthermore, its legal system has identified high-risk positions and situations of conflict of interest that are prohibited from participating in public procurement. An unbalanced system for managing conflict of interest that relies heavily on prohibitions could have negative implications both for the efficiency of the public procurement system and a culture of integrity. Too strict rules may even lead to undesired consequences, undermining officials' motivation and engagement in their workplace if they receive the impression that little trust is placed in them or, worse, that they are inherently corrupt; these hidden costs of control are well known and researched (e.g. Falk and Kosfeld, 2006; Lambsdorff, 2015; Anechiarico and Jacobs, 1996). For instance, an excessively strictly defined approach to identifying, preventing and managing of conflict of interest may ossify the public procurement market: it may come into conflict with other rights of public officials as well as suppliers involved in the market, be counterproductive in practice, and even deter some people from seeking public office. What is called for is a balanced approach that makes a career as public procurement official an attractive choice, and at the same time makes the public procurement market an attractive business opportunity for the private sector. This would mean providing different options of actions, not limited to restricting certain people from participating. In this light, policy makers in Peru could consider closely assessing the potential, apparent and real conflict of interest situations that could arise in public procurement, and provide for different options of action based on the risks of different positions and relationships. Box 8.9 illustrates an example of differentiated approaches for potential and existing conflicts of interest.

Box 8.9. **Conflict-of-interest during tender evaluation in South Australia**

The Department of Planning, Transport and Infrastructure (DPTI) in South Australia suggests ways to address potential and material conflict of interest situations during the procurement process through the Procurement Management Framework. The framework states that the DPTI staff member should notify the evaluation panel chairperson as soon as they notice any apparent conflict of interest situation. Even though a potential conflict of interest will not necessarily preclude a person from being involved in the evaluation process, it is declared and can be independently assessed.

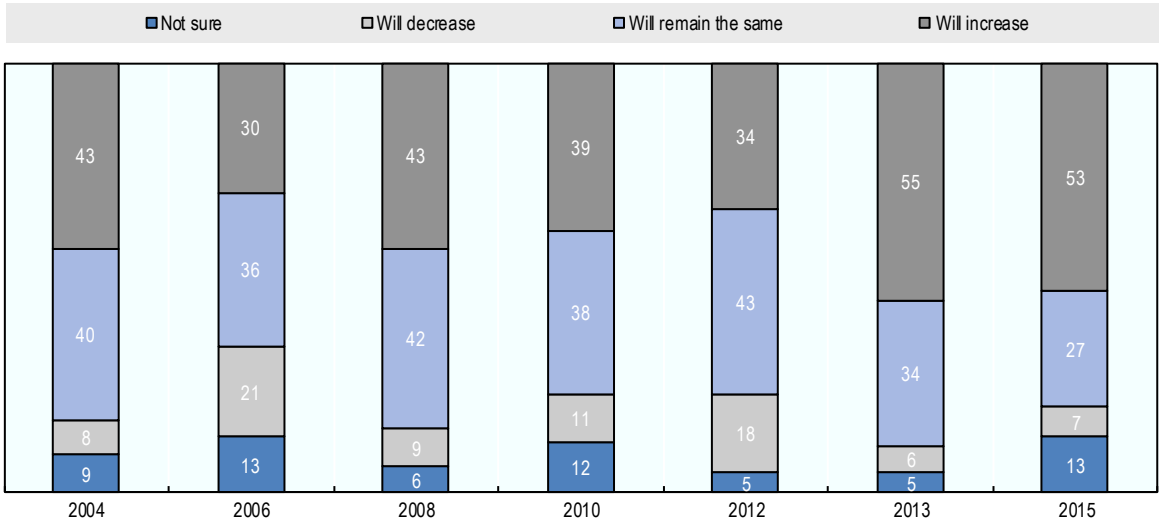
It also lists situations that would be considered a material conflict of interest of a staff member in relation to a company submitting a tender. These include: i) a significant shareholding in a small private company which is submitting a tender; ii) having an immediate relative (e.g. son, daughter, partner, sibling) employed by a company which is tendering, even though that person is not involved in the preparation of the tender and winning the tender would have a material impact on the company; iii) having a relative who is involved in the preparation of the tender to be submitted by a company; iv) exhibiting a bias or partiality for or against a tender (e.g. because of events that occurred during a previous contract); v) a person, engaged under a contract to assist DPTI with the assessment, assessing a direct competitor who is submitting a tender; vi) regularly socialising with an employee of tenderer who is involved with the preparation of the tender; vii) having received gifts, hospitality or similar benefits from a tenderer in the period leading up to the call of tenders; viii) having recently left the employment of a tenderer; or ix) considering an offer of future employment or some other inducement from a tenderer.

Source: OECD (2016), *Towards efficient public procurement in Colombia: Making the difference*, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252103-en.

8.2. Embedding a culture of integrity in public procurement in Peru

Integrity in the behaviour of the stakeholders of public procurement processes cannot be ensured solely through formally implementing an integrity framework; it has to be complemented with an enduring culture of integrity. Despite recent reforms in Peru to strengthen the institutional framework and curb corruption, the citizen's perception is one of unsatisfactory improvement. For instance, the opinion that the level of corruption would increase or stay the same over the next five years dominated responses to the national surveys carried out by Proética (Figure 8.3).

Figure 8.3. **Peruvian citizens expect the level of corruption to increase in the five coming years**



Source: Proética (2015), "Novena encuesta nacional sobre corrupción-2015", www.scribd.com/document/292794637/Novena-Encuesta-nacional-sobre-percepciones-de-la-corrupcion-2015 (accessed 24 April 2017).

The public opinion survey also showed the generally moderate tolerance level of the Peruvians toward different forms of corruption, most of which are relevant for public procurement processes. For instance, around 70% of the people said they were moderately tolerant toward public officials favouring relatives and friends; giving a gift or money to expedite a public process; paying a "tip" in exchange for forgiving a fine; and stealing public services. Addressing these challenges, the following section outlines measures that Peru could consider in order to embed a stronger culture of integrity in public procurement.

8.2.1. Practical guidelines on integrity and managing conflicts of interest for public procurement officials and suppliers

Peru could consider providing practical guidelines on integrity and managing conflicts of interest to public procurement officials as well as to suppliers

Providing clear and realistic descriptions of the ethical values and principles that govern public officials' behaviour helps those officials better identify relevant situations and behave accordingly. In fact, the National Manual on Ethical Principles, Duties and

Prohibitions for the Public Officials (Principios, Deberes y Prohibiciones Éticas en la Función Pública: Guía para Funcionarios y Servidores del Estado) was recently prepared by the High-Level Anti-Corruption Commission to guide all public employees on the scope and content of the Public Administration's Code of Ethics. On prohibitions in particular, it gives examples of realistic situations that public officials could be faced with. In one, a member of the procurement committee evaluates proposals; one proposal is by a company in which his family member has shares. The guide signals this as a conflict of interest that poses a threat to the due behaviour of public officials, and therefore prohibits it. Yet, the number and complexity of the situations that could occur in the activities of public procurement, especially with regard to where conflict of interest could be a threat to the integrity of the system, far exceed the examples that are provided within the manual.

As discussed in the previous section (Table 8.1), there are intrinsic risks of corruption and integrity breaches for different stages and different stakeholders of public procurement processes. These intrinsic risks also differ, depending on countries' legal and regulatory systems. Recognising this, the risky situations and positions based on sound risk assessment, where the integrity of the system may be compromised, first need to be identified. Then, concrete steps and measures that could be taken under the regulatory framework of Peru to resolve these situations should be provided and thoroughly explained. Peru could develop practical manual or guidelines for public procurement officials, detailing and providing for potential situations where the ethical values and public service principles of the official could be at question and guidance on the steps that officials are expected to take in these situations. Box 8.10 below offers an example of such a guide, developed in Australia.

Box 8.10. **Ethics, probity and accountability in procurement in Queensland, Australia**

In addition detailing the principles and values that public procurement officials should abide by, the guidelines provide practical examples of situations where the ethics, probity and accountability could be in question, and what is expected of the officials in such situations. An illustration follows.

Can a procurement officer attend a seminar provided by an offeror?

Attendance by a procurement officer at a public seminar offered by a potential supplier is unlikely to create a conflict of interest. However, the officer must not discuss confidential matters relating to the tender process, and must not use the tender process to obtain a discount on any registration fee. Officers directly involved in the tender process should inform the tender management team as well as their own manager, and gain approval for their attendance at the seminar, which should be fully documented.

Source: Department of Public Works of Queensland Government (2006), *Better Purchasing Guide: Ethics, Probity and Accountability in Procurement*, www.hpw.qld.gov.au/SiteCollectionDocuments/ProcurementGuideEthicsProbityAccountability.pdf (accessed 24 April 2017).

This guideline could be prepared and provided to other stakeholders of public procurement, including contractors, potential suppliers, consultants and auditors. Public procurement is a two-way street, where the integrity of the system cannot be enhanced solely through efforts from the public procurement officials.

8.2.2. Training for integrity in public procurement

Peru could devote efforts to providing sufficient training specifically in public procurement integrity, especially for public procurement officials at the sub-central level

Appropriate organisational strategy, managerial guidance, and support and training programmes are regarded as crucial in raising awareness and developing knowledge of, and commitment to, the critical elements of a culture of integrity in public organisations. Ethical training in particular provides practical guidance on behaviour in situations where official rules contradict traditions or do not provide clear answers on how to proceed in concrete situations. While lectures appear appropriate for rules training, interactive and tailor-made practical methods may be more useful for training in values and ethical conduct in risk situations (OECD, 2013).

The OSCE promotes a culture of corruption prevention in the public sector through national training and certification of more than 11 000 operators recruited between 2012 and 2015. In addition, the OSCE has carried out a number of trainings on the new Public Procurement Law that included the topic of integrity. However, OSCE has yet to develop specific training programmes related to integrity issues, including appropriate management of conflict of interest, in public procurement. As such, the OSCE could consider developing specific training programmes for integrity in public procurement, the content of which would need to be revised and updated regularly. The example in Box 8.11 illustrates a training framework for integrity targeted at procurement officials.

Box 8.11. **Integrity training in Germany**

The Federal Procurement Agency is a government agency that manages purchasing for 26 different federal authorities, foundations and research institutions that fall under the responsibility of the federal ministry of the interior. It is the second largest federal procurement agency after the Federal Office for Defence Technology and Procurement.

The Federal Procurement Agency has taken several measures to promote integrity among its personnel, including support and advice by a corruption prevention officer ("Contact Person for the Prevention of Corruption"), the organisation of workshops, training on corruption, and the rotation of its employees.

Since 2001, it is mandatory for new staff members to participate in a corruption prevention workshop. They learn about the risks of getting involved in bribery and the briber's possible strategies. They also learn how to behave when these situations occur; for example, they are encouraged to report it ("blow the whistle"). Workshops highlight the central role of employees whose ethical behaviour is an essential part of corruption prevention. About 10 workshops took place with 190 persons who provided positive feedback concerning the content and the usefulness of the training. The involvement of the agency's "Contact Person for the Prevention of Corruption" and the Head of the Department for Central Services in the workshops demonstrated to participants that corruption prevention is one of the priorities for the agency. In 2005 the target group of the workshops was enlarged to include not only induction training but also ongoing training for the entire personnel. Since then, six to seven workshops are being held per year at regular intervals, training approximately 70 new and existing employees per year.

Box 8.11. **Integrity training in Germany** *(continued)*

Another key corruption prevention measure is the staff rotation after a period of five to eight years in order to avoid prolonged contact with suppliers, as well as to improve motivation and make the job more attractive. However, the rotation still meets with difficulty in the agency. Due to a high level of specialisation, many officials cannot change their organisational unit, their knowledge being indispensable for the work of the unit. In these cases alternative measures such as intensified (supervisory) control are being taken.

Source: OECD (2016), *Towards efficient public procurement in Colombia: Making the difference,* OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252103-en.

Particular attention needs to be directed to providing sufficient training for public procurement officials at the sub-central level. Public procurement at regional or local levels could be exposed to higher risks of corruption due to fewer obstacles from, for instance, weaker governance capacity. Indeed, the previous chapters have shown that, in the context of Peru, internal controls are relatively weak at sub-central levels (Chapter 6) and capacity and knowledge gaps have been identified for public procurement officials at this level (Chapter 5). In this regard, OSCE could co-ordinate with its regional offices, and through the CAN with, SERVIR and the National School of Public Administration (Escuela Nacional de Administración Pública, or ENAP) to provide sufficient training programmes on integrity in public procurement, which also need to address those integrity risks that are more prevalent at the regional and local levels.

8.2.3. Making conflict of interest transparent through disclosure of private interests

Peru could benefit from adopting proactive management of conflict of interest through disclosure of the private interests of public procurement officials.

Disclosure of private interests and making them publicly available are regarded as an effective complement to managing conflict of interest. Disclosure holds public officials more accountable for their actions, and public availability in particular enables citizens to become involved as a control mechanism. At the same time, this measure could raise concerns over public officials' privacy. Therefore, striking the right balance based on the nature of the position concerned and the seniority has been at the centre of the discussion in many countries.

As a tool to make conflict of interest of public procurement officials transparent, many OECD countries have applied a tailored approach to disclose public procurement officials' private interests and making them publicly available (Figure 8.4).

Asset disclosure for certain public officials is currently defined under Law No. 27482.[5] Under the current law, the asset declaration of public officials includes declaration of:

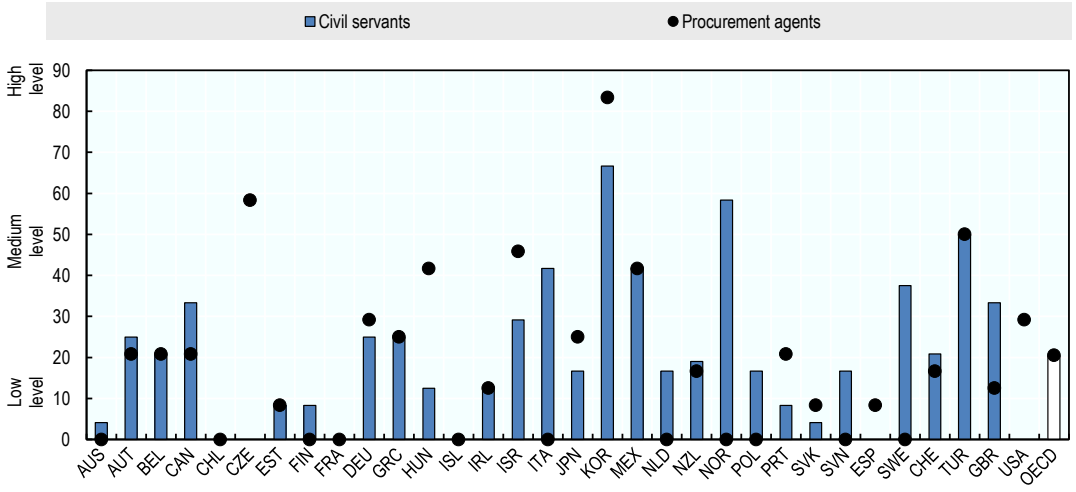
- monthly income
- real property in Peru and abroad
- personal property in Peru and abroad
- savings, loans, deposits and investments in the financial system, made by the respondent or the spouse
- other assets and income of the respondent or the spouse

- debt and liabilities.

Furthermore, all the public officials that are under the scope of the law are subject to declaration of these same items.

However, the type of information solicited in Peru currently is primarily aimed at detecting illicit enrichment. A risk-based approach to asset declarations for procurement officials may require declaring different type of information such as previous employment, gifts received, or outside positions (OECD, 2017b).

Figure 8.4. **Level of disclosure and public availability of private interests of public procurement officials in comparison to civil servants**



Note: Private interests include assets, liabilities, income sources, income amount, paid outside positions, non-paid outside positions, gifts and previous employments.

Source: OECD (2014), "2014 OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection", www.oecd.org/gov/ethics/2014-survey-managing-conflict-of-interest.pdf (accessed 26 April 2017).

A balanced approach to identifying, preventing and monitoring conflicts of interest could include identifying the public procurement officials that are exposed to more risks, and defining the degree of disclosure for different positions based on the assessed risk levels and the level of seniority (OECD, 2017b). Peru could consider adopting the aforementioned approach to asset disclosure of public procurement officials based on sound risk assessment of different positions while ensuring that the declarations are verified effectively (OECD, 2017b).

8.2.4. Active communication and raising awareness of whistleblower protection

Peru could consider building a strong open organisational culture through active communication and raising awareness of whistleblower protection in all stakeholders in public procurement processes.

Whistleblower protection is an essential element of promoting a culture of accountability and integrity and constitutes the ultimate line of defence for safeguarding the public interest by facilitating the reporting of misconduct, fraud and corruption.

Effective whistleblower protection is provided, not only if the process of reporting misconduct, fraud or corruption is clearly set forth, but also it requires that the whistleblower has confidence in reporting and in protection.

Peru is equipped with a dedicated public sector whistleblower protection law (Law 29542 of 2010[6] and its Regulations). The law provides protection for current and former public servants and also for those under temporary labour regimes. Citizens could be provided protection in cases where they report a wrongdoing that occurred in a public entity.

OSCE also establishes complaints mechanisms and whistleblower protection, whether from the public or private sector, in cases of complaints made of alleged violations of government procurement rules by the entities. The allegations stated can be related to preparatory acts (irregularities in the definition of technical specifications or terms of reference, determination of the reference value, overvaluation, among others); the selection process, due to the existence of access barriers (not allowing for the registration of participants, not delivering the technical file for the works, the establishment of restrictive requirements, among others); and contract execution (delayed implementation of benefits, abandoned works). This mechanism reinforces the reporting of wrongdoing through keeping the complaints anonymous and reporting back the result of the analysis.

Furthermore, the Office of the Ombudsman of Peru has published a practical guide for citizens who wish to file a complaint against acts of corruption and other mismanagement against public ethics. Citizens can also formulate queries or complaints about conflict of interest situations and integrity breaches to the General Comptrollership of the Republic and to the institutional control bodies.

Additionally, as it was noted in the OECD Integrity Review of Peru (OECD, 2017b), the current legal framework provides whistleblowers with protection from being dismissed or removed from their positions or workplaces, but does not explicitly include protection against the threat of reprisal. In addition, only public officials are explicitly guaranteed protection within the whistleblower protection law. In order to actively involve the suppliers in the detection of wrongdoing, they need to be ensured of any unjust treatment following the reporting. As an additional way to involve suppliers, Peru could as well consider adopting another reporting channel through high-level reporting mechanisms, as discussed earlier in this chapter. With several lines of reporting in place as previously discussed, Peru could consider communicating them more actively to all stakeholders with a clear statement of protection from any mistreatment following the reporting.

8.3. Ensuring accountable public procurement through promoting transparency and stakeholder participation

8.3.1. Making information more usable by all stakeholders

In order to better reap the benefits from transparency to promote accountable public procurement processes, Peru could consider making the information more useable by all stakeholders

Transparency enables governments and citizens to engage in a mutually responsive way and thus renders the public procurement system more accountable. In this sense, low

levels of transparency and accountability in the system could place the vast resources channelled through public procurement systems in danger of corruption and misuse.

The Secretariat of Public Management (Secretaria de Gestión Pública, or SGP) of the Presidency of the Council of Ministers (PCM) has been until recently the main body in charge of designing transparency policies, as well as to formulate, co-ordinate, supervise and assess the policies of access to public information and transparency. The recent Legislative Decree 1353 of 2017 creates a dedicated transparency department in the Ministry of Justice, the National Authority for Transparency and Access to Information (Autoridad Nacional de Transparencia y Acceso a la Información Pública), with the mandate to propose, enforce and supervise transparency policies and regulations. Currently, however, it lacks the independence to credibly fulfil its mandate and functions and should, through the CAN, closely co-ordinate with the SGP in all aspects related to policies of transparency and citizen oversight (OECD, 2017b).

Notwithstanding, along with the national statement on building an efficient and transparent nation, legal provisions open access to information regarding procurement processes. For instance, the Law for Transparency and Access to Information (Law No. 27806) – its consolidated text approved by Supreme Decree No. 043-2003-PCM and its regulation approved by Supreme Decree No. 072-2003-PCM – establishes the publicity principle, mandating that public sector entities register detailed information about the procurement processes carried out by them on their transparency webpage.

In line with national principles, OSCE promotes access to information related to public procurement through various tools for direct access by all stakeholders of public procurement. Notably, the following lists of information are made accessible:

- On the Electronic System for Government Procurement and Contracting (SEACE) website, public agencies record, under their responsibility, information regarding their annual procurement plan, which is to say actions forming part of the selection process and contract execution. Suppliers also have the opportunity to submit electronic bids in the electronic reverse auction, as well as fill out purchase orders by framework agreement.
- The selection committee allows bidders access to the procurement file, except for the information regarded as secret, confidential or reserved by specific regulations, after awarding of the contract. Even though the information is not made available on the SEACE, the bidders that have not awarded the contract can access all the information about the procurement process.
- The OSCE website contains records of decisions issued by the procurement court (impugning and disciplinary recourses), awards, resolutions, the appointment of arbitrators, opinions on public procurement, standardised bidding terms, directives, rulings, records of suppliers disqualified from contracting with government, and other information relevant for the general public.
- The OSCE Monitoring Unit publishes, among other things, precautionary measures that invalidate resolutions issued by OSCE and the list of penalised companies by disqualification period (temporary and permanent) from contracting with government; the latter allows viewing their legal representative, partners and governing bodies – thus promoting transparency and access to public information.
- The arbitration record disseminates information relevant to the parties and the public about the list of arbitrators managed by OSCE. This database allows anyone to know

the cases to which an arbitrator has been designated; the company or government entity making the designation; any objections that have been made against the arbitrator; awards issued; complaints of violations of the Code of Ethics brought against an arbitrator, and any penalties that may have been imposed by the Procurement Court; and other information that contributes to transparent management of arbitration in the field of government procurement.

Still, the key to enhancing integrity through increasing transparency has to do with transparency enabling control by the private sector and the citizens via the information made available. In this sense, the role of the public sector should not stop at simply making the information available, and go beyond to render the information more usable by the suppliers and civil society, adding an additional layer of control on the accountability of the public procurement system. The timeline for the additional control by suppliers and civil society, especially prior to the awarding of contracts, needs to be clearly defined in order not to cause any delays in the process. Possible measures that Peru could take to make further use of the information and involve other stakeholders are discussed more in detail in Chapter 7.

8.3.2. Actively engaging the private sector and civil society as additional watchdogs

Peru could benefit from the active engagement of the private sector and civil society as additional watchdogs to ensure accountable public procurement.

Integrity breaches in public procurement result from complex relationships among different stakeholders with multiple interests. This stresses the need for active engagement and efforts from the private sector and civil society as well as from the government in order to properly address and manage the breaches. OSCE has signed integrity pacts with chambers of commerce from different departments of the country as instruments of transparency, integrity and efficiency in the area of contracting. These pacts generate specific commitments based on the requirement for ethical behaviour in the private sector. In addition, modifications to Public Procurement Law No. 30225, approved by Legislative Decree No. 1341, added an obligation to include an anti-corruption clause in all contracts in article 32.3. Article 40.5 in particular states that contracts signed without the anti-corruption clause are nullified.

In addition to suppliers, civil society and citizens in public procurement could play an oversight and monitoring role as a direct social control on government activities. Furthermore, their active involvement in public procurement processes could further increase transparency in government activities and aid in restoring public trust in the system. Box 8.14 below summarises challenges and lessons learned from studying different social accountability mechanism initiatives around the OECD area. Peru could consider these country experiences in developing measures to engage and involve civil society and citizens in the public procurement processes.

Table 8.3. **Beyond public scrutiny: Stocktaking of social accountability (SA) in OECD countries**

Challenges		Policy lessons
Clarifying objectives	The choice of topic and objective for SA initiatives – and their clear communication – is crucial. There is little point in government promising engagement when what is actually on offer is simply greater proximity. Equally, civil society organisations (CSOs)-initiated SA initiatives might have more impact if they were to focus on specific "entry points" where public scrutiny can exercise the greatest systemic leverage for reform.	Choose your topic, clarify your objectives. Ensure the issues at stake are relevant to citizens.
Raising public awareness	All too often initiators of SA appear to believe that it is sufficient to simply post information about events on the Internet in order to reach a wide audience. Nothing could be further from the truth. Even in OECD countries with high levels of household Internet use, there is a need to invest significant efforts in raising public awareness through traditional media (e.g. radio, TV, pamphlets, posters), new media (e.g. SMS alerts on mobile phones), and via existing intermediaries and networks (e.g. CSOs).	Invest in communication. Use existing networks (CSOs).
Choosing whom to involve, when and how	Only once SA initiators have clarified whether their objective is scrutiny, proximity or engagement can they choose whom to involve and the appropriate tools to use. If the objective is to ensure public scrutiny for a highly technical policy issue, then a small professional watchdog that divulges its findings to a wider public may be sufficient. If proximity is the goal, then a coalition of civil society organisations may be best placed to act as relays to "close the gap" between decision makers and grassroots groups or individual citizens.	Lower the threshold for engagement. Engage upstream. Build partnerships.
Defining the "rules of the game"	In order to avoid frustration among participants, it is important to establish a set of clear rules. These should specify both the procedural aspects (e.g. the time available for debate, length of oral or written submissions) and the respective rights and duties of the participants.	Set clear rules.
Demonstrating results	Maintaining public interest and involvement in SA initiatives requires initiators to tighten the "feedback loop" and demonstrate how people's contributions have been used. The challenge is twofold: to demonstrate efficacy and immediate results while also building support and momentum over time.	Ensure feedback and follow-up.
Preserving memory	One of the greatest impediments to ensuring collective learning and improvement of SA initiatives over time is the high rate of staff turnover in both government and CSOs. Institutional memory and the chance to move beyond experimentation towards mainstreaming SA will be lost.	Build skills. Share lessons.
Collecting information on costs	The current lack of information on the true costs of SA initiatives prevents any serious debate on their merits or drawbacks. This hardly serves the interests of either proponents or detractors of these new governance models.	Invest in data collection.
Estimating impacts	Even if complete information on SA costs were available, glaring gaps in knowledge about the real impact of SA initiatives remain – on the process and outputs of government decision making and on outcomes. Evaluation should not simply be an optional extra but an essential component of these initiatives.	Learn to evaluate, evaluate to learn.

Source: Caddy, J., T. Peixoto and M. McNeil (2007), *Beyond Public Scrutiny: Stocktaking of Social Accountability in OECD Countries*, OECD and the World Bank, http://dx.doi.org/10.1787/9789264040052-en.

8.4. Proposals for action

In order to enhance the integrity of the public procurement system in Peru, policy makers could consider undertaking the following actions.

8.4.1. Providing for a consistent and coherent national system on integrity and conflicts of interest management in public procurement

- Peru could consider strengthening its high-level commitment to fighting against corruption by developing specific integrity strategies for public procurement.
- Peru could consider developing a code of ethics for public procurement officials to guide their behaviours.
- Peru could benefit from adopting a balanced approach to managing conflict of interest in public procurement, in order to drive efficiency while appropriately managing it.

8.4.2. Embedding a culture of integrity in public procurement in Peru

- Peru could consider providing practical guidelines on integrity and managing conflicts of interest to public procurement officials as well as to suppliers.
- Peru could devote efforts to providing sufficient training specifically in public procurement integrity, especially for public procurement officials at the sub-central level.
- Peru could benefit from adopting proactive management of conflict of interest through disclosure of the private interests of public procurement officials.
- Peru could consider building a strong open organisational culture through active communication and raising awareness of whistleblower protection in all stakeholders in public procurement processes.

8.4.3. Ensuring accountable public procurement through promoting transparency and stakeholder participation

- In order to better reap the benefits from transparency to promote accountable public procurement processes, Peru could consider making the information more useable by all stakeholders.
- Peru could benefit from the active engagement of the private sector and civil society as additional watchdogs to ensure accountable public procurement.

Notes

1. "Channel stuffing" refers to a business practice involving sending a customer unneeded goods that can be booked as sales and revenue under the guise of accrual accounting as a way to manipulate accounts and manage earnings. (Markham, J.W. 2006).
2. The higher the perception index (and thus rank), the lower will be the perceived level of corruption.
3. Law 30225 on Public Procurement and its Regulation
4. The last modification to the code of conduct of the OSCE was approved by Resolution No. 549-2011-OSCE/PRE in August 2011.
5. Law No. 30161, whose regulation is in the process of being approved, is to replace Law No. 27482.
6. Law on the Protection of Whistleblowers in the Administrative Sphere and Effective Collaboration in Criminal Matters.

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Chapter 9

Effective dispute resolution systems in Peru

This chapter examines the courses of action that suppliers in Peru can take to challenge procurement decisions during the procurement procedure and contract execution. Against the 2015 OECD Recommendation on Public Procurement, it attempts to determine whether the changes implemented in Peru in early 2016 are likely to build confidence in bidders by establishing effective means for disputing decisions so as to correct defects. The chapter also discusses the complications that can arise for OSCE as an administrator for the resolution of disputes and as a supervisor of the system as a whole. The chapter also highlights relevant experiences in other OECD countries that could prove useful to the Peruvian authorities.

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 new regulatory framework introduced in January 2016, Public Procurement Law No. 30225, includes a number of innovative changes to the public procurement review system in Peru that were much needed. The procurement system had in fact faced challenges and criticism in the past, with claims of corruption occurring at different stages of the procurement process. Charges included irregular payments and bribes often exchanged to obtain public contracts and licences, and public funds regularly diverted to companies, individuals or groups due to favouritism among procurement officials (World Economic Forum, 2015-16). These claims were corroborated during the fact-finding mission, with concerns raised by economic operators about public authorities not fully respecting arbitration decisions.

To be effective, a remedies system must be well designed, capable of offering protection, easily accessible to suppliers, uncomplicated, inexpensive, and efficient in processing cases. The steps taken by the Peruvian authorities to reform the system mark a step in the right direction, in terms of offering better protection and accessibility. However, the system is relatively complex and could be made more efficient by clarifying the role of OSCE, streamlining work processes, and synchronising deadlines for challenges. In Peru there is one specific mechanism for solving disputes during the tendering processes (pre-award), and another for the execution of the contract (post-award). The elaborate system in place for the latter in Peru is not found in many other OECD countries, where public contracts, once entered into, are subject to the usual contract rules. Moreover, arbitration with public entities on contract disputes is quite frequent in Peru. One of the possible explanations is that public officials are not equipped with technical knowledge or are reluctant to make decisions to solve issues, so disagreements end up in arbitration. Another possible explanation is that the lack of an effective pre-award remedy system stops issues from being raised during the tendering process, and so they become contract administration issues later on.

Table 9.1. **Mechanisms to solve disputes during the tendering and resolution processes during the execution of the contract**

Phase	Activity	Description
Tendering	*Queries and observations*	Submission of queries and observations from the tenderers in the selection procedures in order to clarify or modify the tender documentation.
	Judgement	Tenderers can also ask for judgement (Pronunciamiento) from the Risk Management Directorate of OSCE when they are not satisfied with answers provided by the public entity. The process is limited to cases of public tender and public bidding.
	Appeal process	An appeal is filed with the public entity that carries out the tendering procedure or that is in the Administrative Tribunal, as correspondent.
Execution of contract	*Conciliation*	Collaboration of a neutral third party who is given certain control by the other parties.
	Arbitration	Arbitration is mandatory by the legislation for settling disputes in matters of public procurement. Only disputes that may arise within the framework of public contracts.
	Dispute resolution boards	Dispute resolution boards are a mechanism that aims to prevent and reduce the numbers of disputes arising during the execution of works, so that if parties agree on their decision, the conflict is settled immediately without stopping the work.

Source: Information provided by OSCE.

OECD findings suggest that certain characteristics of the system in Peru can be made more efficient, depending on the features of the cases. As it is legal proceedings take a long time due to both the backlog of pending cases before the courts and the lack of resources or means to speed up proceedings. To counter these inefficiencies, public authorities have taken action to educate suppliers and public officials, empowering them to conduct procurements in a more efficient and effective way and avoiding unnecessary disputes.

The aim of the Peruvian remedies system is to allow irregularities to be challenged and corrected as soon as they occur during the procurement procedure. Box 9.1 shows some of the core requirements for an effective remedies system.

Box 9.1. **Requirements for an effective remedies system**

It is important for suppliers to have remedies available to them to enforce procurement rules. Remedies can motivate them to monitor procurement procedures and require that procurement rules be followed so that their chances of being awarded a contract are not unlawfully diminished. Thus, remedies both enhance the lawfulness of procedures and encourage competition.

So as to be effective, remedies must be:

- clear and straightforward, i.e. understandable and easy to use
- available to all economic operators wishing to participate in a specific contract award procedure without discrimination, in particular on the grounds of nationality
- effective in preventing or correcting instances of unlawfulness on the part of suppliers and/or public authorities.

Source: OECD (2016), *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252103-en.

The changes implemented in early 2016 as part of the regulatory reforms help the Peruvian authorities steer towards a framework that is clear and straightforward, accessible, and effective in preventing or correcting instances of unlawfulness. Legislative Decree 1341, which came into force in 2017, has a supervisory focus that places higher integrity demands on suppliers and sets stricter anti-corruption criteria. In this respect, the 2015 OECD Recommendation of the Council on Public Procurement encourages countries to "handle complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrong-doing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress" (OECD, 2015). Furthermore, the OECD promotes accountability in public procurement, emphasising the importance of states applying oversight and control mechanisms to support accountability throughout the public procurement cycle, including appropriate complaint and sanctions processes (Box 9.2).

Box 9.2. **The OECD Recommendation on Public Procurement**

XII. RECOMMENDS that Adherents apply oversight and control mechanisms to support accountability throughout the public procurement cycle, including appropriate complaint and sanctions processes.

To this end, Adherents should:

i) *Establish clear lines for oversight of the public procurement cycle* to ensure that the chains of responsibility are clear, that oversight mechanisms are in place, and that the delegated levels of authority for approval of spending and of key procurement milestones are well defined. Rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition.

ii) *Develop a system of effective and enforceable sanctions* for government and private sector procurement participants that are commensurate with the degree of wrongdoing, to provide adequate deterrence without creating undue fear of consequences or risk aversion in the procurement workforce or supplier community.

iii) *Handle complaints in a fair, timely and transparent way* through the establishment of effective courses of action for challenging procurement decisions to correct defects, prevent wrongdoing and build the confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress.

iv) *Ensure that internal controls (including financial controls, internal audit and management* controls*) and external controls and audits are co-ordinated, sufficiently resourced and integrated***,** to in turn ensure:

1. the monitoring of the performance of the public procurement system reliable reporting and compliance with laws and regulations, as well as clear channels for reporting credible suspicions of breaches of those laws and regulations to the competent authorities, without fear of reprisals
2. consistent application of procurement laws, regulations and policies
3. reduced duplication and adequate oversight in accordance with national choices
4. independent *ex post* assessment and, where appropriate, reporting to relevant oversight bodies.

Source: OECD (2015), "Recommendation of the Council on Public Procurement", www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf (accessed 24 April 2017).

The structure of the Peruvian supervisory system is similar to that in other countries in the region. Peru has a strong supervisory culture with a special procurement Administrative Tribunal in place with a comprehensive knowledge of general law and broad experience in different laws, sectors and cases. Also, a special court (tribunal) is usually better acquainted with methods of interpretation and legal principles, and more knowledgeable in applying them. However, the Administrative

Tribunal only handles certain appeals; the majority go to the public entities. The criteria for an Administrative Tribunal hearing are stringent; there is a legislative option to prioritise larger procurements, due to the resolution capacity of the Administrative Tribunal. Were the tribunal to hear other cases, it would need to have additional chambers. This chapter assesses the current situation of the more established review mechanism, which for instance places greater emphasis on conciliation, and explores the potentials of tools such as the new dispute resolution boards (Junta de Resolución de Disputas, or JRD). It also addresses the core arbitration system, which has been expanding in recent years in an attempt to manage the overflow of cases brought forward during the execution of contracts. Finally, the chapter considers ways in which the system of public procurement review and control in Peru can be developed to enhance results.

9.1. Challenges to procurement decisions during the tendering process

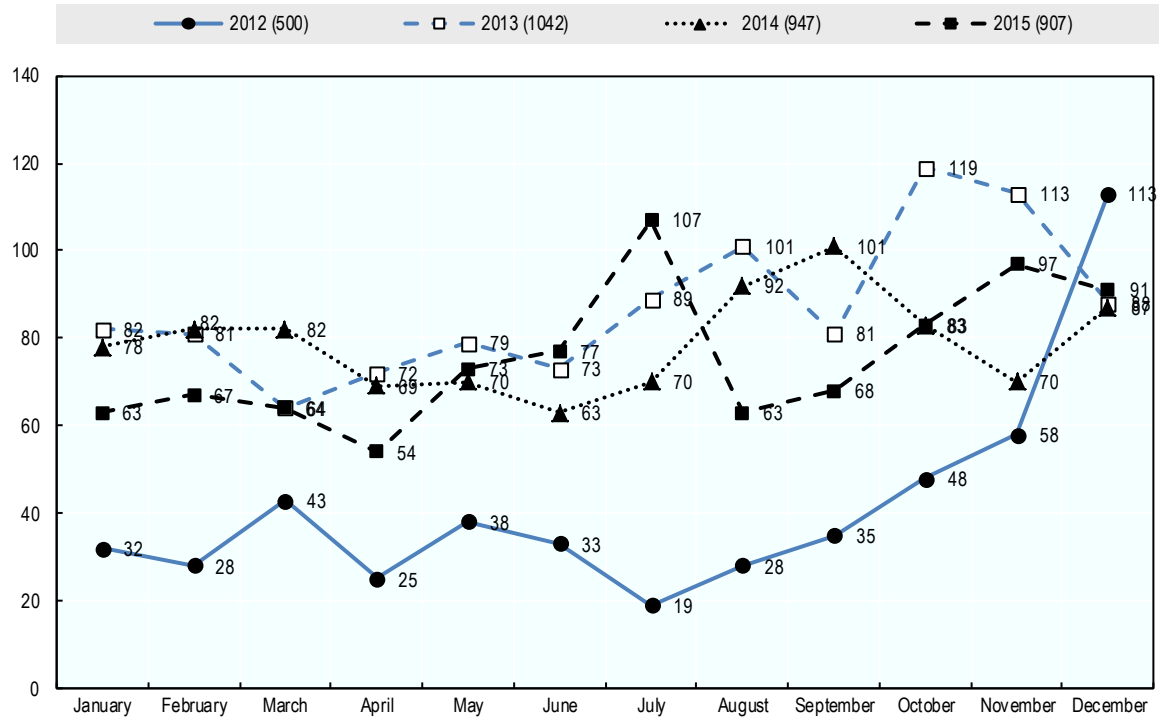
9.1.1. The Administrative Tribunal – Case numbers and threshold levels

Peru should consider extending further trainings and guidance to suppliers and oversight bodies to improve the handling of complaints within the review system

In the Peruvian legal system, participants or bidders in a selection procedure can challenge a procurement decision only on the basis that they consider the decision to impact their rights or interests. Unsuccessful bidders can complain by appealing to the Administrative Tribunal or the procuring entity. The core competence of the Administrative Tribunal lies in resolving disputes arising during the tendering procedure, settling disputes between bidders and contracting authorities due to alleged infringements of the public procurement law. It is only during the tendering process that the Administrative Tribunal is involved; conflicts that arise during the execution of the contract are for the arbitration system, as discussed later in this chapter. A substantial change was made to the tribunal procedures in 2007, when participants were no longer allowed to submit an appeal at any time during the process. Since 2007 it has only been allowed after the award of the contract.

Statistics show an increasing number of appeals especially administrative appeals before public entities. Appeals lodged before public entities more than doubled between 2014 and 2015. Data provided about the appeals submitted before the Administrative Tribunal should be accurate (Figure 9.1); however, appeals submitted before public entities cannot be verified, as entities sometimes do not record all information. A large proportion of appeals to Administrative Tribunal claim incorrect interpretation of qualification or award criteria, while relatively few cases are based on suppliers' discrimination. The cases brought before the OSCE tribunal vary; in the past it has found infringements in close to 50% of the cases, with close to 70% of decisions leading to the nullification of the process. One type of issue the tribunal has addressed is that of bidders with insufficient warranties. If the appeal is submitted before the OSCE Administrative Tribunal, the term for settlement is 18 working days; it can be extended to 28 days in case any additional information is required.[1]

Figure 9.1. **Number of appeals lodged before the procurement Administrative Tribunal 2012-2015 (total for the year)**



Source: Information provided by OSCE.

To be allowed to appeal cases to the procurement Administrative Tribunal, the contract has to be at least worth 50 UIT (Unidad Impositiva Tributaria, or Peruvian Taxation Units, equivalent to PEN 197 500/USD 60 000) or higher, according to Legislative Decree 1341. The number of appeals has almost doubled since 2012 since the minimum for appealing was 600 UIT. In practice, an appeal procedure before the Administrative Tribunal lasts an average of 40 working days. If an appeal is lodged before a public entity however, the entity must submit a legal technical report on the issue being challenged to the head of that public entity. The report cannot be issued by the selection committee or any member of the body responsible for the procurement. The public entity resolves the appeal and notifies its decision through SEACE within 10 working days from the filing of the appeal.

Knowledge of different experiences in OECD countries can benefit Peru. The threshold now in Peru is similar to what can be found in Norway, where there is a complaint board (KOFA) in place receiving on average between 200 and 400 cases per year, and where the average case handling time is 100 days, which is longer than in Peru. The number of cases received by KOFA each year has fluctuated mainly due to decisions to raise the threshold for national procedures from USD 23 000 to USD 58 000 in 2006, and by increasing fees in 2012 from USD 93 to USD 935 in complaint cases but to USD 117[2] in illegal direct award cases where no fee was charged before. The strength of the Norwegian system seems to be its legitimacy: despite the fact that its findings are only advisory and not binding, KOFA decisions are respected by both parties (Box 9.3) – which is not always the case in Peru.

Box 9.3. **The Norwegian Complaints Board for Public Procurement (KOFA)**

The Norwegian Complaints Board for Public Procurement, KOFA (Klagenemnda for offentlige anskaffelser) is assigned to review complaints alleging infringements of the law on public procurement and associated regulations. However, it is not a review body in accordance with the EU remedies directive, because its decisions are not legally binding but only advisory. KOFA is an independent body composed of ten members, including the chair, all of them lawyers qualified to be judges in the ordinary courts. Some members are lawyers in private practice, some are from academic institutions, and some are judges. The current chair is a previous judge of the supreme court. They are appointed for a period of four years, and can serve for maximum eight years. They receive compensation per case. Cases are normally handled by three members, but KOFA can be set with five members in matters of principle. KOFA is supported by a secretariat consisting of legal officers, administratively organised as a unit within the Norwegian Competition Authority (the NCA) in Bergen. In addition to having responsibility for administrative affairs, the secretariat handles the formal and material preparation of cases. The secretariat can reject a complaint if it is clear that no infringement has taken place or if the case is "unfit" to be handled by KOFA, e.g. because it cannot be dealt with based on a written procedure. A decision to reject can be appealed to the chair. About one-third of the complaints are rejected. About 5% of the complaints are withdrawn by the complainant.

The procedure for reviewing cases consists of a written exchange of pleadings with tight time limits, at the outset limited to the complaint, a defence (ten days), a reply (five days) and a rejoinder (five days). There are no oral proceedings. Similar to civil actions before the courts, the procedure is adversary, as opposed to inquisitorial, and limited to the parties' claims, pleas, allegations and evidence. Complaints must be submitted within six months of the date on which the contract is concluded. Complaints must be lodged in writing. The language of procedure is Norwegian. The filing fee of NOK 8 000 (USD 1 000) must be paid in advance. The parties do not need to be represented by a lawyer.

A complaint does not have the effect of suspending the procedure for the award of a public contract. For this purpose, an action for interim measures to suspend the procedure must be brought before a court. However, provided the contract is not yet concluded, the contracting authority may voluntarily decide to suspend the procedure pending the outcome of the decision by KOFA. If so, KOFA gives the case priority and handles it in an expedited procedure (as it also does if interim measures are in place and the parties agree to let KOFA handle the case). A priority case is normally dealt with in 60 days, while the average case-handling time is 100 days. This compares well with the case-handling time in court proceedings. Each party carries its own costs.

KOFA finds infringement of the procurement rules and principles in roughly 50% of the cases not rejected; and may state that such a breach has affected the outcome of the procedure, and that the procedure should be cancelled. KOFA may also find that the complainant is entitled to damages, either for the loss of contract or for costs incurred by participating in the award procedure, but KOFA will not calculate or award a compensation. The complainant will have to present a claim to the contracting authority, and if necessary bring a case before the ordinary court.

As stated above, decisions by KOFA are only advisory and not legally binding on the contracting authority. However, KOFA enjoys respect and authority, and in most cases the contracting authorities comply with its decisions. A decision cannot be appealed. However, a decision may serve as evidence before the ordinary courts. The ordinary courts often refer to KOFA decisions as a valid source of law.

KOFA may also deal with so-called illegal direct awards, typically cases where it is alleged that the contracting authority has awarded a contract without first publishing a notice calling for competition. This is regarded as a very serious breach of the procurement rules. Until 2012 KOFA could impose administrative fines in cases of illegal direct awards. This sanction was replaced by similar powers given to the ordinary courts when the new EU remedies directive was implemented in 2012. KOFA can still find the contracting authority guilty of such a breach. As from 1 January 2017 KOFA has had the power to impose administrative fines amounting to a maximum of 15% of the relevant contract value. These decisions are legally enforceable and may be appealed to the ordinary courts. Complaints alleging illegal direct award must be submitted within two years of the date on which the contract is concluded. The filing fee is NOK 1 000. The normal complaint rate is 1-2% of the procurement procedures.

Source: Direktoratet for forvaltning og IKT (Agency for Public Management and eGovernment).

9.1.2. The need for transparency to assess impact

Peru should consider increasing transparency of the system by collecting data on the performance (compliance decisions) of contracting authorities

Economic operators in the tendering process can ask the public entity to clarify or modify tender documentation through submission of queries and observations. In the case of public tender and public bidding, if participants are not satisfied with answers provided by the public entity, they can ask the Risk Management Directorate of the OSCE to issue a binding decision (judgement). On the other hand, economic operators (under certain circumstances) can appeal award of the contract to the Administrative Tribunal of the OSCE or to the head of the public entity (depending on the threshold). Decisions taken in those instances can only be appealed to the judicial system. Acts adopted during the selection procedure can be challenged following award of the contract. If the awards of contract or actions adopted in advance are challenged, then the challenge must be submitted within eight working days after the notification in the case of public tendering and public bidding. The same holds in the case of reverse auctions that exceed the amount established for open tender and open biddings (PEN 400 000). In the case of simplified awards, selection of individual consultants, price comparison and reverse auctions that do not exceed the amount established for open tender and open biddings PEN 400 000, the appeal must be made within five working days after the contract is awarded. The times indicated are applicable to any appeals, whether they are brought before the contracting authority or the tribunal.

To enable matters to be handled, corrected or explained as soon as they arise, and thereby increase the lawfulness and transparency of the procurement procedures, the European Union legal framework on public procurement remedies requires decisions to be reviewed by the authorities as quickly as possible at each stage of the procurement process (Box 9.4). How countries apply this mechanism varies, and there can be a clause stating that a committee or a neutral party has a role in case of conflict. Nevertheless, there can also be a reference to a specific court to which any disputes arising need to be brought.

Box 9.4. **The European Union legal framework on public procurement remedies**

The European Union has adopted two directives laying down remedies in relation to public procurement: Directive 89/665/EEC, which covers the public sector, and Directive 92/13/EEC, which covers the utilities sector. Both directives were amended by Directive 2007/66/EC.

Regarding contracts falling within the scope of the directives laying down substantive rules on public procurement (Directive 2004/17/EC and Directive 2004/18/EC, as replaced by Directive 2014/23/EU, Directive 2014/24/EU and Directive 2014/25/EU), the remedies directives require that decisions taken by contracting authorities or contracting entities be reviewed effectively and, in particular, as quickly as possible, on the grounds that such decisions have infringed EU public procurement law.

Box 9.4. **The European Union legal framework on public procurement remedies** *(continued)*

EU Member Countries may, in accordance with their national legal systems, limit the right to remedies in, for example, the following cases:

i) Suppliers that could not have been awarded the contract, for example because they lack the critical technical qualifications, may be denied the right to challenge the contract award.

ii) Suppliers that have not participated in the procurement procedure may not be allowed to challenge contract award decisions. The reason is that such decisions do not affect outsiders to the procurement procedure.

iii) Suppliers that have been excluded at earlier stages of the award procedure (for example at the selection stage) may not have standing to challenge decisions taken at later stages of the procedure (for example, the award decision). In particular with regard to the right to challenge the contract award decision, according to article 2a(2) of Directive 89/665/EEC, the right to remedies may be denied to those tenderers that have been informed by the procurement authority of the (prior) decision concerning their exclusion and that decision has either been challenged and found lawful or the time limit for challenging the decision has passed. The right to challenge the award decision may also be denied to those candidates that were informed by the procurement authority of the rejection of their applications prior to the notification of the contract award decision. The reason is that the contract award decision does not affect tenderers that have been previously and definitively excluded from the procurement process.

iv) Suppliers that remain in the award procedure may not be allowed to challenge at later stages of the procedure any defective decisions that may have been taken at earlier stages of the procedure (for example, at the selection stage).

v) Community groups, contractors' trade associations, subcontractors, environmental associations and other interested bodies may not have access to public procurement remedies.

For further information, see http://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/remedies-directives_en (accessed July 2016).

Source: OECD (2016), *Towards Efficient Public Procurement in Colombia: Making the Difference*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264252103-en.

In Peru, procurement decisions may be challenged through an appeal that is decided in administrative proceedings. An appeal may be filed when disagreements arise between the public entities and participants or bidders during the procurement procedure, and while implementing or maintaining electronic catalogues of framework agreement. Through this process it is possible to challenge the acts ordered until any time prior to the finalisation of the contract. All disputes arising during the selection procedure can only be challenged through appeal; procurement regulation has not set forth any other challenge mechanism. Once an appeal is filed, the organising public entity responsible for making the decision is required to register it with SEACE on the same day as the appeal, and to notify in person all of the interested bidders about the appeal filed.

When a certain contract is covered by an exemption from the procurement procedure, public entities are allowed to contract in a direct manner with one company without having to publish a call for competition. Economic operators cannot challenge direct contracting, nor can they file an appeal. Nevertheless, any person can file a complaint to the Risk Management Directorate of the OSCE and question the circumstances under which the exception was

approved. Supervision activities performed by the directorate are limited to proceedings carried out during the tendering procedure. If supervision activity detects an irregularity during the procurement procedure, it initiates nullification of the procedure at any stage, according to article 44 of Law 30225. Once the OSCE detects those kinds of activities, it communicates that information to the head of the public entity, and it is the latter's role to declare the nullity of the invalid act and trace the procedure back to that invalid act. With Legislative Decree 1341 a new situation was included in the law that now justifies declaration of contract nullity in case of corruption. According to the 2016 legislation, a public entity – despite entering into a contract and starting its implementation – can officially declare *ex officio* the nullity of a contract, in order to protect the legality of the contract and the aims it pursues with one or more of the following assumptions:

- The contract was signed in contravention of article 11 of the Law.[3]
- There is a violation of the Presumption of Veracity principle during the tendering process or in the signing of the contract.
- The contract has been signed even though an appeal is being processed.
- The conditions and/or requirements established for the configuration of the assumption of direct awarding have not been met.
- The public entity has not applied tendering procedures provided by the Law, although they were under its scope.
- When it is established that the contractor, its shareholders, partners or related companies or any of their respective directors, officers, employees, advisers, legal representatives or agents has paid, received, offered, attempted to pay or receive or offer in the future any payment, undue benefit, gift or commission related to that contract or selection procedure.
- Contracting was undertaken without carrying out the corresponding tendering process.

Peruvian authorities are currently lacking data and performance information on how procurement entities are complying with legal decisions on remedies. It is important to understand the ramification of such decisions, as well as ensuring that they are being implemented by the relevant parties.

9.1.3. The barrier for SMEs of high guarantees

Peru should consider a preferential guarantee (1% or 2%) for Micro and Small Enterprises for a complaint to be dealt with during the procurement procedure

Decisions made by the Administrative Tribunal are published on SEACE the same day they are issued. As it can be difficult for suppliers to search and find relevant case law, it is necessary for OSCE to improve the classification of its decisions and make them easier to search. All communications related to appeals are made through SEACE. From the moment an appeal is submitted, either by administrative appeal before the public entity or the tribunal, there is an obligation to register it on SEACE; from that time the procurement procedure is suspended. The tribunal communicates its decision by notifying both parties electronically through its own system. Filing an appeal is free of charge. However, considering that the action stops the procurement procedure and affects procurement opportunities, a guarantee of 3% of the reference value of the challenged procurement procedure is requested, which under no circumstances can be higher than 200 UIT. The guarantee is returned to the complainant if

the action is well founded in whole or in part; when the nullity of procedure is declared, or there is no purpose to rule on the substance of the case, when after the filing of the appeal, an impediment to contract appears and when there is a "denegatoria ficta". The guarantee will only be executed if the action is declared unfounded in whole entirely unfounded or when declared irrelevant due to the infringement of substantial requirements or the provider gives up the appeal. The guarantee that is not returned goes to OSCE.

The appeal process should inspire confidence in the government and not be used simply to extend the time frame. The regulatory framework requires the contracting authority to notify all bidders directly interested in the final decision of the filing of the appeal; generally, the contract award winner is the person notified of the filing of appeal. During the fact-finding mission, concerns were raised about the 3% guarantee for SMEs. There are ways for Peru to address that issue, for example by lowering the guarantee percentage for SMEs, or not applying it in all cases. Many countries have different approaches to guarantees when using the remedies system. In Mexico, whether a guarantee is required or not depends on the circumstances (Box 9.5).

Box 9.5. **Presentation of tender protest bonds for interruption of the procurement procedure in Mexico**

The legal framework for public procurement in Mexico does not require bidders to post a bond to submit, process and resolve a protest regarding the legality of different acts of public tenders or invitations to tender involving at least three people.

The procurement procedure acts and any other related acts may be interrupted upon the filing of a protest in the following instances:

1. At the request of the protesting party, provided that the competent authority is made aware of the existence or possible existence of acts contrary to the legal provisions governing procurement procedures, and that this case would not cause any harm to the public interest or violate any public order provision.

The protesting party shall post a bond of at least 10%, and no more than 30%, of the amount of their economic proposal. If such an amount cannot be established, the percentage shall be fixed based on the authorised budget for the corresponding procurement procedure.

If there is a third interested party in the protest procedure, which may be any of the other bidders or the bidder awarded the contract, and this third party provides a counter-bond equivalent to the bond amount, the interruption shall be null and void.

2. By decision of the competent authority itself when it is made aware of obvious irregularities in the procurement procedure subject to the protest, provided that such an interruption does not cause any harm to the public interest or violate any public order provision.

In this case, the protesting party is not required to provide a bond.

For more information, consult Title Six, Chapter One of the Law of Acquisitions, Leases and Services of the Public Sector; Title Six, Chapter One of its Regulations; Title Seven, Chapter One of the Law on Public Works and Related Services; and Title Six, Chapter One of its Regulations, at SFP, n.d.

9.1.4. The need for more effective enforcement of public procurement rulings

Conflicting parties must comply with the resolution determined by the Administrative Tribunal (within the framework of an appeal), without qualification and under the tribunal's own terms. When a contracting authority is not in compliance, that fact is

communicated to the Institutional Supervisory Body and/or the Office of the Comptroller General of the Republic. In the event of infractions, the Administrative Tribunal may impose a fine of between 5% and 8% of the value of the contract. As a precautionary measure, the right to participate in procurement is suspended until the fine is cancelled (up to a maximum of 18 months).

There are no data or information available about whether legal decisions are being enforced or not. Furthermore, administrative action can be filed before the judiciary (judges) if the bidders are not satisfied with the tribunal's decision. However, filing does not suspend the procurement procedure. The judicial branch does not have the same competence to resolve appeals in public procurement matters, except in the case of annulment of the arbitration award. In 2015 the judiciary issued 110 decisions in administrative actions filed against the decisions of the Administrative Tribunal; of these, 98.6% were favourable to the Tribunal.

9.2. Conflicts that arise during execution of the contract

Peru needs to support the mediation setup for complaints which can offer real possibilities for assessing and resolving disputes during the execution of the contract

There are three mechanisms for settling disputes arising between the contracting authority and the contractor having to do with execution, interpretation, resolution, absence, inefficiency, or voiding of the contract are as follows: conciliation, dispute resolution boards (JRD*)* and arbitration. The parties involved are: i) the purchaser, which is the public entity, and ii) the contractor, which is the winning bidder that signs the contract. The dispute resolution board is a process incorporated in the legislation in 2016 for contracts of works, in accordance with the reference value and other conditions included in the regulations. This mechanism aims at preventing and reducing the quantity of disputes arising during the execution of works, so that if parties agree on their decision, the conflict is settled immediately without stopping the work; otherwise, the unsatisfied party may demand arbitration but only at the conclusion of the contract. Within the dispute resolution board process, the technical board solves any dispute that appears during the execution of the work. Both parties must execute the solution immediately even if they are not satisfied with it, and wait until the conclusion of the contract to go to arbitration.

The objective of the reforms is to resolve disputes both arising between public entities and contractors during the contract execution and arising in the tendering procedures. The added value of the new mechanisms is still to be determined, but the Peruvian authorities are counting on shorter case handling, increased transparency, and greater efficiency in dealing with remedies. During the fact-finding mission the length of the dispute resolution process was criticised; on average for example, arbitration can take up to 18 months to resolve. For years, the most highly publicised corruption cases in public procurement have been related to arbitration. That is why the new public procurement regulation (Law No. 30225) included mechanisms to increase the levels of transparency to avoid bad practices, such as:

- National Registry of Arbitrators
- Accreditation of arbitral institutions
- Obligation of arbitral institutions and centres that administer dispute boards to send information about the arbitral procedure to OSCE

- Publication of arbitral decisions on SEACE
- Creation of an arbitral record, which is an electronic database about arbitrators working in public procurement.

The Constitution of Peru establishes the exceptional nature of arbitration jurisdiction, determining that the complainant has the ability to appeal before the jurisdictional body of the government to demand justice, but also before a private jurisdiction, as recognised by the Peruvian Constitutional Court in a binding precedent about arbitration. "Consequently, arbitration may not be understood as a mechanism displacing the Judicial Branch, nor as a replacement, but as an alternative complementing the judicial system made available to the society for the pacific dispute resolution …" (Cantuarias, 2006). Private arbitration is indeed an alternative to the judicial system, but it does not replace it. However, arbitration within public procurement is mandatory for disputes that are generated after the signing of the contract. Parties shall demand arbitration directly or after the use of conciliation or a dispute resolution board when a conciliation agreement is not completed, or when any of the parties disagree totally or partially with the resolution of the dispute board.

9.3. Newly introduced resolution boards aimed at enhancing efficiency

Peru should develop key performance indicators to measure the impact of conciliation and dispute resolution boards, for example on length of proceedings and results

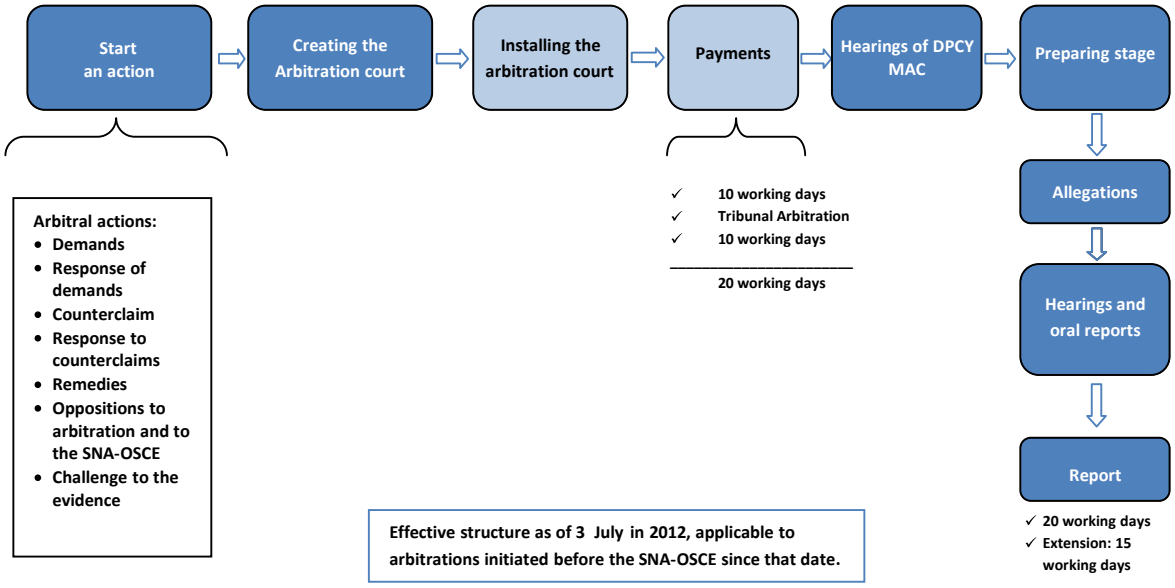
When disputes arise after the signing of the contract they must be resolved through conciliation, arbitration (ad hoc or from an institution) or by the dispute resolution board. Conciliation implies the collaboration of a neutral third party that is handed certain control by the parties for the process but does not issue a solution. The role of the conciliator is to assist them in reaching a solution, providing guidance to clarify the disputed items and contribute with suggestions, interpretations, opinions and possible solutions (Caivano, 1998, p. 37). Conciliation requests must be brought before a conciliation centre accredited by the Ministry of Justice of Peru. If arbitration is agreed, parties either use arbitrational institutions responsible for organising and administering the process (OSCE is one such institution); or an ad hoc institution that can be established in specific cases according Legislative Decree No. 1341 in 2017. In the case of JRDs the cases must be administered by a centre.

Conciliation and dispute boards are not under the responsibility of OSCE. Conciliation, as well as the arbitration, is a mechanism that was introduced into public procurement law in 1998. It can be applied for any dispute arising during contract execution. The use of dispute boards is voluntary and their use depends on whether provision has been made for them in the contract. Hence it is difficult to estimate the cost and length of procedures. For institutional arbitration proceedings, cost and time frames depend on the particular arbitration institution.

Institutional arbitration, on the other hand, is indeed under the responsibility of OSCE (SNA – National Arbitration System), and considers provisions included in the Single Revised Text of the National System of Conciliation and Arbitration (see Figure 9.2). For ad hoc arbitration proceedings, time frames will depend on the rules established by the parties and the arbitrators, the arbitration expenses of ad hoc processes, and SNA-OSCE

processes are regulated through Directive No. 021-2016-OSCE/CD. In order to envisage the impact these tools will have in the future, Peruvian authorities need to develop indicators to measure how they are affecting the procurement process, such as length of the process, satisfaction with the process, number of cases per year, arbitrations won by the government, arbitrations won by the suppliers, and the amount that the government loses through arbitration.

Figure 9.2. **The SNA-OSCE arbitration proceedings**



Source: Sub-directorate of Arbitration Proceedings – Directorate of Arbitration Management, OSCE.

9.3.1. Improving dispute resolution for public works with dispute resolution boards

Peru should encourage the use of dispute resolution boards which can effectively prevent and/or settle controversies that may arise during the execution of works

Before the work starts, the parties opting for the possible eventual use of a dispute resolution board include in the contract a clause for dispute resolution under the responsibility of JRD, provided the value of the works execution contract in question is higher than PEN 20 million. The JRD intends to effectively prevent and/or settle disputes that may arise during the execution of works, from beginning to end. The JRD decisions are binding, mandatory and immediate, even if any of those involved express disagreement with those decisions and wish to submit the controversy to arbitration. Any breach of compliance is reason for the party affected to terminate the contract. While decisions made by JRD must be fully obeyed by the parties, that does not mean that decisions made by the JRD are not subject to arbitration. The party in full or partial disagreement with a decision issued by the JRD must, within seven days of notice, send to the other party and the JRD a written communication stating the reasons for disagreement and its intention to refer the controversy to arbitration. The arbitration must be initiated within 30 working days following completion of work by the contractor.

The dispute resolution board should prevent and reduce the quantity of disputes arising during the execution of work, so if parties agree with its decision, the conflict is settled immediately. The JRD is comprised of impartial or independent members who commit to visiting the work frequently and to follow-up from start to finish. Their assignment is made in a mutual agreement by the parties or by a centre administering these mechanisms of conflict settlement.[4] The board consists of one member when the value of the corresponding works contract is equal to or greater than PEN 20 million and lower than PEN 40 million; it consists of three members when the corresponding works contract has a value greater than or equal to PEN 40 million.

All JRDs that operate in the field of government contracts must be managed by a centre providing organisational services and management. These centres must fulfil certain requirements, such as experience in arbitrations management, the existence of a team of professionals providing the essential support, and essential minimal infrastructure. The JRDs have the potential to resolve disputes quickly and curtail the risk on protracted and costly litigation. Before the new law was enacted, any dispute arising during contract execution was subject to an arbitration procedure that entailed cessation of work until the end of the arbitration process. OSCE issued a number of opinions declaring that the halting of the work was not a "natural consequence" of the arbitration. With the new mechanism in place, the work execution will not stop due to disputes arising between the parties.

9.4. Prioritising within the arbitration system and reducing workload

9.4.1. The need for more strategic management of the system

Peru needs to make the arbitration system more effective and should manage it in a more strategic way by focusing less on case handling but more on monitoring and ensuring quality of the system

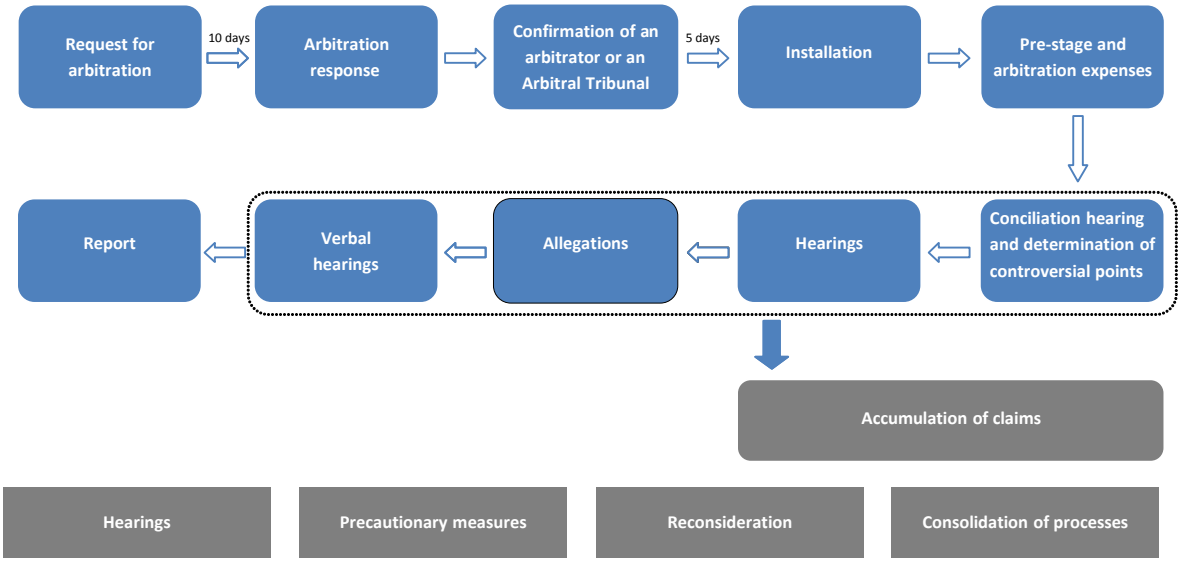
Ad hoc arbitration does not involve an arbitration institution to organise and administer arbitration procedures – thus the parties decide which rules will govern the arbitration procedure. Pursuant to the regulations of the public procurement law, ad hoc arbitration begins with the submission of a request for arbitration (unless there is another understanding between the parties) and continues basically following the procedural scheme charted below. There is no information available on the total number of ad hoc arbitration proceedings, but it is possible to identify the total of unique arbitrators or ad hoc arbitration courts installed by the OSCE from 2011 to 2015. In 2011 a total of 351 installations were made. That number has grown steadily, rising to 732 in 2015. Thus the number of ad hoc arbitrations has doubled in four years.

Institutional arbitration involves the parties designating certain institutions to manage the arbitration cases. The National Arbitration System (SNA-OSCE), for instance, is an institutional arbitration system managed by OSCE that specialises in dispute settlement in public procurement. It is autonomous, governed by its own regulations and by the legislative decree establishing norms for arbitration (Legislative Decree No. 1071). The SNA-OSCE is responsible for organising and administering institutional arbitration proceedings with the objective of settling

disputes that occur during the execution of the contract, in accordance with the regulatory framework between contractors and public entities (Figure 9.3). With the introduction of Legislative Decree 1341 in 2017, SNA-OSCE only organises and administers those arbitration proceedings where parties mutually agree to assign in the case of contracts for goods and services, whose original amounts are less than ten (10) UIT.

Additionally, there are arbitration institutions in the private sector that also administer and organise institutional arbitration.

Figure 9.3. **Ad hoc arbitration proceedings**



Source: Sub-directorate of Arbitration Proceedings – Directorate of Arbitration Management, OSCE.

The SNA department responsible for managing arbitration usually designates one or more employees for each case. Regulations do not oblige arbitration centres to send their list of arbitrators, but arbitrators must be registered at the National Registry of Arbitrators. So far, approximately 140 arbitrators have been registered. OSCE applies a strict regulatory framework while other (institutional) arbitration centres have their own rules of arbitrations, e.g. the Chamber of Commerce. SNA-OSCE processes initiated during the past five years have gradually increased the pressure on the OSCE staff. The procedures for analysing and determining the result can be time-consuming and OSCE has been criticised, as previously discussed. In general the procedure is written but some cases are presented orally, in particular if there is a need for witnesses or experts, in order to allow for cross-examination. In 2015 SNA received 250 new cases. The same year it resolved 54 cases, most of them from 2013 since case-handling time is approximately 18 months. Policy makers in Peru should consider introducing a maximum time frame for the handling of such cases. There is an opportunity not only to reconsider this approach but also to promote private alternatives. OSCE should reconsider its role as an administrator of arbitrations, and place more emphasis on ensuring that the system is transparent and efficient. OSCE should continue to be responsible for quality by

monitoring processes and conducting random checks on all the institutional arbitration centres.

9.5. Proposals for action

The remedies and dispute resolution system in Peru addresses both the tendering process and the execution of the contract. This review of the tendering process suggests that while cases can be resolved quickly, the increased number of appeals lodged before the Administrative Tribunal can put too much strain on that body. The new regulatory framework has strengthened the resolution part of the system by establishing the dispute resolutions boards. The introduction of these boards is an important change, because the public works continue while issues are being addressed. However, it is too early to say if the changes will lead to a more efficient system; there is still room for improvement for cases that reach the arbitration stage. There is a risk that contractors will lose faith in the arbitration system if it continues take over a year to resolve cases. However, steps taken to strengthen the infrastructure of the system in terms of data collection and quality assurance will help the Peruvian authorities to better manage the review process. One example of progress is the introduction of the National Registry of Arbitrators, where all parties can now access a comprehensive list of potential arbitrators who can be chosen by contracting parties. To further enhance the transparency of the review and remedy system in place, and reduce the number of formal complaints against its procurement procedures, the Peruvian authorities could consider the following actions:

- Peru should consider extending further trainings and guidance to suppliers and oversight bodies, to improve the handling of complaints within the review system.
- Peru should consider increasing transparency of the system by collecting data on the performance (in relation to compliance decisions) of contracting authorities.
- Peru should consider a preferential guarantee (1% or 2%) for micro and small enterprises for a complaint to be dealt with during the procurement procedure.
- Peru needs to ensure more effectively the enforcement of public procurement rulings.
- Peru needs to support the mediation setup for complaints, which can offer real possibilities for assessing and resolving disputes during the execution of the contract.
- Peru should develop key performance indicators to measure the impact of conciliation and dispute resolution boards, for example on the length of proceedings and results.
- Peru should encourage the use of dispute resolution boards, which can effectively prevent and/or settle controversies that may arise during the execution of works.
- Peru needs to make the arbitration system more effective and should manage it in a more strategic way. This could be done by focusing less on case handling and more on monitoring and ensuring the quality of the system.

Notes

1. Pursuant to article 113 of the Regulations of the procurement law approved by Legislative Decree No. 1017, the entity settles the appeal and notifies its decision through the SEACE within 12 working days following submission of the appeal or from the remedial action taken for omissions and/or errors noticed in the submission.
2. The currency in Norway is Norwegian krona. The threshold for national procedures has therefore increased from NOK 200 000 (USD 23 000) to NOK 500 000 (USD 58 000) in 2006 and the increase in fees since 2012 is from NOK 800 (USD 93) to NOK 8 000 (USD 935) in complaint cases but to NOK 1 000 (USD 117) in illegal direct award cases.
3. This constitutes a new impediment for bidders or contractors for companies convicted, in Peru or abroad, of crimes of corruption, embezzlement, etc. This impediment is also applied to companies that have admitted to and/or recognised any of those crimes described, etc. (article 11-n).
4. See the article: Dispute Resolution Board will enable to settle contractual conflicts rapidly." http://puntoedu.pucp.edu.pe/noticias/junta-de-resolucion-de-disputas/.

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