

INFOCARD ELANBiz

Government to Government Contracts¹

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This Infocard provides an overview of the main aspects related to Government to Government contracts in Peru.

Introduction

In 2019 and 2020, the Peruvian government has focused on developing its public investment projects and improving the execution of large projects, taking into account that Peru has an infrastructure gap of over USD 363 million², which has become more evident during the pandemic.

In addition to this, the development of infrastructure projects under the General Regime of Public Procurement³ has resulted in high levels of bureaucracy, corruption and delays⁴. To address these problems, it has become necessary to create and regulate new exceptional forms of procurement, among them the signing of contracts between the Peruvian government and a foreign government. This procurement modality (“Government to Government Contracts” or “GtoG”) allows the Peruvian government to acquire goods and services and contract the execution of public works through the bodies, entities or companies –public or private– of the foreign government.

The main purpose of Government to Government contracts is to allow the Peruvian government to implement the projects, by means of a foreign government providing –through its entities or companies– technical assistance and advisory in project management, PMO (Project Management Office), knowledge transfer, management of procurements, and others services agreed upon in the contract. After the procurement process, foreign or Peruvian companies may be awarded the

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

² According to [Urgent Decree N° 018-2019](#), in order to streamline infrastructure projects, the Peruvian government has implemented extraordinary investment promotion measures to boost the growth of the economy, through the adequate implementation of the portfolio of the projects prioritized in the National Infrastructure Plan for Competitiveness (PNIC), approved by [Supreme Decree N° 238-2019-EF](#). Likewise, the projects may be executed as Special Public Investment Projects (PEIP) at the request of the public entities of the National Government, Regional Governments, or the Metropolitan Municipality of Lima; as established by [Urgent Decree N° 021-2020](#) and its Rules of Procedure approved by [Supreme Decree N° 119-2020-EF](#) and amended by [Supreme Decree N° 179-2020-EF](#).

³ The Peruvian government contracts the acquisition of goods, provision of services, consultancy and execution of public works with private providers, whether natural or legal persons, national or foreign, in accordance with [Supreme Decree N° 082-2019-EF](#) – Single Organized Text of the Law of Public Procurement and [Supreme Decree N° 344-2018-EF](#) amended by [Supreme Decree N° 377-2019-EF](#) – Rules of Procedure of the Law of Public Procurement.

⁴ In that regard, the Peruvian Minister of Economy declared at the end of July 2020 that the Government intends to present a bill to Congress within a period of 2 months to improve the legal framework for public procurement. <https://gestion.pe/economia/gobierno-presentara-proyecto-para-modificar-ley-de-contrataciones-publicas-noticia/?ref=gesr>

construction and design of the public works in a transparent and rapid manner, and with standardized construction contracts outside the scope of the public procurement law. For its part, the foreign government seeks international presence by opening new markets for its agencies, entities or companies (public or private), as well as to strengthen its collaboration and technical assistance relations with Peru.

It is worth mentioning that one of the first regulations on the contract between the Peruvian government and a foreign government was established in 2011, in the Peruvian Defense sector, to exceptionally allow for the contracting of services and acquisition of military material⁵ for strategical and security reasons, resulting in the creation of the Armed Forces Purchasing Agency.⁶

Subsequently, in 2014, a more extensive regime was implemented to allow for the acquisition of goods, the provision of services or the execution of public works, exempt from the scope of the General Public Procurement Regime. This exemption has been maintained until now⁷ whilst being subject to oversight by the Supervisory Authority of Public Procurement ([OSCE](#))⁸ as well as prior and simultaneous oversight by the General Comptroller of the Republic of Peru.⁹

The following sections will analyze the current legal framework, the procedure and applicable scheme for Government to Government contracts, as well as the main experiences with this type of contract.

1. Current Legal Framework

1.1. General Legal Framework

Government to Government contracts are exempt from the scope of the General Public Procurement Regime and are regulated by the Twenty-First Final Complementary Provision of [Supreme Decree N° 082-2019-EF](#) – Single Organized Text of Law N° 30225 (Law of Public Procurement), which mainly establishes the following:

- Government to government contracts are defined as the contracting between the Peruvian government and a foreign government for the acquisition of goods or the execution of public works. The management, development or operation may be executed by the foreign government through its own bodies or agencies, public or private companies, whether national or foreign.
- They are regulated under the scope of international commerce and by the norms and

⁵ As established in [Ministry Resolution N° 193-2011-DE/SG](#)

⁶ As established in [Legislative Decree N° 1128](#) – Legislative Decree which creates the Armed Forces Purchasing Agency and its Rules of Procedure, updated by [Supreme Decree N° 001-2020-DE](#).

⁷ As established by Article 5°, sub-section e) of [Supreme Decree N° 082-201-EF](#) – Single Organized Text of the Law of Public Procurement, Law N° 30225.

⁸ OSCE is a technical body attached to the Ministry of Economy and Finance (*MEF*), in charge of supervising compliance with the public procurement regulation, and promoting better practices in public procurements for the contracting of goods, services and public works.

⁹ As established by [Comptroller Resolution N° 119-2020-GG](#)

principles of international law.

- The Peruvian government must authorize such a contract by means of Supreme Decree, declaring the matter of procurement of national interest, which must comply with the following conditions:
 - (i) A market research for the identification of possible states which might fulfill the requirements of the Peruvian government;
 - (ii) A technical-economic report comparing the conditions offered by the interested states and explaining the advantages for the Peruvian government of contracting with another government;
 - (iii) A report from the budget office (or any other public agency fulfilling its functions), stating that the necessary financing is available for said contracting; unless a debt arrangement is necessary, in which case it must be included in the Annual Debt Program of the respective year; and
 - (iv) Declaration of viability and/or approval within the framework of the National System for Multi-Year Programming and Investment Management, when applicable.
- Likewise, Government to Government Contracts must include:
 - (i) A plan for the transfer of knowledge related to the purpose of the agreement;
 - (ii) A plan for the legacy of the country;
 - (iii) A compromise to implement a Project Management Office, if the contractual purpose includes project management; and
 - (iv) The obligation for the other government to send the documents referring to the execution of the contract or agreement. This information must be made available to the Supervisory Authority of Public Procurement ([OSCE](#)) and the bodies which make up the National System of Oversight, if the latter request it. If the contract is for the acquisition of goods, delivery can be made in the primary area or in the place agreed by the contracting governments. If the purpose of the contract is the provision of a service, it shall take place wherever the parties agree upon.

1.2. Sectorial Legal Framework

Concerning the tender for foreign states and the signing of Government to Government contracts, the Peruvian government may act through its bodies, dependencies or public entities.¹⁰ Among them, it could be any of its nineteen Ministries, or public entities especially created for the execution of specific investment projects, as was the case with the “Special Project for the

¹⁰ For more details, the List of Peruvian Entities can be found at the [Peruvian Government’s Website](#).



Preparation and Development of the XVII Pan American Games of 2019 ([PEJP](#))¹¹” or “the Authority for Reconstruction with Changes ([ARCC](#)).”¹²

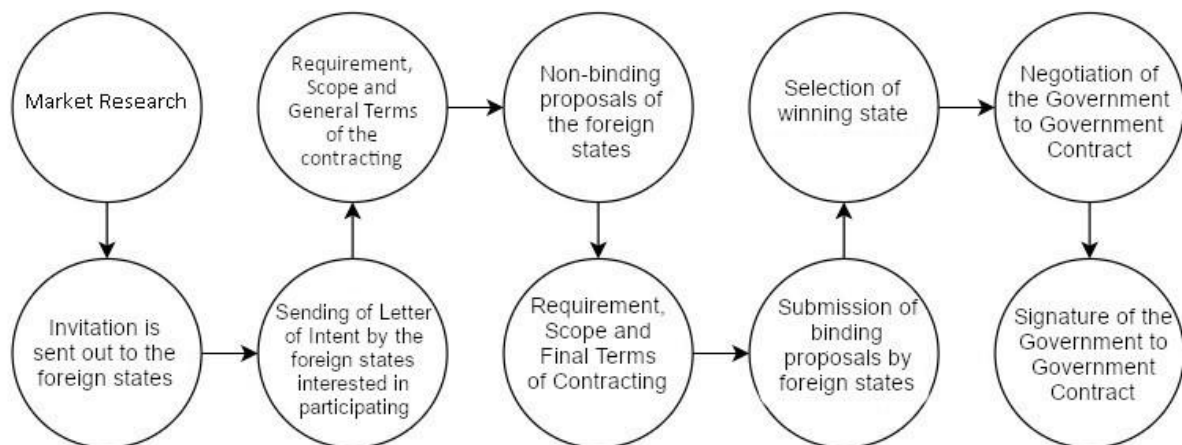
In this regard, said public entities may issue specific guidelines applicable to the tender, selection and negotiation with the foreign government and the signing of the corresponding Government to Government contract, in accordance with the Twenty-First Final Complementary Provision of [Supreme Decree N° 082-2019-EF](#) – Single Organized Text of Law N° 30225 (Law of Public Procurement).

2. Procedure and Applicable Scheme

2.1. Procedure

The procedure for selecting the foreign state is established in accordance with the specific guidelines issued by the bodies, dependencies or public entities acting on behalf of the Peruvian government.

In that regard, for instance, in accordance with the provisions of the Ministry of Health through its [Ministry Resolution N° 1110-2019/MINSA](#) and the Ministry of the Interior through its [Ministry Resolution N° 1895-2018-IN](#), the applicable procedure was as follows:



¹¹ Created by [Supreme Decree N° 002-2015-MINEDU](#) under the authority of the Ministry of Education and later transferred under the authority of the Ministry of Transport and Communications through [Legislative Decree N° 1335](#), in order to program and execute the necessary actions for the development of the XVIII Pan American Games of 2019, mainly the public investment projects in sports infrastructure, within the framework of the Master Plan and the commitments undertaken by the Organizing Committee of the aforementioned games, *COPAL – PERÚ*.

¹² Created by [Law N° 30556](#) – Law which passes provisions of extraordinary nature for interventions by the national governments in the face of disasters and which creates the authority for the reconstruction with changes, incorporated into [Supreme Decree N° 094-2018-PCM](#) and amended by [Legislative Decree N° 1354](#) and [Urgent Decree N° 040-2019](#).

2.2. Scheme

The applicable contract scheme will be determined by the contracting states in the contract negotiation stage, in accordance with the Twenty-First Final Complementary Provision of [Supreme Decree N° 082-2019-EF](#) – Law of Public Procurement (General Legal Framework).

Said scheme will involve the regulation of the commitments of the foreign states and the Peruvian government, as well as the technical obligations of the companies or entities through which the foreign state will execute the Government to Government Contract, with the anti-corruption clause and the clause for knowledge transfer being of vital importance for the Peruvian government.

3. Main Experiences of the Peruvian Government and Possible Future Developments

As examples, we will mention some of the contracts signed by the Peruvian government with foreign governments:

3.1. Government to Government Contracts entered into between Peru and France:

- ❖ Contracting of a Satellite System for the Implementation and Development of the National Center for Satellite Imagery Operations of Peru (*CNOIS*), which had the purpose of acquiring a terrestrial observation satellite, declared of national interest by [Supreme Decree N° 017-2013-DE](#), and signed on 25 April 2014.
- ❖ Contracting for Technical Assistance in the Execution of Investment Projects: “Improvement and Expansion of the Health Services of the Sergio E. Bernales National Hospital, Collique town, district of Comas, province and department of Lima”, and “Improvement of Problem-Solving Capacities of the Health Services of the Antonio Lorena Hospital Level III-1 Cusco” declared of national interest by [Supreme Decree N° 001-2020-SA](#) and signed on 27 June 2020.

3.2. Government to Government Contracts entered into between Peru and the UK:

- ❖ Cooperation and Assistance for the Execution of the XVIII Pan American Games and Sixth Para Pan American Games 2019, declared of national interest by [Supreme Decree N° 023-2017-MTC](#), and signed on 03 August 2017. In this regard, the National Plan of Infrastructure for Competitiveness, published on 28 July 2019 by means of [Supreme Decree N° 238-2019-EF](#) specifies that the Special Project of the Pan American Games (*PEJP*) was a success in terms of execution largely due to the management approach of projects of the executing unit and the fact that it had the support of a Project Management Office (PMO), whose role was essential in the information systems and technical support for decision-making.
- ❖ Contracting for the Specialized Consultancy and Specialized Assistance in the

Management of the Implementation of the Comprehensive Plan for the Reconstruction with Changes, declared of national interest by [Law N° 30556](#) amended by [Legislative Decree N° 1354](#), and signed on 22 June 2020.

3.3. Government to Government Contract entered into between Peru and Korea

- ❖ Contract for the Technical Assistance in the Execution of the Investment Project: “Improvement and Extension of the Airport Service in the Cusco region through the New International Airport of Chinchero – Cusco”, declared of national interest by [Supreme Decree N° 021-2019-MTC](#), and signed on 24 October 2019.

3.4. Government to Government Contract entered into between Peru and Ukraine

- ❖ Contract for the Acquisition of an AN-178 aircraft to Recover the Operational Capacity of the Peruvian National Police, declared of national interest by [Supreme Decree N° 019-2019-IN](#), and signed on 23 October 2019.

3.5. Possible Developments of the Government to Government Contracts

It should be noted that the use of Government to Government Contracts will be more and more frequent. On the one hand, [Supreme Decree N° 179-2020-EF](#) of 7 July 2020 amended the Rules of Procedure for Special Public Investment Projects, within the framework of [Urgent Decree N°021-2020](#), [Supreme Decree N° 119-2020-EF](#), by incorporating an eighth final complementary provision according to which the entities of the National Government that request authorization for the creation of Special Public Investment Projects (*PEIP*) can use Government to Government contracts for such purposes. It is also specified that the Government to Government contracts may include Specialized Technical Assistance in Investment Management for the management and execution of investments, the collaborative Methodology of digital modeling of information for construction (BIM)¹³, and standardized contracts.¹⁴

On the other hand, in his speech of 28 July 2020, the President of the Republic of Peru announced that Metro Lines 3 and 4 would be executed through Government to Government contracts, with an investment of PEN 30 billion. Other projects that would also be carried out through Government to Government contracts are the construction and improvement of the Central Highway (covering regions of the central highlands and a large part of the jungle), as well as the construction of 75 schools with an investment of PEN 3 billion, 44 hospitals and health centers with a similar investment of PEN 3 billion, and 24 sanitation and drinking water projects, for over PEN 5 billion.

¹³ The Peruvian Government passed the Guidelines for the Use of Building Information Modeling Methodology in Public Investments through [Directoral Resolution N° 007-2020-EF/63.01](#) and its [Annex](#). For further technical information check: <https://www.mef.gob.pe/es/estrategia-bim-peru>

¹⁴ This refers to international models of construction contracts such as FIDIC and NEC among others.

Useful Links

- **Ministry of Health - MINSa**
<https://www.gob.pe/minsa/>
- **Ministry of the Interior - MININTER**
<https://www.gob.pe/mininter>
- **Ministry of Defense - MINDEF**
<https://www.gob.pe/mindef>
- **Ministry of the Economy and Finance – MEF**
<https://www.gob.pe/mef>
- **Supervisory Authority of Public Procurement**
<https://www.gob.pe/osce>
- **Special Project for the Preparation and Development of the Pan American Games**
<https://www.lima2019.pe/>
- **Authority for Reconstruction with Changes**
<http://www.rcc.gob.pe/>

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