

DECRETO LEGISLATIVO Nº 1017 EN INGLÉS**Wednesday, June 4, 2008****LEGISLATIVE DECREES****Legislative Decree approving the Public Procurement Law****LEGISLATIVE DECREE No. 1017****Web Link: EXPOSICIÓN DE MOTIVOS - PDF (EXPLANATORY STATEMENT - PDF)**

(*) In accordance with Article 1 of Urgency Decree No. 014-2009, published on January 31, 2009, this Legislative Decree came into force since February 01, 2009.

(*) In accordance with Article 3 of Law No. 29523, published on May 1, 2010, municipal savings and loans banks are excluded from Public Procurement Law and from its Regulations. The Board of directors of each municipal savings and loans bank shall enact its own acquisition and procurement regulations by a simple majority. These Regulations shall consider the judgment of the Supervising Agency of the Government Procurement (OSCE) and the Superintendency of Banking, Insurance and Private Pension Fund Administrators of Peru (SBS).

CONFORMITIES: Supreme Decree No. 184-2008-EF (REGULATIONS)

OTHER CONFORMITIES

PRESIDENT OF THE REPUBLIC

WHEREAS:

Under the Law No. 29157, and for a period of one hundred eighty (180) calendar days, the Congress of the Republic delegates to Executive Branch the power to legislate on diverse issues regarding the implementation of the USA - PERU Free Trade Promotion Agreement and the economic competitiveness support for its use, including the regulatory improvement, administrative simplification and Government modernization;

In accordance with the provisions of Article 104 of the Peruvian Constitution,

With the approval of the Council of Ministers, and,

With a certificate of notification to the Congress of the Republic,

Has issued the following Legislative Decree:

LEGISLATIVE DECREE APPROVING THE PUBLIC PROCUREMENT LAW**TITLE I****GENERAL PROVISIONS****Article 1.- Scope**

This rule contains the provisions and guidelines to be observed by Public Sector Entities during the procurement processes of goods, services or works and, regulates rights and obligations

derived from them.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations). Article 2

Article 2.- Objective

The objective hereof is to establish the rules focused on maximizing the value for taxpayers' money in procurement activities performed by Public Sector Entities so that this procurement shall be executed in a timely manner and under the best quality and price conditions, complying with principles referred to in Article 4 of this norm.

Article 3.- Scope of application

3.1 *Within the scope of this rule and under the umbrella term of Entities, the following are included:*

- a) *The National Government, departments and offices.*
- b) *The Regional Governments, departments and offices.*
- c) *The Local Governments, Departments and offices.*
- d) *The Independent Constitutional Agencies.*
- e) *The Public Universities.*
- f) *The eleemosynary corporations and councils for social participations.*
- g) *The Armed Forces and the Peruvian National Police (PNP).*
- h) *The Welfare, Health and Housing Funds, among others of similar nature to the Armed Forces and the Peruvian National Police (PNP).*
- i) *The private and public Government companies, either belonging to National or Regional or Local Government and semi-public companies under the Government Control,*
- j) *Projects, programs, funds, de-concentrated agencies, Executive branch public bodies, institutions and other executing and/or operating, functional, organizational units of the branches of Government, as well as the agencies referred to in the Peruvian Constitution and others created and recognized by national legal system.*

**CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations). Articles 2, 256, 271, 279, 283 and 287
Urgency Decree No. 041-2009. Article 1
Urgency Decree No. 078-2009. Article 1**

3.2 *This rule shall apply to procurement to be performed by Entities in order to obtain goods, services and works, assuming payment of the price or of the corresponding remunerations with public funds, and other obligations derived from the contracting party.*

3.3 *This rule shall not apply to:*

- a) *Procurement of workers, employees, government employees or officials subject to the administrative or labor career in the private sector.*
- b) *Procurement of external auditors in or to Entities, which is subject to the rules governing the National Control System. Other procurement performed by General Comptrollership of the Republic is subject to the provisions of this Legislative Decree and its Regulations.*
- c) *Indebtedness operations and administration of the national debt.*
- d) *Procurement of financial and legal consultancy and other specialized services, directly or indirectly involved in the external or internal indebtedness operations and the administration of the national debt;*

e) *Banking and financial contracts entered into by and between Entities;*

f) *Services contract or non-personal services contracts entered into between Entities and natural persons except for consultancy contracts. Furthermore, the contracts for services entered into with the presidents of the board or board of directors performing full time functions in the Entities or State companies shall be outside the scope of this rule; (*)*

(*) In accordance with the First Final Supplementary Provision of the Legislative Decree No. 1057, published on June 28, 2008, the referential rules to non-personal procurement services shall be understood to be effective to the administrative procurement services.

g) *Acts of disposition as well as administration and management of government properties;*

h) *Procurements whose amounts are equal or less than three (3) Penalty Tax Units, currently in force at the moment of the transaction; unless in the case of goods and services included in the Catalog of the Framework Agreement;*

i) *Procurement of notaries public to perform the functions provided in this rule and its Regulations;*

j) *Services provided by conciliators, referees, conciliation centers, arbitral institutions and other derived from the conciliatory and arbitral function;*

k) *Procurements to be performed with certain supplier, as expressly mandated by law or judicial authority;*

l) *Granting of natural resources and public works of infrastructure, goods and public services;*

m) *Transfer to the private sector of shares and assets belonging to the State, within the framework of the privatization process;*

n) *Direct budget execution modality contemplated in the rules of the matter except for the procurement of goods and services required for it;*

ñ) *Procurements with providers not settled in the country and whose higher estimated provision value is performed in foreign territory;*

o) *Procurements performed by the Missions of the Foreign Affairs of the Republic, exclusively for their operation and management, out of the national territory;*

p) *Services procurements of lawyers, legal advisors and of any other type of advisory required for the defense of the State in international controversies on investments in arbitral or judicial forums;*

q) *Purchases of goods performed by the Entities through public tender, which shall be performed in accordance with the matter rules;*

r) *Agreements of cooperation, management or similar ones, signed between Entities, or between them and international bodies, as long as goods, services or works are given, which are provided by law, and also not to pursue for profit;*

s) *Procurement of public services, as long as there is no possibility of contracting with more than one supplier; and,*

t) *Procurements performed in accordance with the requirements and specific procedures of international agencies, States or cooperative entities, as long as they are associated to donations or official credit operations. (*)*

(*) Article amended by the Sole Article of Law No. 29873, published on June 1, 2012, in force on the thirtieth following working day from the publication of the Government Procurement Law amendment, approved by the Supreme Decree 184-2008-EF, which reads as follows:

“Article 3.- Scope of application

3.1 Within the scope of this law and under the umbrella term of Entities, the following are included:

- a) The National Government, departments and offices.
- b) The Regional Governments, departments and offices.
- c) The Local Governments, Departments and offices.
- d) The Independent Constitutional Agencies.
- e) The Public Universities.
- f) The eleemosynary corporations and councils for social participations.
- g) The Armed Forces and the Peruvian National Police (PNP).
- h) The Welfare, Health and Housing Funds, among others of similar nature to the Armed Forces and the Peruvian National Police (PNP).
- i) The private and public Government companies, either belonging to National or Regional or Local Government and semi-public companies under the Government Control, and,
- j) Projects, programs, funds, de-concentrated agencies, Executive branch public bodies, institutions and other executing and/or operating, functional, organizational units of the branches of Government, as well as the agencies referred to in the Peruvian Constitution and others created and recognized by national legal system, on condition that it have administrative, economic and budgetary autonomy.

3.2 This law shall be applied to procurement activities to be performed by Entities in order to obtain goods, services and works, assuming payment of the price or of the corresponding remunerations with public funds, and other obligations derived from the contracting party.

3.3 This law shall not be applied to:

- a) Procurement of workers, employees, government employees or officials subject to the administrative or labor career in the private sector.
- b) Procurement of external auditors in or to Entities, which is subject to the rules governing the National Control System. Other procurement performed by General Comptrollership of the Republic is subject to the provisions of this law and its regulations.
- c) Indebtedness Operations and administration of the national debt.
- d) Procurement of financial and legal consultancy and other specialized services, directly or indirectly involved in the external or internal indebtedness operations and the administration of the national debt.
- e) Banking and financial contracts entered into by and between Entities.
- f) Administrative contracts for services or regulations acting to this effect.
- g) Services contracts entered into with the presidents of board of directors, who perform full time functions in Entities or State companies.

h) Acts of disposition as well as administration and management of government properties.

i) Procurements whose amounts are equal or less than (3) Penalty Tax Units, valid at the moment of the transaction, which does not undermine the responsibility of the Entity to safeguard the use of public resources in accordance with the principles of morality and efficiency.

This assumption does not apply to procurement of goods and services included in the Catalog of the Framework Agreement, according to the established by the regulations.

j) Procurements for notaries public to exercise functions provided in this law and its regulations.

k) Services provided by conciliators, referees, conciliation centers, arbitral institutions and other derived from the conciliatory and arbitral function; except under the infringements and sanctions provided for referees.

l) Procurements to be performed with certain supplier, as expressly mandated by law or judicial authority.

m) Granting of natural resources and public works of infrastructure, goods and public services.

n) Transfer to the private sector of shares and assets belonging to the State, within the framework of the privatization process.

ñ) Direct budget execution modality contemplated in the rules of the matter, unless the procurement of goods and services required for it.

o) Procurements with providers not settled in the country and whose higher estimated provision value is performed in foreign territory.

p) Procurements performed by the Missions of the Foreign Affairs of the Republic, exclusively for their operation and management, out of the national territory.

q) Service procurements of lawyers, legal advisors and of any other type of advisory required for the defense of the State in international controversies on investments in arbitral or judicial forums.

r) Purchases of goods performed by the Entities through public tender, which shall be performed in accordance with the rules of the matter.

s) Agreements of cooperation, management or others similar, signed by or between Entities, and international agencies, as long as goods, services or works are given, which are provided by law, and also are not pursuing for profit.

The agreements referred to in this paragraph shall, under any circumstances, be used to the task of performing procurement processes.

t) Procurement of public services, as long as there is no possibility of contracting more than one provider.

u) Procurements performed in accordance with the requirements and specific procedures of international bodies, States or cooperative entity, provided they are derived from operations of external indebtedness and/or donations related to these operations.

v) Procurements performed in accordance with the requirements and specific procedures of international bodies, States or cooperating entities, derived from donations made by these, provided that such donations represent at least 25% of the procurement total amount involved in the Agreement signed for this purpose.

In all assumptions described in this paragraph, except for literal u), the General Comptrollership of the Republic will intervene.”

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations), Article 2 and Fifth Temporary Supplementary Provision**
Law 29465, Article 16 (Public Sector Budget Law for the fiscal year 2010)
Law No. 29626, Article 18 (Public Sector Budget Law for the fiscal year 2011)
Law No. 29951, Article 13 (Amounts for determination of the procurement processes)

Article 4.- Principles governing procurements

Procurement processes set by this rule and its Regulations are governed by the following principles, without prejudice to the application of other general principles of public law:

a) Principle of Human Development Promotion: Public procurement shall contribute to the human development at the national territory, in accordance with the standards universally accepted on the matter.

b) Principle of Morality: All acts related to the procurement processes of the Entities shall be subject to the rules of honesty, veracity, intangibility, justice and probity.

c) Principle of Free Concurrence and Competition: In the procurement processes shall be included regulations or treatments that promote the widest, objective and impartial concurrence, plurality and bidder's participation.

d) Principle of Impartiality: The agreements and resolutions of the officials and bodies responsible for the procurement of the Entity shall be adopted in strict application of this rule and its Regulations; as well as the consideration of technical criteria allowing objectivity when dealing with bidders and contractors.

e) Principle of Reasonability: In all tendering procedures, the object of contracts shall be reasonable, in quantitative and qualitative terms, to satisfy the public interest and the expected result.

f) Principle of Efficiency: The procurements performed by the Entities shall be carried out under the best conditions of quality, price and periods of execution and delivery, and with the best use of available material and human resources. Procurements shall observe criteria of speed, economy and efficiency.

g) Principle of Publicity: The notification for the tendering procedures and acts to be issued as a result shall be published and properly diffused to ensure the free concurrence of potential bidders.

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h) Principle of Transparency: Any procurement shall be carried out on the basis of objective criteria and qualifications, supported and available for bidders. Bidders will have access during the tendering procedures to the respective documentation, except the exceptions provided in this rule and its Regulations. The notification, the award to the bidder and the results shall be of public knowledge.

i) Principle of Economy: The criteria of simplicity, austerity, concentration and saving in the use of resources, in tendering procedures phases and in agreements and resolutions falling on them shall be applied to any procurement activities, avoiding demands and formalities expensive and unnecessary in the Basis and contracts.

j) Principle of Technological Validity: Goods, services or works execution shall meet the quality and technological modernity conditions needed to fulfill effectively the purposes for which they are required, from the moment they are contracted and for a specified and predictable duration, with the possibility of being adapted, integrated and updated if necessary, with scientific and technological advances.

k) Principle of Fair and Equal Treatment: All procurement of goods, services or works shall have participation and access in order to contract with the Entities in equals, being prohibited for privileges, advantages or prerogatives.

l) Principle of Fairness: The benefits and rights of the parties shall keep a reasonable relationship of equivalence and proportionality, without prejudice to the powers corresponding to the State in the management of the general interest.

m) Principle of Environmental Sustainability: In any procurement criteria shall be applied to warrant the environmental sustainability, trying to avoid environmental negative impacts in accordance with the rules of the matter.

These principles will also serve as interpretative and integrating criteria for the application of this rule and its Regulations, and as parameters for the performance of the officials and agencies responsible for procurements.

CONFORMITIES: **AGREEMENT 267-01-2009 (Approving Regulations for the services procurement and acquisition of goods)**

Article 5.- Specialty of the rule and delegation

This Legislative Decree and its Regulations prevail over the rules of public law and over those of private law that are applicable.

The Holder of the Entity may delegate, by resolution, the authority that this rule bestows. The approval of exonerations, the ex officio declaration and the authorizations for additional benefits of works and other established by the Regulations cannot be delegated.

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations) Article 5**

Article 6.- Agencies involved in procurements

Each Entity shall establish in its Regulations of Organization and Functions or others instruments of organization, the agency or agencies responsible for planning, preparing, executing and monitoring the procurement processes until its culmination, where the relevant activities of each government official shall be pointed out, in order to establish that the responsibilities are inherent.

The government employees and officials that are part of the agency responsible for the Entity procurements shall be qualified in matters related to public procurements, according to the requirements established in the Regulations.

By agreement, the Entities may entrust, whether National or International Private and/or Public Sector entities, the execution of procurement processes including the necessary preparatory acts under the proceedings and formalities provided for in the Regulations.

CONFORMITIES: **Supreme Decree. No. 184-2008-EF, Articles 5, 86, 87, 88, 89**
Urgency Decree No. 041-2009, Second Temporary Supplementary Provision.

Article 7.- Procurement record

The Entity shall keep a Procurement Record containing all proceedings concerning the procurement process, from the user requirements to contract completion, and shall include the non-winning tenders. This record shall remain under custody of the agency in charge of procurement as provided in the Regulations.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 10

Article 8.- Annual Plan of Procurement

All Entities shall prepare its Annual Plan of Procurement, which shall schedule the procurement of goods, services and Works required during the fiscal year, independently of its regulatory system or funding source, as well as the estimated amounts and types of tendering procedures provided. The estimated amounts to be executed during the corresponding fiscal year shall be included in the institutional Budget. The Annual Plan of Procurement shall be approved by the Head of the Entity and shall be published in the Electronic System of Government Procurement (SEACE).

Requirements, content and procedures shall be determined by Regulations for developing and amending the Annual Plan of Procurement.

**CONFORMITIES: Supreme Decree. No. 184-2008-EF (Regulations), Article 6, 7, 8, 9
Resolution No. 169-2009-OSCE-PRE (Approving the Board of Directors of
"Annual Procurement Plan")
Supreme Decree No. 013-2013-EF, Second Final Supplementary Provision
(Contributions for the Health Funds)**

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TITLE II**TENDERING PROCEDURES****CHAPTER I****General Provisions**

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations), Article 19

Article 9.- National Register of Providers (RNP)

Being registered in the Suppliers/Providers National Registry (RNP) and not being stopped, sanctioned or disabled for making contracts with State are requirements to be participants, bidders and/or contractors.

The Regulations shall establish the organization, functions and procedures of the Suppliers/Providers National Registry (RNP), the requirements for registration and assignment of categories and specialties, inclusion and periodicity of the guilty persons list published in the Official Gazette "El Peruano". In no case, these requirements constitute barriers to competition.

Providers whose inclusion in the Suppliers/Providers National Registry (RNP) were declared invalid since they submitted false documentation or inaccurate information shall apply to be reconsidered for registration in such Register two (2) years later from the date the invalidity decision was administratively issued.

The Suppliers/Providers National Registry (RNP) is not supposed to require an operating license during the registration process.

In no case, the basis of the tendering procedures may require to bidders the documentation that they had to have submitted for their registration to the Suppliers/Providers National Registry (RNP).

The Government Procurement Supervising Agency - OSCE will administer the Suppliers/Providers

National Registry (RNP) and shall keep it updated in its institutional portal.

Entities are prohibited from keeping records of providers. They will only have the authorization to keep and maintain an internal list of providers, consisting of a database containing the relationship of them. Under no circumstances, the incorporation in this list will be a requirement to participate in tendering procedures that the Entity convenes. The incorporation of providers in this list is discretionary and free.

The Suppliers/Providers National Registry (RNP) will be decentralized in order not to prejudice or generate higher transaction costs for small and micro enterprises located in various regions of the country.

Under responsibility and within the framework of the current legislation on the matter, the National Registry of Identification and Civil Status (RENIEC), the National Superintendency of Tax Administration (SUNAT), the National Office of the Superintendent of Public Registries (SUNARP), the National Institute for the Defense of Competition and Intellectual Property (INDECOP), the Judiciary and the Peruvian National Police (PNP) shall provide access to relevant information, safeguarding the tax reserve, so that the Suppliers/Providers National Registry (RNP) have updated information to perform the subsequent inspection of the information provided by providers.

By Supreme Decree endorsed by the Ministry of Economy and Finance may be provided the access to the information held by other Entities and that is relevant to the Suppliers/Providers National Registry (RNP).
(*)

(*) Article amended by the Sole Article of Law No. 29873, published on June 01, 2012, in force on the thirtieth following working day from the publication of the amendment of the Government Procurement Law, approved by the Executive Decree 184-2008-EF, which reads as follows:

“Article 9.- Suppliers/Providers National Registry (RNP)

9.1. In order to be participant, bidder and/or contractor, they shall be registered in the Suppliers/Providers National Registry (RNP) and not being estopped, sanctioned or disabled for making contracts with State.

9.2. The Regulation sets out the organization, functions and procedures of the Suppliers/Providers National Registry (RNP), as well as the requirements for registration and its renewal, the assignment of categories and specialties, inclusion and the periodicity of the list regarding the sanctioned published on the Government Procurement Supervising Agency (OSCE) Webpage. In no case, these requirements constitute barriers to competition and are established in pursuant to reciprocity principle.

The publication of the sanctioned includes information of the partners, shareholders, equity holders or holders and the members of the administration bodies, in accordance with the procedure provided for in the regulation.

9.3. Government Providers registered in the Suppliers/Providers National Registry (RNP) as Work Executors shall be given a procurement maximum capacity calculated according to experience as work executors and share capital subscribed and paid in Peru, where this subscribed and paid share capital of legal persons registered in the Suppliers/Providers National Registry (RNP) as executors of work is clearly established to be higher than 5% of procurement maximum capacity, as well as legal persons not incorporated in Peru and, therefore, their capital shares are not in Peru according to capital allocation which may have been effectively deposited in an entity of domestic financial system as for its offices and of equivalent mechanisms only for non-domiciled legal persons, who shall prove they have deposited in an active account in a company of domestic financial system on behalf of its legal representative in that country, the amount whose procurement maximum capacity shall be calculated. Both in the case of foreign legal person offices in Peru as non-domiciled legal persons offices, and for validity purposes before the Suppliers/Providers National Registry (RNP), the capital contributions aforementioned shall have been approved in a general meeting of shareholders or a similar agency of the corporation prior to actual bailment,

under each corporation articles or laws of the country where the headquarters were incorporated

Notwithstanding the above, for purposes of carry out the registration of foreign companies before the Suppliers/Providers National Registry (RNP) shall apply the Principle of Reciprocity. Foreign companies will receive the same treatment as Peruvian companies receive in their country of origin for State procurements.

The provisions set out in the preceding paragraphs do not apply to providers who come from countries where the Republic of Peru had a treaty or international commitment in force including provisions on public procurement; or micro and small enterprises (Mypes) duly registered in the National Register of Micro and Small Enterprises (REMYPE).

9.4. Providers whose registration in the Suppliers/Providers National Registry (RNP) was declared invalid by having presented false documentation or inaccurate information shall apply to be reconsidered for registration in such Register two (2) years later from the date the invalidity decision was administratively issued.

The Suppliers/Providers National Registry (RNP) is not supposed to require an operating license during the registration process.

The Government Procurement Supervising Agency - OSCE will control the Suppliers/Providers National Registry (RNP) and shall keep it updated in its institutional web portal. Entities are prohibited from keeping records of providers. They shall only have the authorization to keep and maintain an internal list of providers, consisting of a database containing the relationship of them. Under no circumstances, the incorporation in this list will be a requirement to participate in tendering procedures that the Entity convenes. The incorporation of providers in this list is discretionary and free.

The Suppliers/Providers National Registry (RNP) will be decentralized in order not to prejudice or generate higher transaction costs for small and micro enterprises located in various regions of the country.

Under responsibility and within the framework of the current legislation on the matter, the National Registry of Identification and Civil Status (RENIEC), the National Superintendency of Tax Administration (SUNAT), the National Office of the Superintendent of Public Registries (SUNARP), the National Institute for the Defense of Competition and Intellectual Property (INDECOP), the Superintendency of Banking, Insurance and Private Pension Fund Administrators of Peru (SBS), the Judiciary, the Peruvian National Police (PNP) and other Entities from which information may be required, shall provide access to relevant information, safeguarding the reserves provided by law with the purpose that the Suppliers/Providers National Registry (RNP) have an updated information that allows to exercise the subsequent inspection of the information provided by providers.

By Supreme Decree endorsed by the Ministry of Economy and Finance the access to the information held by other Entities and that is relevant to the Suppliers/Providers National Registry (RNP) may be provided.

9.5. In no case, the basis of the tendering procedures demands to bidders the documentation that they had to have submitted for their registration to the Suppliers/Providers National Registry (RNP)."

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 52, 251, 281

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Article 10.- Impediments for being a bidder and/or contractor

Whatever the applicable procurement legal regime may be, the following are impeded from being participants, bidders and/or contractors:

a) In all public procurement processes, up to twelve (12) months after having left office, the President and Vice-presidents of the Republic, the Congressmen of the Republic, the Ministers and Vice-ministers of State, the Justices of the Supreme Court of Justice of the Republic, the heads and members of the collegiate entity of the Autonomous Constitutional Entities;

b) In the country's regions, up to twelve (12) months after having left office, the Presidents, vice-presidents and Advisors of the Regional Governments;

c) Within their jurisdiction, up to twelve (12) months after having left office, the Justices of the Supreme Courts of Justice, the Mayors and Aldermen;

d) Within the entity to which they belong, 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;

e) In the corresponding procurement process, 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 tenders in a selection process and in the authorization of payments for the contracts derived from said process, save for supervision contracts;

f) Within the scope and time period established for the persons specified in the preceding paragraphs, the spouse, partner in law or the family members up the fourth degree of consanguinity and second degree of affinity;

g) Within the scope and time period established for the persons specified in the preceding paragraphs, the legal persons in whose capital or social equity they may have or may have had a participation higher than five percent (5%) within the twelve (12) months preceding the notice of intended procurement;

h) Within the scope and time period established for the persons specified in the preceding paragraphs, 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 twelve (12) months preceding the notice of intended procurement;

i) Within the scope and time period established for the persons specified in the preceding paragraphs, 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;

j) The natural or legal persons who are currently administratively sanctioned with temporary or permanent disqualification for exercising their right to participate in selection 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 twelve (12) months from the sanction being imposed, of legal persons who are currently administratively sanctioned with a temporary or permanent disqualification for participating in selection 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 five percent (5%) of the capital or social equity and for the duration that the sanction is in force;

l) Others established by law or by the Rules of Application of this Regulation.

The proposals that contravene the provisions contained in this article shall be deemed as not submitted. Those contracts entered into in contravention of the provisions of this article are null, without prejudice to the liabilities that may apply on the part of the functionaries and servants of the procuring Entity and the contractors that entered into those contracts.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 42, item 1, paragraph a), section II), paragraph a), 103, items 1, 111, items 5 and 237, item 1, paragraph d) and Third Complementary Transitory Provision.

Article 11.- Prohibition of restrictive practices.-

The bidders in a selection process are prohibited from concerting among themselves, or with third parties, in order to establish restrictive practices on free competition, under the penalty of being disqualified for contracting with the State, without prejudice to the other sanctions established by the provisions in force ().*

(*) Article modified by the Law's Single Article No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved by Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 11.- Prohibition of practices that affect greater participation and competition in the procurement process.

It is prohibited to concentrate prices, conditions or advantages among providers/suppliers in the procurement processes. This impact on free competition can also materialize through agreements not to participate or not to present proposals in the procurement processes. The functionary or public servant who intervenes or favors these practices shall be sanctioned administratively or criminally in accordance with the corresponding regulations.”

CONFORMITIES: Legislative Decree No. 1034, Second Complementary and Final Provision
Supreme Decree No. 184-2008-EF (Regulations) Art. 237.

Article 12.- Requirements to call for a process

It is a requirement for calling for a selection process, under penalty of nullification, that it be included in the Annual Procurement Plan and that it have its Contract Dossier duly approved in accordance with the provisions in the Rules, which shall include the availability of resources and their financing source, as well as the duly approved Tender Documentation, save for the exceptions established in the Rules.

It shall be possible to conduct processes whose contractual execution may be extended over more than one (1) budget period, in which case the appropriate budget reserve must be adopted during the corresponding periods in order to guarantee payment of the obligations.

CONFORMITIES: LAW No. 29289, Seventeenth Final Provision.
Law No. 29465, Fourth Final Provision (Budget law for the public sector for fiscal year 2010).
Directorial Resolution No. 043-2009-EF-76.01 (Directive No. 005-2009-EF-76.01), Article 17, item 17.6.
Supreme Decree No. 184-2008-EF (Regulations) Article 10, 35.
Directorial Resolution No. 030-2010-EF-76.01, Article 13 of Directive No. 005-2010-EF/76.01

Article 13.- Technical characteristics of the goods, services and works to be contracted.

On the basis of the Annual Procurement Plan, the user area must require the procurement of the goods, services or works, taking into account the duration terms established for each selection process, in order to ensure the timely fulfillment of its needs.

When presenting its requirement, the user area must describe the good, service or work to be contracted, defining with precision its quantity and quality, indicating the public purpose for which it is to be contracted.

The formulation of the technical specifications must be carried out by the user area in coordination with the Entity body in charge of the procurement, evaluating in each case the technical alternatives and the possibilities offered by the market for fulfilling the requirement. This evaluation must allow the participation of the plurality of providers/suppliers in the market for the notice of intended procurement of the corresponding selection process, preventing the inclusion of unnecessary requirements whose compliance would only favor specific bidders.

The technical specifications must comply mandatorily with the technical rules and national weather and/or sanitary standards, if any. These may include the specific conditions in the technical standards, if any.

In the case of works, furthermore, the physical availability of the tract of land or location where they will be executed shall be required, as well as the approved technical dossier, with the obligation to comply with the requirements established in the Rules. The Entity shall be mindful of its adequate formulation in order to ensure the technical quality and to reduce to a minimum the need to reformulate it due to errors or technical deficiencies that may have repercussions on the works execution process.

In the selection processes, as per the list of items, steps, stages, packages or lots, it will be possible to call for the procurement of goods, services or works in a single process, establishing an estimated value for each item, step, stage, package or lot. The Rules shall establish the additional procedures to be followed in these cases.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 11.

Article 14.- Contents of the call and deadlines for the selection processes.

The contents of the call for the selection processes shall be set in the Rules, with the obligation to have a reasonable time period between the Notice of Intended Procurement and the submittal of proposals according to the specific characteristics of each process.

The deadlines for the selection processes are counted in calendar days, with the obligation to set in the Rules those that correspond to each of the stages of the process.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 22, 23, 24.

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CHAPTER II

About the Selection Processes

Article 15.- Procurement mechanisms

The selection processes are: public tender, public bidding, direct awarding and awarding for lesser amounts, which may be conducted in a corporate manner or subject to the selection modalities of Reverse Auction or Framework Agreement, as per the Rules.

The Rules shall determine the characteristics, requirements, procedures, methodologies, modalities, deadlines, exceptions and systems applicable to each selection process.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 19, 21
Resolution No. 168-2009-OSCE-PRE (Directive on "Guidelines for the Application of the Special Modality of Selection by Reverse Auction" is

approved).

Resolution No. 418-2010-OSCE-PRE (Directive No. 007-2010/OSCE-CD on Framework Agreement is approved).

Resolution No. 089-2012-OSCE-PRE (“Directive on Framework Agreement” is approved, which supersedes Directive No. 007-2010-OSCE-CD).

Resolution No. 290-2012-OSCE-PRE (Directive No. 015-2012-OSCE-CD “Application of the Special Modality of Selection by Reverse Auction” is approved).

Resolution No. 292-2012-OSCE-PRE (Directive No. 017-2012-OSCE-CD “Framework Agreement” is approved).

Article 16.- Public tender and public bidding

Public tenders are called for the procurement of goods, supplies and works. Public biddings are called for procurement services of any nature.

In both cases, the margins established by the Public Sector Budget Law are applied.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 19.

Article 17.- Direct awarding

Direct awarding is applied to procurement conducted by the Entity, within the margins established by Public Sector Budget Law. Direct awarding may be public or selective. The Rules shall establish the form, requirements and procedure in each case.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 19.

Article 18.- Awarding for lesser amounts

Awarding for lesser amounts is applied to the procurement conducted by the Entity whose amount is less than one tenth of the minimum limit established by the Public Sector Budget Law for the cases of public tender and public bidding.

The Rules shall establish the minimum requirements and formalities for developing the selection processes referred to by this article. The Entities must post on their institutional website the requirements for goods or services to be acquired under the lesser amounts modality.

In the awarding for lesser amounts, the procurement shall be mandatorily conducted electronically through the Electronic System for Government Procurement and Contracting (SEACE), with the exceptions established by the Rules.

Moreover, the Rules for this regulation shall establish the form in which the electronic procurement shall be applied progressively and mandatorily to the public tender, public bidding and direct awarding processes in their different modalities.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 19.

Article 19.- Fractioning prohibition.

It is forbidden to fraction the procurement of goods, services and the execution of works with the purpose of modifying the corresponding type of selection process, according to annual needs. The procurement by steps, stages, packages or lots according to the nature of the object of the procurement or in order to favor the participation of small and micro businesses in those economic sectors where there is competitive offer, are not considered as fractioning.

The ministry of Economy and Finance, with the prior favorable opinion from the Ministry of Labor and Promotion of Employment and the Ministry of Production, shall establish by means of a Supreme Decree the sectors that are the subject of interest for the State in order to promote the participation of micro and small businesses.

In these cases, the prohibition shall be applied to the total amount of the step, stage, package or lot to be executed.

The body in charge of the procurement in each Entity is responsible in each case for compliance with the prohibition referred to in this article. ()*

(*) Article modified by the Single Article of Law No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved through Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 19.- Fractioning prohibition

It is prohibited to fraction the procurement of goods, services and the execution of works with the purpose of avoiding the corresponding type of selection process according to annual need, or evading the application of State Procurement regulations in order to lead to contracting below three (3) UITs (Penalty Taxation Units), and/or commercial agreements signed by the Peruvian State on matters of public procurement. The procurement by steps, stages, packages or lots according to the nature of the object of the procurement or in order to favor the participation of small and micro businesses in those economic sectors where there is competitive offer, are not considered as fractioning

The ministry of Economy and Finance, with the prior favorable opinion from the Ministry of Labor and Promotion of Employment and the Ministry of Production, shall establish by means of a Supreme Decree the sectors that are the subject of interest for the State in order to promote the participation of micro and small businesses.

The prohibition applies to the total amount of the step, stage, package or lot to be executed.

The body in charge of the procurement in each Entity is responsible in each case for compliance with the prohibition referred to in this article.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 20.

Article 20.- Exemption from selection processes

The following procurement is exempted from the selection processes:

a) Those that are undertaken between Entities, as long as due to opportunity costs they turn out to be more efficient and technically viable in order to fulfill the need and there is no contravention to what is established in Article 60 of the Political Constitution of Peru;

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 127.

b) In the case of an emergency situation derived from catastrophic events, from situations that imply grave danger or that affect national defense and security;

**CONFORMITIES: Urgency Decree No. 036-2009, item 2.1, Art. 2.
Supreme Decree No. 184-2008-EF (Regulations) Article 128.**

c) In a shortage situation, duly verified, that affects or prevents the Entity from fulfilling its activities or operations, with the obligation to determine the responsibilities, if any, of the functionaries or servants whose conduct may have originated the configuration for these grounds;

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 129.

d) Procurement of a secret, military secret nature, or due to internal reasons, on the part of the Army, the Peruvian National Police and the bodies that make up the National Intelligence System, which must be remain reserved according to law, with the prior favorable opinion from the General Comptrollership of the Republic;

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 130.

e) Whenever there is a single supplier of goods or provider of services who don't allow for substitutes, or when, for technical reasons or reasons related to the protection of rights, the exclusiveness of the supplier/provider has been established; and,

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations) Article 131.**

f) For utmost personal services, duly and objectively supported.

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations) Article 132.**

The rules shall establish the formalities, conditions and complementary requirements that correspond to each of these grounds for exemption. (*)

(*) Article modified by the Single Article of Law No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved through Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 20.- Exemption from selection processes

The following procurement is exempted from the selection processes:

a) Those that are undertaken between Entities, as long as due to opportunity costs they turn out to be more efficient and technically viable in order to fulfill the need and there is no contravention to what is established in Article 60 of the Political Constitution of Peru;

b) In the case of an emergency situation derived from catastrophic events, from situations that affect national defense and security, or from situations that imply the grave danger that any of the aforementioned assumptions may occur;

c) In a shortage situation, duly verified, that affects or prevents the Entity from fulfilling its activities or operations, with the obligation to determine the responsibilities, if any, of the functionaries or servants whose conduct may have originated the configuration for these grounds;

d) Procurement of a secret, military secret nature, or due to internal reasons, on the part of the Army, the Peruvian National Police and the bodies that make up the National Intelligence System, which must remain reserved according to law, with the prior favorable opinion from the General Comptrollership of the Republic;

e) Whenever there is a single supplier of goods or provider of services who don't allow for substitutes, or when, for technical reasons or reasons related to the protection of rights, the exclusiveness of the supplier/provider has been established;

f) For utmost personal services, provided by natural persons, duly and objectively supported.

The Rules establish the formalities, conditions and complementary requirements that correspond to each of the grounds for exemption.”

Article 21.- Formalities for exempted procurement

Procurement derived from exemption from selection processes shall be conducted in a direct manner, with the prior approval by means of a Resolution from Head of the Entity, Agreement from the Regional Council Board or the Municipal Council Board, accordingly, according to the prior technical and legal reports that must be issued mandatorily.

A copy of said Resolutions of Agreements and their supporting reports must be delivered to the General Comptrollership of the Republic and must be published on the Electronic System for Government Procurement and Contracting (SEACE), within ten (10) calendar days from their

approval, under liability of the Head of the Entity. The cases referred to in paragraph d) of Article 20 of this regulation are exempted from publication.

The approval of exemptions under regularization is prohibited, except for the emergency exemption grounds.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 133, 134, 135, 136.

Article 22.- Shortage situation

A situation is considered as one of shortage when it is an imminent, extraordinary and unforeseeable situation, in which the absence of the good, service or works compromises directly and imminently the continuity of the functions, services, activities or operations that the Entity is charged with. Said situation entitles the Entity to contract the goods, services or works only for the time, or quantity, accordingly that is necessary to resolve the situation and carry out the corresponding selection process.

Approval of the exemption by virtue of the shortage situation grounds does not constitute a waiver, exemption or release from the responsibilities of the functionaries or servants from the Entity whose conduct may have originated the presence or configuration of said grounds. If the situation was generated by wrongfulness or inexcusable guilt on the part of the functionary or servant from the Entity, this constitutes a responsibility aggravating factor. In these cases, the authority with the purview for authorizing the exemption must order, in the corresponding approval statement, the start of the corresponding actions, in accordance with Article 46 of this Legislative Decree.

When the conduct of a subsequent selection process is not called for, the reasons that motivate the definitive procurement that is the object of the exemption must be substantiated in the prior technical and legal reports that support the Resolution or the Agreement authorizing the exemption. This provision is also applicable, if necessary, to the emergency situation. ()*

(*) Article modified by the Single Article of Law No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved through Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 22.- Shortage situation

A situation is considered as shortage when it is an imminent, extraordinary and unforeseeable situation, in which the absence of the good, service or works compromises directly and imminently the continuity of the functions, services, activities or operations that the Entity is charged with. Said situation entitles the Entity to contract the goods, services or works only for the time, or quantity, accordingly that is necessary to resolve the situation and carry out the corresponding selection process.

Approval of the exemption by virtue of the shortage situation grounds does not constitute a waiver, exemption or release from the responsibilities of the functionaries or servants from the Entity whose conduct may have originated the presence or configuration of said grounds. If the situation was generated by wrongfulness or inexcusable guilt on the part of the functionary or servant from the Entity, this constitutes a responsibility aggravating factor. In these cases, the authority with the purview for authorizing the exemption must order, in the corresponding approval statement, the start of the corresponding actions, in accordance with Article 46 of this law.

When it comes to procurement covered by an international treaty or commitment that includes provisions on public procurement, the exemption only applies if the shortage situation meets the conditions indicated in the first paragraph of this article.

When the conduct of a subsequent selection process is not called for, the reasons that motivate the definitive procurement that is the object of the exemption must be substantiated in the prior technical and legal reports that support the Resolution or the Agreement authorizing the exemption. This provision is also applicable, if necessary, to the emergency situation.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 129.**Article 23.- Emergency situation**

An emergency situation is one in which the Entity has to act immediately due to catastrophic events, situations that imply grave danger or which affect national defense and security.

In this case, the Entity is exempted from filing the administrative dossier and shall be able to order the execution of that which is strictly necessary to remedy the event that has occurred and to satisfy the need that has arisen, without becoming subject to the formal requirements of this Legislative Decree. The Rules shall establish the mechanisms and deadlines for regularizing the corresponding procedure.

The other activities necessary to complete the objective proposed by the Entity shall not be of an emergency nature and shall be contracted according to what is established in this regulation. ()*

(*) Article modified by the Single Article of Law No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved through Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 23.- Emergency situation

An emergency situation is one where the Entity must act immediately due to catastrophic events, or events that affect national defense or security, or situations that imply a grave danger that any of the aforementioned assumptions may occur.

In this case, the Entity is exempted from filing the administrative dossier and must obtain immediately what is strictly necessary in order to prevent and attend to the requirements generated as a consequence of the event that has occurred, without becoming subject to the formal requirements of this regulation. The Rules establish the mechanisms and deadlines for regularizing the corresponding procedure.

The other activities necessary to complete the objective proposed by the Entity shall not be of an emergency nature and shall be contracted according to what is established in this regulation.

The public functionaries who, taking advantage of the provisions in this article should order the acquisitions of goods, services and works, without the occurrence of an actual emergency situation and/or acquire them beyond that which is strictly necessary, shall be subject to the corresponding penal and administrative sanctions.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 128.**Article 24.- About the Special Committee**

In the public tenders and public biddings, The Entity shall designate a Special Committee that must conduct the process.

For direct awarding, the Rules shall establish the rules for designating and forming Permanent Special Committees or for appointing and Special Ad Hoc Committee.

The body in charge of procurement shall be charged with conducting the awarding for lesser amounts. In these cases, the Head of the Entity may designate a Special Ad Hoc Committee or a permanent one whenever he/she considers it convenient.

The Special Committee shall be formed by three (3) members, one of which (1) must belong to the user area for the goods, services or works that are the subject of the Noticed of Intended Procurement, and another one must belong to the body in charge of procurement for the Entity. At least one of the members must necessarily be technically knowledgeable on the object of the procurement. In the case of sophisticated goods, specialized services, works, or when the Entity does not have a specialist, one or more independent experts may be part of the Special Committee,

whether these are natural or legal persons, who do not work in the procuring Entity or functionaries who work in other Entities.

The Special Committee shall be in charge of crafting the Tender Documentation and the organization, conduct and execution of the selection process, until the contract is awarded or administratively secured or the selection process is canceled.

If the Special Committee becomes aware that in the proposals there is a document over whose veracity or accuracy there is a reasonable doubt, it shall notify the fact to the body in charge of the procurement so that it may conduct an inspection immediately. This shall not suspend, in any case, the continuity of the selection process.

In the cases referred to by Article 32 of this Legislative Decree, the selection processes shall be conducted by the same Special Committee that conducted the original selection process.

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations) Article 33.**

Article 25.- Responsibility

The members of the Special Committee are jointly responsible for the selection process carried out is in conformity with the law, and are administratively and/or legally answerable, accordingly, regarding any irregularity committed within it that may be attributable to them for wrongfulness, negligence and or inexcusable guilt. The stipulations in Article 46 of this Legislative Decree are applicable to the members of the Special Committee.

In the event that the responsibility of the independent experts who participate in the Special Committee is established, be they natural or legal persons, the fact shall be notified to the State Procurement Court so that, after evaluation, they are to be included in the Chapter of the Disqualified for Contracting with the Suppliers/Providers National Registry (RNP).

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations) Article 34.**

CHAPTER III

About the Tender Documentation

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations) Article 35.**

Article 26.- Minimum conditions for the Tender Documentation

The Tender Documentation for a selection process shall be approved by the Head of the Entity or by the functionary to whom this function has been delegated and, with the exceptions established in the Rules for awarding for lesser amounts, must mandatorily contain the following:

a) The mechanisms that foster greater participation and competition of bidders with respect to the objective of the process and obtaining the most favorable technical and economic proposal. Demanding technical and commercial requirements of a general nature established in the Tender Documentation does not constitute a discriminatory treatment;

b) The details of the technical characteristics of the goods, services or works to be contracted; the place of delivery, manufacture or construction, as well as the deadline for execution, accordingly. These details may be contained in a Technical Specifications Appendix or, in the case of works, in a Technical Dossier.

c) The guarantees, according to what is established by the Rules;

d) The deadlines and publicity mechanisms that guarantee the effective possibility of participation of the bidders;

e) The definition of the system and/or modality to be followed, in accordance to what is provided for in this regulation and its Rules of Application;

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 40, 56 and 135.

f) The selection process schedule;

g) The proposal evaluation and qualification method;

h) The contract pro-forma, in which the contracting conditions are specified, except if it only corresponds to the issuance of a purchase or service order. In the case of works contracts, the General Execution Schedule for the work, the Schedule for the budgeted disbursements and the Technical Dossier, shall be necessarily included as appendices;

i) The Estimated Value and the readjustment formulas in the cases determined by the Rules;

j) The regulations that are to be applied in the event of financing granted by Multilateral Entities or Government Agencies; and,

k) The mechanisms that ensure the confidentiality of the proposals.

The stipulations in the Tender Documentation, in this regulation and its Rules of Application, are mandatory for all bidders and for the calling Entity.

The State Contracting Standards Board, OSCE, shall approve the Standardized Tender Documentation by means of Directives, and that Tender Documentation shall be used mandatorily by the Entities.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 38, 39, 58, and 92. Urgency Decree No. 041-2009, Art. 8. Resolution No. 293-2012-OSCE-PRE (Directive No. 018-2012-OSCE-CD "Provisions on the Contents of the Standardized Tender Documentation that State Entities must use in the selection processes that they call for" is approved).

Article 27.- Estimated Value

The body in charge of procurement in each Entity shall determine the Estimated Value of procurement in order to establish the corresponding type of selection process and to arrange the assignment of the necessary budgeted resources.

The Estimated Value shall be determined on the basis of a study on the price possibilities and the conditions offered by the market, carried out according to the analysis of the commercialization levels, from the technical specifications or reference terms and the estimated costs in the Annual Procurement Plan, in accordance with the criteria specified in the Rules. When it comes to investment projects, the estimated value shall be established according to the investment amount consigned in the pre-investment study that supports the viability statement.

When it comes to works, the Estimated Value may not be older than six (6) months counted from the date of Notice of Intended Procurement of the corresponding process.

In the case of goods and services, the age of the Estimated Value may not be greater than three (3) months counted from the approval of the Contract Dossier. For the cases in which a longer period than those consigned is required, the body in charge of procurement, responsible for determining the Estimated Value, must indicate its updating period.

The Estimated Value is of a public nature. Only exceptionally, shall the Entity determine that it is of a reserved nature, through a duly supported decision, under liability of the Head of the Entity. The Estimated Value shall always be published on the Electronic System for Government Procurement and Contracting

(SEACE).

The Rules shall specify the mechanisms for determining the Estimated Value, including the contracting of collection, recoveries or similar services, and success fees. ()*

(*) Article modified by the Single Article of Law No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved through Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 27.- Estimated Value

The body in charge of procurement in each Entity shall determine the Estimated Value of procurement in order to establish the corresponding type of selection process and to arrange the assignment of the necessary budgeted resources. In the selection processes subject to the Framework Agreement modality, determining the estimated value is optional.

The Estimated Value is determined on the basis of a study on the price possibilities and the conditions offered by the market, carried out according to the analysis of the commercialization levels, from the technical specifications or reference terms and the estimated costs in the Annual Procurement Plan, in accordance with the criteria specified in the rules. When it comes to investment projects, the estimated value is established according to the investment amount consigned in the pre-investment study that supports the viability statement.

When it comes to works, the Estimated Value may not be older than six (6) months counted from the date of determination of the budget consigned in the Technical Dossier.

In the case of goods and services, the age of the Estimated Value may not be greater than three (3) months counted from the approval of the Contract Dossier. For the cases in which a longer period than those consigned is required, the body in charge of procurement, responsible for determining the Estimated Value, must indicate its updating period.

The Estimated Value is of a public nature. Only exceptionally, shall the Entity determine that it is of a reserved nature, through a duly supported decision, under liability of the Head of the Entity. The Estimated Value shall always be published on the Electronic System for Government Procurement and Contracting (SEACE).

The rules specify the mechanisms for determining the Estimated Value, including the contracting of collection, recoveries or similar services, and success fees.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 13.

Article 28.- Consultations and Observations on Tender Documentation

The schedule referred to in paragraph f) of Article 26 of this regulation must establish a deadline for submitting consultations and observations on the Tender Documentation and another one for their responses.

Through the consultations, clarification requests for the provisions of the Tender Documentation are formulated and, through the observations, they are questioned regarding non-compliance with the minimum conditions or any provision on State contracting matters, or other complementary or connected regulations that relate to the selection process.

Responses to the consultations and observations must be substantiated and supported and shall be notified, in a timely and simultaneous fashion, to all participants through the Electronic System for Government Procurement and Contracting (SEACE), and are considered as an integral part of the Tender Documentation.

In the event that the Special Committee should not consider the observations formulated by the participants, these may request that the Tender Documentation and the process proceedings be raised to the Government Procurement Supervising Agency, OSCE, as long as the selection process Estimated Value is equal to, or greater than, three hundred (300) Taxation Units (UIT).

If the Estimated Value is smaller than the amount specified in the preceding paragraph, the observations shall be responded to by the Head of the Entity in the last instance.

The procedure and deadline to file the consultations and observations shall be specified by the Rules. (*)

(*) Article modified by the Single Article of Law No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved through Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 28.- Consultations and Observations on the Tender Documentation”

The schedule referred to in paragraph f) of Article 26 of this law must establish deadlines for submitting consultations and observations on the Tender Documentation.

Through the consultations, clarification requests for the provisions of the Tender Documentation are formulated and, through the observations, they are questioned regarding non-compliance with the minimum conditions or any provision on State contracting matters, or other complementary or connected regulations that relate to the selection process.

Responses to the consultations and observations must be substantiated and supported and shall be notified, in a timely and simultaneous fashion, to all participants through the Electronic System for Government Procurement and Contracting (SEACE), and are considered as an integral part of the Tender Documentation.

Participants may request that the Tender Documentation and the process proceedings be raised to the Government Procurement Supervising Agency, OSCE, as long as the requirements for raising them established in the rules are met.

The procedure and deadline to file the consultations and observations shall be specified by the Rules.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 58
Resolution No. 170-2009-OSCE-PRE (Directive on “Raising Observations on Tender Documentation and Issuance of Rulings”)
Resolution No. 281-2012-OSCE-PRE (Directive No. 006-2012-OSCE-CD
“Raising Observations on Tender Documentation and Issuance of Rulings”)

Article 29.- Legal subject to the Tender Documentation

The crafting of the Tender Documentation shall take up the provisions in this regulation and its Rules of Application and other complementary or connected regulations that relate to the selection process, which shall be applied mandatorily. Only in the event of regulatory voids, shall the principles and norms of public law that may be applied to them be observed.

CHAPTER IV

About the Procedures

Article 30.- Submitting proposals and awarding the contract

The submission of proposals and the awarding of the contract, in the cases specified by the Rules, shall be conducted in a public act on one or more dates specified in the notice of intended procurement, in the presence of a notary public, or Justice of the Peace in the absence of the former in the locality of the proceedings. The procedures and requirements for said submission shall be regulated by the Rules.

The stages and the acts of the selection process may be subject to extension or

postponement by the Special Committee, as long as duly justified causes intervene, notifying about it all participants in the selection process. In addition, a report must be delivered to the Head of the Entity explaining the reason for the extension or postponement.

The postponement or extension may not lead the Entity into a shortage situation, under liability of the Head of the Entity.

A report shall be drawn up from the act of submission of proposals and the awarding of the contract, which shall be signed by all the members of the Special Committee, by all the overseers and by the bidders who wish to do so.

The procedure submitting proposals, the awarding of the contract and the publication of the results through the Electronic System for Government Procurement and Contracting (SEACE) shall be set forth in the Rules.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 64.

Article 31.- Evaluation and qualification of proposals

The method for evaluating and qualifying proposals that will be established in the Rules must objectively allow a selection of the quality and technology required, within the most convenient deadlines and at the best total cost.

The aforementioned method must demand on the part of the bidders the submission of the documents that are strictly necessary.

The Rules shall establish the criteria, the system and the factors that apply to each type of good, service or work to be procured.

In the procurements subject to the Reverse Auction modality, the contract shall be awarded to the proposal at the lowest cost, and scoring, bonuses, promotions or other additional benefits that imply a different evaluation shall not be applicable.

Article 32.- Selection procedure not awarded

The Special Committee awards the contract in a public tender, a public bidding or direct awarding, even in the cases in which a single offer may be declared valid.

The selection procedure shall be declared not awarded when there is no valid offer left; and, partially not awarded when there is no valid offer left in any of the items identified separately.

A selection procedure being declared not awarded obligates the Entity to formulate a report evaluating the causes that motivated said declaration, with the obligation to adopt the corrective measures before calling for tender again, under liability.

In the event that a public tender, public bidding or direct awarding are declared not awarded, an awarding process for a lesser amount shall be called for.

In order to award the contract in the selection processes called for under the Reverse Auction modality, the existence of two (2) valid offers as a minimum shall be required; otherwise, the procedure shall be declared not awarded. ()*

(*) Article modified by the Single Article of Law No. 29873, published June 01, 2012, in force as of the thirtieth calendar day following the publication of the modification of the Rules of Application of the State Procurement Law, approved through Supreme Decree No. 184-2008-EF, whose text is the following:

“Article 32.- Selection procedure not awarded

The Special Committee awards the contract in a public tender, a public bidding or direct awarding, even in the cases in which a single offer may be declared valid.

The selection procedure shall be declared not awarded when there is no valid offer left; and, partially not awarded when there is no valid offer left in any of the items identified separately.

A selection procedure being declared not awarded obligates the Entity to formulate a report evaluating the causes that motivated said declaration, with the obligation to adopt the corrective measures before calling for tender again, under liability.

In the event that a public tender, public bidding or direct awarding are declared not awarded, an awarding process for a lesser amount shall be called for.

The lesser amount awarding process derived from a selection procedure declared not awarded must have the same formalities as the main process.

In order to award the contract in the selection processes called for under the Reverse Auction modality, the existence of two (2) valid offers as a minimum shall be required; otherwise, the procedure shall be declared not awarded.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 19, item 4, paragraph c)

Article 33.- Validity of proposals

In all selection processes, it shall be only considered as valid offers, the ones complying with the entire requirements established in the Tender Documentation.

The proposals that exceed the Estimated Value shall be returned by the Special Committee, as not submitted; with exception of execution of works, in such case proposals exceeding the Estimated Value in more than ten percent (10%) thereof shall be returned.

The regulation of this rule shall indicate the lower limits in case of work execution and consultancy.

In order to award the contract to proposals exceeding the Estimated Value until the limit afore mentioned, the approval of the Entity Head and necessary availability of resources are required.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 39 and 76

Article 34.- Process cancellation

During any stage of the selection process until the Awarding, the Entity responsible of the call may cancel it in case of force majeure or unforeseeable circumstances; when there is no more need for contracting or even continue the need; the allocated budget has to be intended for other emergency purposes declared expressly under its sole responsibility. In that event, the Entity shall repay the cost of the Basis whom had acquired it.

The execution of the process cancellation shall be made by a Resolution or Agreement duly supported, from the same or superior level that initiated the contracting file and duly published as stated by the Regulation.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 79

TITLE III

ABOUT THE CONTRACTS

General Provisions

Article 35.- About the Contract

The contract shall be held by written and adjusted according to the pro-forma included in the Tender Documentation with the corresponding amendments approved by the Entity during the selection process. The regulation shall state in which cases the contract will be executed by a purchase or service order; it is not necessarily to incorporate the clauses referred in the article 40 of this rule without prejudice of its legal application.

The contract enters into force when complying the conditions established for such an effect in the Tender Documentation and may be incorporated other amendments expressly stated in the Regulation.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 138

Article 36.- Consortium Offers

Different Consortium bidders may take part in the selection process without creating a different legal person. To this purpose, the accreditation about the existence of a formal promise of consortium is mandatory. It shall be perfected after awarding the bid and before signing the contract.

The parties of the consortium shall be jointly liable to the Entity for any consequences arising from their individual participation in the consortium during the selection process or their joint participation in the contract execution as a result thereof. They shall appoint a common representative with sufficient powers to exercise the rights and comply with the liability resulting from their quality of bidders and contract until its settlement.

The parties of the consortium shall be enrolled in the Suppliers/Providers National Registry (RNP) and qualified to be contracted by the State.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 145

Article 37.- Subcontracting

The contractor may subcontract with prior approval by the Entity, part of their services stated in the contract, unless expressly prohibited in the Tender Documentation.

The contractor shall be liable for the entire execution of its contract to the Entity without prejudice about the liability that may correspond to the Subcontractor.

In order to be a Subcontractor, it is required to be qualified to enter into a contract with the State and enrolled in the Suppliers/Providers National Registry (RNP).

Without prejudice aforementioned, the foreign contractors may subcontract similar domestic contractors, ensuring the training and technology transfer to their subcontractors.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 146

Article 38.- Advances

At the contractor's request and provided that it had been considered in the Basis, the Entity may pay out advances in the cases, amounts and conditions stated in the Regulation.

In order to grant the advance, the contractor shall guarantee the total amount thereof.

The advance will be amortized according to the Regulation.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 171, 172, 173.

Article 39.- Guarantees

The guarantees that shall be granted by bidders and/or contractors, as appropriate, are the bid bond,

contract performance bond, advances and differential amount of bid; its modalities, amounts and conditions will be regulated by Regulation.

The guarantees accepted by the Entities shall be unconditional, joint, irrevocable and of automatic execution in the country as per requirement of the respective Entity under responsibility of the issuing companies. They shall be regulated by the Superintendency of Banking and Insurance and Pension Fund Management Companies; or to be considered in the last list of first-class foreign banks that are published regularly by the Central Reserve Bank of Peru.

By virtue of the automatic execution, at first request, the issuing companies cannot take any exclusion to the guarantee execution and they shall fulfill it immediately within a term no longer than three (3) days. Any delay will generate joint liability to the guarantee's issuing company and to the bidder or contractor; it will lead to carry out the payment of interests in favor of the Entity.

The Regulation will state the treatment to follow in cases of lease contract and those where the service compliance is carried out prior to payment.

In the regular contracts for supply of goods or services, as well as in the contracts for execution and consultancy of works that are entered into by the Entities with the Micro and Small Enterprises, they could grant as a performance bond the ten percent (10%) of total amount to contract; percentage that will be withheld by the Entity.

Regarding contracts for the execution of works, such a benefit will only be applicable when:

a) For the amount, the contract to be signed corresponds to an awarded selection process of lesser amounts, a selective direct award or a public direct award;

b) The term of execution of the work is not less than sixty (60) calendar days; and,

c) The payment in favor to the contractor considers, at least, two (2) regular valuations based on the work progress.

Without prejudice to the final preservation of the withheld amounts, the unjustified non-performance by benefiting contractors pursuant this article that could bring about the termination of the contract, will lead to transitional disqualification of contracting with the State for a term not less than one (1) year nor more than two (2) years. ()*

(*) Article amended by the Sole Article of Law No. 29873, published on June 1st, 2012, in force as of the thirtieth calendar day following the publication of the amendment of the Regulation based on the State Procurement Law, approved by Supreme Decree 184-2008-EF, which reads as follows:

“Article 39.- Guarantees

The guarantees that shall be granted by bidders and/or contractors, as appropriate, are the bid bond, contract performance bond, advances and differential amount of bid; its modalities, amounts and conditions will be regulated by Regulation.

The guarantees accepted by the Entities shall be unconditional, joint, irrevocable and of automatic execution in the country as per requirement of the respective Entity under responsibility of the issuing companies. They shall be regulated by the Superintendency of Banking and Insurance and Pension Fund Management Companies, and authorized to issue guarantees or to be considered in the last list of first-class foreign banks that are published regularly by the Central Reserve Bank of Peru.

By virtue of the automatic execution, at first request, the issuing companies cannot take any exclusion to the guarantee execution and shall fulfill it immediately within a term no longer than three (3) days. Any delay will generate joint liability to the guarantee's issuing company and to the bidder or contractor; it will lead to carry out the payment of interests in favor of the Entity.

The regulation states the treatment to follow in cases of lease contract and those where the

provision compliance is carried out prior to payment.

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- a) For the amount, the contract to be signed corresponds to an awarded selection process of lesser amounts, a selective direct award or a public direct award;
- b) The term of execution of the work is not less than sixty (60) calendar days.
- c) The payment in favor to the contractor considers at least two (2) regular valuations based on the work progress.

Without prejudice to the final preservation of the withheld amounts, the unjustified non-performance by benefiting contractors pursuant this article that could bring about the termination of the contract, will lead to transitional disqualification of contracting with the State for a term not less than one (1) year not more than two (2) years.”

CONFORMITIES: **Law No. 29289, Articles 14, item 14.4**
 Supreme Decree No. 184-2008-EF (Regulations) Articles 155 and 249

Article 40.- Mandatory clauses in contracts

The contracts covered by this rule, and under responsibility, necessarily shall include clauses referred to:

- a) Guarantees: The Entities will establish in the contract the guarantees that shall be granted to ensure the proper execution and compliance thereof.
- b) Dispute settlement: Any dispute arising during the execution stage of the contract shall be settled by conciliation or arbitration. In the case, the Basis or the contract does not include the relevant clause, the model clause establishing the Regulation will be considered as a matter of law.
- c) Termination of contract for non-performance: In case of non-performance by the contractor of any of its obligations, which has been previously observed by the Entity, and has not been subject to correct; this last may terminate the contract in whole or in part, sending by notarial notice the document to manifest this decision and the reason that justifies it. Authority of the same or higher hierarchical level than that one, which has entered into the contract, will approve this document. The contract is terminated as a matter of law from receipt of such notification by the contractor. The previous requirement by the Entity may be omitted in cases established by the Regulation. The same right applies to the contractor at the non-performance of fundamental obligations by the Entity, provided that the contractor has set a deadline by notarized letter and the non-performance has not been corrected.

CONFORMITIES: **Supreme Decree No. 184-2008-EF (Regulations) Article 168**

Article 41.- Additional services, reductions and extensions

Exceptionally and previous support by the user area of procurement, the Entity may order and pay directly the execution of additional provisions in case of goods and services up to twenty-five percent (25%) of the amount, provided that they are necessary for attaining the contract purpose. It may also reduce goods, services or works up to the same percentage.

CONFORMITIES: **Law No. 29564, Article 2**

In relation to works, additional services may be up to fifteen percent (15%) of the original contract amount, minus the related deductive budgets, defined as those derived from work substitutions directly related to additional work services, provided that both meet the purpose of the original contract. For such effect, the Head of the Entity will approve corresponding payments.

In the event that it becomes necessary the execution of additional work services by deficiencies of Technical File or unpredictable situations following the contract signing, greater than those established in the second paragraph of this Article and up to a maximum of fifty percent (50%) of the amount originally contracted, without prejudice to any liability that may correspond to the designer, the Head of the Entity may decide to authorize them. This will require the authorization of the Head of the Entity as well as to have prior approval of the Office of the Comptroller General of the Republic for execution and payment and verification that they have the necessary resources. For additional emergency cases, such authorization will be issued prior to payment. The Office of the Comptroller General of the Republic shall have a term no longer than fifteen (15) working days, under responsibility to make its determination. This situation must be reported to the Committee on Budget and General Accounts of the Republic from the Congress of the Republic and the Ministry of Economy and Finance, under the responsibility of the Entity Head.

Alternatively, the Entity may terminate the contract by written notice to the contractor.

The decision of the Entity or the Office of the Comptroller General of the Republic to approve or not the execution of additional services shall not be subject to arbitration. Neither disputes concerning the execution of additional work services and higher supervision services requiring prior approval of the Office of the Comptroller General of the Republic shall be subject to arbitration.

The Contractor may request an extension of the agreed term for delays and/or stoppage beyond their control, duly verified, and modifying the contract schedule.

Discrepancies regarding the origin of the term extension are settled in accordance pursuant paragraph b) of article 40 of this law. ()*

(*) Article amended by the Sole Article of Law No. 29873, published on June 1st, 2012, in force as from the thirtieth working day following the publication of the amendment of the Regulation based on the State Procurement Law, approved by Supreme Decree 184-2008-EF, which reads as follows:

“Article 41.- Additional services, reductions and extensions

41.1. Exceptionally and previous support by the user area of procurement, the Entity may order and pay directly the execution of additional provisions in case of goods and services up to twenty-five percent (25%) of the amount, provided that they are necessary for attaining the contract purpose. It may also reduce goods, services or works up to the same percentage.

41.2. In relation to works, additional services may be up to fifteen percent (15%) of the original contract amount, minus the related deductive budgets, defined as those derived from work substitutions directly related to additional work services, provided that both meet the purpose of the original contract. For such effect, the Head of the Entity will approve corresponding payments.

In the event that this is essential to the execution of additional work services by deficiencies of Technical File or unpredictable situations following the contract signing, greater than those established in the second paragraph of this Article and to a maximum of fifty percent (50%) of the amount originally contracted, without prejudice to any liability that may correspond to the designer, the Head of the Entity may decide to authorize them. This requires the authorization of the Head of the Entity, having for execution and payment, to have prior approval of the Office of the Comptroller General of the Republic and with the verification that they have necessary resources. For additional emergency basis, such authorization is issued prior to payment. The Office of the Comptroller General of the Republic has a term no longer than fifteen (15) working days, under responsibility to make its determination. This situation must be reported to the Committee on Budget and Accounts of the Republic from the Congress of the Republic and the Ministry of Economy and Finance, under the responsibility of the Entity Head.

41.3. Regarding supervision services, when in cases other than those additional Works, occur variations within the work term or related to the pace of work authorized by the Entity and, provided that the additional services are involved in supervision necessary for a proper control of the work, the Head of the Entity may authorize them under the same conditions specified in the original contract and up to a maximum of fifteen percent (15%) of the contracted amount of supervision, considering for the calculation all previously approved additional services. When this percentage is exceeded, authorization of the Office of the Comptroller General of the Republic will be required prior to payment; the limit established in paragraph 41.1 of this article is not applicable to this case.

41.4. Alternatively, the Entity may terminate the contract by written notice to the contractor.

41.5. The decision of the Entity or the Office of the Comptroller General of the Republic to approve or not the execution of additional services cannot be subject to arbitration. Neither disputes concerning the execution of additional work services and higher supervision services requiring prior approval of the Office of the Comptroller General of the Republic shall be subject to arbitration.

41.6. The Contractor may request an extension of the agreed term for delays and/or stoppage beyond their control, duly verified, and modifying the contract schedule.

41.7. Discrepancies regarding the origin of the term extension are settled in accordance pursuant paragraph b) of article 40 of this law."

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 174, 175, 200

Article 42.- Completion of contract

Contracts for goods and services culminate with the approval of the last agreed service and corresponding payment.

Regarding contracts for execution or consultancy of works, the contract culminate with the settlement and payment, which will be prepared and presented to the Entity by the contractor, according to the terms and requirements set forth in the Regulation. This Entity shall issue its opinion within a maximum term also set in the Regulation under the responsibility of the appropriate official. If there is no issued order or agreement duly based on the aforementioned term, the settlement made by the contractor shall be deemed approved for all legal purposes.

The contract file will end with the completion of the contract.

Article 43.- Special requirements in work contracts

For purposes of work contract execution, the Regulation will establish the requirements to be met by the resident engineer or architect, members of the Engineers and Architects Association respectively, appointed by the contractor; and the inspector appointed by the Entity or the supervisor employed by the Entity, as well as the features, functions and responsibilities to be assumed. Furthermore, the Regulation shall state the features of work log book and the formalities for the work acceptance and final payment.

Article 44.- Termination of contracts

Either party may terminate the contract without any liability on it, in fortuitous event or force majeure that definitely precludes the continuation of the contract.

When the contract is terminated, for reasons attributable to either party, the caused damages shall be compensated.

In the event of termination of work contract, and existence of work balance to use, the Contracting Entity may choose to end the work by direct administration, agreement with another

entity, or taking into account the order of priority; it may invite bidders who participated in the selection process that led to the execution of the work expressing their intention to balance it. The procedure is set out in Regulation hereof.

Failure to proceed any aforementioned mechanisms, corresponding selection process shall be called, taking into account the respective Reference Value.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 209

Article 45.- Process and Contract Register

The Entity, under the responsibility, shall register in the Electronic System for Government Procurement and Contracting (SEACE), all acts performed in each selection process that is called, the signed contracts and their execution; as stated by the regulation.

Entities exempted from registering information in the Electronic System for Government Procurement (SEACE) shall be required to submit within fifteen (15) days after the close of each three months to the Office of the Comptroller General of the Republic, a list of all the calls made in that period, with the documentation to see its outcome.

CONFORMITIES: Order No. 285-2012-OSCE-PRE (Enactment of Directive No. 010-2012-OSCE-CD "Provisions related to the allocation process, updating and inactivation of SEACE Certificate granted to its users")

TITLE IV

RIGHTS, LIABILITY AND PENALTIES

CHAPTER I

About Entities and Officials

Article 46.- Liability and penalties

The officials and servants as well as members of the Special Committee participating in the process of procurement of goods, services and works, are responsible for compliance with the rule hereof and its Regulation.

If the rules allow discretionary margins to be performed by the official or server, it shall be executed according to the principles stated in article 4 hereof.

The assessment of the proper performance of the servers or officials in discretionary decisions referred to aforementioned paragraph is made by the highest authority of the Entity to which it belongs, in order to measure their performance. To this end, the Entity may provide, on a regular and selective manner, the specialized audits and exam execution.

In the case of state enterprises, the Board makes such assessment.

In case of non-performance of the provisions, stated in this Legislative Decree, shall apply according to its severity the following sanctions:

- a) Written warning;
- b) Suspension without payment from thirty (30) to ninety (90) days;
- c) Temporary cessation without payment up to twelve (12) months; and,
- d) Removal or dismissal.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 123

Article 47.- Supervision

The Entity shall supervise, directly or through third parties, the entire execution process. For that purpose, the contractor shall provide the necessary support.

By virtue of that right of supervision, the Entity has the authority to apply contractual terms for the contractor to correct any inconsistency with the exact fulfillment of the agreed obligations.

The fact that the Entity does not supervise the process, does not exempt the contractor to fulfill the applicable duties or responsibilities.

CHAPTER II

About the contractors

Article 48.- Interest and penalties

In case of payment delay by the Entity, unless it is due to a fortuitous event or force majeure, it shall recognize the corresponding statutory interest to the contractor. The same right corresponds to the Entity provided that it is the creditor.

The contract shall establish the penalties to be applied to the contractor before the unjustified non-performance of its contractual obligations pursuant the Regulation.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 181

Article 49.- Compliance of the agreement

Contractors are required to comply fully with the offer of their proposal and any documented formal statement that have been provided additionally during the selection process or the execution of the contract, as stated in the provisions of paragraphs 2) and 3) of article 1774 of the Civil Code.

Article 50.- Contractor's liability

The contractor is liable for the provided quality and hidden defects of the goods or services offered for a term not less than one (1) year as of the acceptance issued by the Entity. The contract may provide exceptions for consumables and/or perishable goods, provided that the nature of these goods not adjusts to this term. In the case of works, the term of liability shall not be less than seven (7) years as of the total or partial acceptance of the work, as appropriate.

The Basis shall establish the maximum term of contractor's liability.

Article 51.- Administrative infringements and penalties

51.1 Infringements

Administrative penalty shall be imposed on providers, participants, bidders and/or contractors who:

a) Do not keep their bid to the consent of the bid award or, to be winners and when signing the contract, do not sign the contract unjustifiably; or do not receive unreasonably purchase or service order issued in their favor;

b) Terminate the contract, purchase or service order by their own decision;

c) Have delivered the good, provided the service or performed the work with hidden defects, prior final legal judgment or arbitral award;

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 243

d) Contract with the State and to be disqualified, according to law hereof;

e) Participate in the selection process or enter into a contract without a current registration in the Suppliers/Providers National Registry (RNP);

f) Sign a contract, in the cases of execution or consultancy of works, for amounts greater than their free capacity of hiring or different majors, as applicable;

g) Make subcontracts without the authorization of the Entity or by a percentage greater than that allowed by the Regulation;

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 237, item 2

h) Engage in practices that restrict free competition, prior statement of the competent national body and when incurred in cases of common partners who are not allowed as established in the Regulation;

i) Submit false or inaccurate information to the Entities, the Tribunal of State Procurement or the Supervisory Body for State Procurement - OSCE;

j) Make impugned appeals against unimpugnable acts set forth in the Regulation;

k) After granting conformity, it is verified that the contract obligations were unjustifiably non-fulfilled even the terms of liability provided in the Basis; and,

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 243

l) Other infringements established in the Regulation.

51.2 Penalties

In cases that the Law hereof or its Regulation point out, the Court for Procurement of the State shall impose on providers, participants, bidders and contractors the following penalties:

a) Temporary disqualification: It consists of deprivation, for a specified period, of the rights to participate in the selection process and to contract with the State. This disqualification in any case could be less than six (6) months and no more than three (3) years.

b) Final Disqualification: It consists of the permanent deprivation of the right as providers, participants, bidders and contractors to participate in the selection process and to contract with the State.

Whether in a period of four (4) years, a natural or legal person is imposed on two (2) or more penalties joining together thirty-six (36) months or more temporary disqualification months, the Court of Government Procurement will order the final disqualification of the provider, participant, bidder or contractor.

c) Compensation: Those that result from execution of the guarantees granted to the filing of appeals, which are stated unfounded or inadmissible by Tribunal for State Procurement or Entity. If the appeal is declared based on the total or in part, the Tribunal or the Entity will return the guarantee. In case of withdrawal, one hundred percent (100%) of the guarantee will be executed.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 113 and 120

The penalties imposed are not impediment for the contractor to comply with the obligations derived from earlier contracts entered into with Entities; therefore, it shall continue with the execution of the contracts that would have been signed until the completion thereof.

Providers, participants, bidders or contractors who engage in the grounds established in the letter g) of paragraph 51.1 of the article hereof, shall be punished with temporary disqualification for contracting with the State for a period not less than six (6) months and no more than one (1) year.

Providers, participants, bidders or contractors who engage in the grounds set out in t a), b), c), d), e), f), h), i), j) and k) of paragraph 51.1 of this article 51 shall be punished with a temporary disqualification for contracting with the State for a period not less than one (1) year and no more than three (3) years.

The imposition of penalties is independent of civil or criminal liability that may be incurred for committed infringements.

Furthermore, the Government Procurement Supervising Agency - OSCE may impose financial penalties on entities that infringe the public procurement rules. (*)

(* Article amended by the Sole Article of Law No. 29873, published on June 1st, 2012, in force as from the thirtieth working day following the publication of the amendment of the Regulation based on the State Procurement Law, approved by Supreme Decree 184-2008-EF, which reads as follows:

“Article 51.- Infringements and administrative penalties

51.1. Infringements

Administrative penalty shall be imposed on providers, participants, bidders and contractors who:

a) Do not keep their proposal to the consent of the bid award or, to be winners and when signing the contract, do not sign unreasonably the contract or Framework Agreement, or do not receive unreasonably purchase or service order issued to their favor.

b) Terminate the contract, purchase or service order by their own decision

c) Have delivered the good, provided service or performed the work with hidden defects, prior final legal judgment or arbitral award.

d) Contract with the State to be disqualified, according to law hereof.

e) Be registered as participants and submit proposals, or enter into a contract or Framework Agreement without current registration in the Suppliers/Providers National Registry (RNP).

f) Sign a contract, in the cases of execution or consultancy of works, for amounts greater than their free capacity of hiring or different majors, as applicable.

g) Sign a contract despite having been notified of the suspension or revocation of the procurement process, provided by Government Procurement Supervising Agency (OSCE) in the exercise of their functions.

h) Make subcontracts without the authorization of the Entity or by a percentage greater than that allowed by the Regulation.

i) Incur in transgression of the prohibition contained in article 11 of the law hereof or when incurring in cases of common partners disallowed as provided in the Regulation.

j) Submit false or inaccurate information to the Entities, the Tribunal for State Procurement or the Government Procurement Supervising Agency (OSCE).

k) Make impugned appeals against unimpugnable acts set forth in the Regulation.

l) After granting conformity, it is verified that the contract obligations were unjustifiably non-fulfilled even the terms of liability provided in the Basis.

m) Other infringements established in the Regulations.

51.2. Penalties

In cases that the Law hereof or its Regulation appoints, the Tribunal for State Procurement shall impose on providers, participants, bidders and contractors, the following penalties:

a) Temporary disqualification: It consists of deprivation, for a specified period, of the right to participate in the selection process and to contract with the State. This disqualification in any case

could be less than six (6) months and no more than three (3) years.

b) Final Disqualification: Consists of the permanent deprivation of the right as providers, participants, bidders and contractors to participate in the selection process and to contract with the State. Whether in a period of four (4) years, a natural or legal person is imposed on two (2) or more penalties joining together thirty-six (36) months or more temporary disqualification months, the Court for Procurement of the State will order the final disqualification of the provider, participant, bidder or contractor.

c) Compensation: Those that result from execution of the guarantees granted to the filing of appeals, which are stated unfounded or inadmissible by Tribunal for State Procurement or Entity. If the appeal is declared based in whole or in part, the Tribunal or the Entity returns the guarantee. In case of withdrawal, one hundred percent (100%) of the guarantee will be executed.

Providers, participants, bidders or contractors who engage in the grounds set forth in paragraph 51.1 of the article hereof, shall be punished with a temporary disqualification from contracting with the State or permanent disqualification, as applicable.

In the case of the infringement provided in letter j) of paragraph 51.1 of the article hereof, the penalty shall be temporary disqualification of not less than three (3) years and no more than five (5) years. In case of recidivism, the disqualification shall be definitive, regardless of the period that has relapsed and the number of imposed penalties.

In case of concurring more than one infringement in the selection process or in the execution of a contract, the provided penalty for the most serious offense is applied.

The penalties imposed are not an impediment for the contractor to comply with the obligations derived from earlier contracts entered into with Entities; therefore, it shall proceed with the execution of the contracts that would have been signed until the completion thereof.

The imposition of penalties is independent of civil or criminal liability that may be incurred for committed infringements.

Likewise, the Government Procurement Supervising Agency (OSCE) may impose financial penalties on Entities that infringe the public procurement rules when acting as a supplier.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 235

TITLE V

SETTLEMENT OF DISPUTES AND CONTESTATIONS

Article 52.- Settlement of Disputes

Disputes resulting among the parties about the execution, interpretation, resolution, non-existence, inefficiency, annulment or invalidity of the contract shall be settled through conciliation or arbitration, as agreed by both all parties. These proceedings shall be requested before the termination of the contract and it will be considered as independent. This term shall expiry but in cases that Entities submit claims caused by errors hidden in goods, services and works delivered by contractors, the expiration term will be fixed in accordance with Article 50 of these regulations, and it will be as per the confirmation of the Entity.

Arbitration will be solved by a sole arbitrator or a board of arbitration through the application of this Legislative Decree and its Regulations, as well as the rules of public and private law; keeping this order obligatorily when applying the law.

The sole arbitrator and the president of the board of arbitration must be necessarily lawyers with proved specialization in administrative law, arbitration and procurement; while other members can be experts or professionals in other fields. The appointment of arbitrators and other issues regarding the board of arbitration shall be governed by the Regulations.

The arbitrators must inform timely if there is any inconvenient that not allows them to practice their position independently, impartially and supremely, being subject to what it is established in the Code of Ethics approved by the Procurement Supervising Agency - OSCE. The arbitrators who break this obligation shall be sanctioned according to the Regulations and the Code of Ethics. The obligation to inform is kept through the whole arbitration process. The parties may exempt the arbitrators from the grounds for recusal that do not constitute absolute impediment.

When there is any arbitration in progress and a new dispute, derived from the same contract and considering it is ad-hoc arbitration, arises up, any party may request the arbitrator for all claims of said arbitration within the expiration term foreseen in the first paragraph of this article. Nevertheless, the arbitration agreement may establish that all claims may proceed only if both parties agree on it and formalities established within the same arbitration agreement are accomplished; if parties do not come into agreement, claims are not effective.

The arbitration award is unappealable, final and obligatory for parties since notification, and it must be remitted by the sole arbitrator or the Board of Arbitration to the Procurement Supervising Agency - OSCE, within the time established by Regulations. The Procurement Court shall impose economic penalties in case of breaking the remittance of award as established in Regulations, when appropriate.

The arbitration referred in this rule is developed in compliance with the Principle of Transparency, the Government Procurement Supervising Agency - OSCE must order the publication of awards and records, as well as their use in the specialized studies in cases of administrative arbitration.

Likewise, the conciliation and arbitration proceedings shall be additionally subject to law, provided that it is not opposed to the law and its regulation established herein. ()*

(*) Article amended by the Sole Article of Law No. 29873, released on June 01, 2012, effective from the thirtieth working day after the release of the amendment of the Regulations of Procurement Law, approved by Supreme Decree 184-2008-EF, which reads as follows:

“Article 52.- Settlement of Disputes

52.1. The disputes arising among parties about the execution, interpretation, resolution, non-existence, inefficiency, nullity or invalidity of the contract shall be settled through conciliation or arbitration, as agreed on by the parties. The conciliation shall take place in a resolution center either public or approved by the Ministry of Justice.

52.2. The conciliation and/or arbitration procedures shall be requested at any moment prior to the date of the contract termination. In specific cases where the matter of controversy refers to contract nullity, contract resolution, extension of the contract period, receipt and approval of the provision, valuations or measurement, liquidation of the contract and payment, the respective procedure shall be executed in the period of 15 working days in accordance with the provisions of the regulation. The party requesting the conciliation shall inform this to the Procurement Supervising Agency - OSCE in the period established in Regulations, except when it is an arbitration administered by the mentioned agency or when the agency appoints the arbitrator.

For claims made by Entities for errors hidden in goods, services or works delivered by the contractor, the expiration term is established according to the article 50 of the law in force, and starts from the date of conformity granted by the Entity.

All the foreseen periods will expire

52.3. The arbitration shall be based on the rule of law and solved by sole arbitrator or board of arbitration by executing the Peruvian Political Constitution, of the governing law and its regulations, as well as the regulations of public and private law. This order of preference must be applied in the law application. This is a public order regulation. Non-compliance with provisions mentioned in this numeral will cause the dissolution of the award.

52.4. The single arbitrator and the president of the board of arbitration must be lawyers with proved specialization in administrative law, arbitration and procurement. The rest of the members may be either experts or professionals in other subjects. The appointment of arbitrators and other issues regarding the board of arbitration are governed by the regulations.

52.5. When there is arbitration in progress and a new dispute that derives from the same contract, arises up, any party may ask the arbitrators for all claims of such arbitration, being required to do it within the invalidity period specified in the numeral 52.2 of this article. Nevertheless, in the arbitration agreement, it can be established that all claims shall be executed only when both parties agree and comply with the formal requirements in the arbitration agreement. If there is no agreement, claims shall not be executed.

52.6. The arbitration award is unappealable, final and obligatory for the parties since notification, and should be sending to parties personally and by the Electronic System for Government Procurement and Contracting (SEACE) for its validity. This system should allow operationally the award notification. The notification shall be deemed to have been effected once the last act has occurred. For counteracting this award, it shall bring an action for nullity in accordance with provisions set forth in this law and the Legislative Decree No. 1071, Arbitration Law.

52.7. The arbitration referred in this rule is developed in compliance with the Principle of Transparency. The Government Procurement Supervising Agency (OSCE) orders the publication of awards and conciliation records, and their use for the developing specialized studies in administrative arbitration.

52.8. Arbitrators are required to inform opportunely if there is any reason impeding to perform their duties with independence, impartiality and autonomy; to act with transparency; and, if necessary, to explain when they will not comply with the order of priority specified in numeral 52.3 of this article. This obligation will continue throughout the arbitration.

The non-compliance of any of these requirements is considered as infraction and it is administratively punishable according to the seriousness of the offence, considering a temporal suspension or a permanent disablement as arbitrator in disputes occurred within the framework of law and its regulations in force; and the subsequent suspension or exclusion of the Procurement Supervising Agency (OSCE), depending on the punishment..

The administrative punishment shall be applied without prejudice to what it may correspond in accordance with the Code of Ethics for the arbitration administered by the Procurement Supervising Agency (OSCE) or by any other institution in charge of the process.

52.9. Parties may exempt the arbitrators from grounds for rejection that do not represent any impediment at all.

52.10. If the arbitration agreement establishes that the arbitration is institutional, and it does not refer to any determined arbitral institution, it is understood that the arbitration is governed by the organization and administration of the National System of Arbitration of the Procurement Supervising Agency (OSCE), in accordance with its regulations.

52.11. The National System of Arbitration of the Procurement Supervising Agency (SNA-OSCE) constitutes an institutional system of specialized arbitration for procurement disputes resolution. It is autonomous, specialized and governed by its own regulations approved by the Procurement Supervising Agency (OSCE) and, additionally, by the Law of Arbitration. The approval and attributions are established by the regulations.

52.12. The conciliation and arbitration proceedings must comply with the provisions of law, provided that they are not opposed to law and its regulations.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 179, 214, 215, 235, 238 AND 241

Article 53.- Contesting Appeals

The disputes arising between the Entity and the participants or bidders within a tendering procedure may only cause to file an appeal. The activities ordered from the summons prior to enter into the contract can be contested by the appeal. The basis and its integration nor the resolutions or agreements approving the exemptions, shall not be contested by these procedures.

The appeal shall only be filed after the bid is awarded. The regulations shall establish the procedure, requirements and term for its submission and resolution.

The appeal shall be known and decided by the Entity Holder provided that the reference value of the procedure does not exceed six hundreds (600) Applicable Penalty Tax Units (UIT). In case that the reference value of the tendering procedure exceeds said amount, the appeals shall be known and decided by the Procurement Court, as stated by the Regulations of this rule, except for what it is established in the Thirtieth Final Supplementary Provision. The resolution decided by the appeal ends all available administrative remedies.

The Entity Holder is entitled to delegate the power of deciding the appeal. The officer to whom this power is granted shall be responsible for the issuance of the action resolving the appeal.

When the appeal is filed before the Procurement Court, the Entity is required to submit the corresponding record, within a maximum term of three (3) days after being requested, under the responsibility of the Entity Holder. The non-compliance of this obligation by the Entity shall be informed to the Government Accountability Office.

The appealing guarantee shall be granted in favor of the Procurement Supervising Agency - OSCE and the Entity, when applicable. This guarantee shall be equivalent to the 3 percent (3%) of the tendering procedure or the item to be contested. In any case, the guarantee shall not be less than fifty percent (50%) of one (1) UIT.

The contentious-administrative appeal proceeds against the decision in the final administrative instance, without putting off its execution.

By the agreements adopted in Plenary Chambers, which constitute precedents of mandatory observance, the Procurement Court understands expressly and generally that the rules established in this rule and its Regulations. ()*

(*) Article amended by the Sole Article of Act 29873, released on June 01, 2012, effective from the thirtieth working day after the release of the amendment of the Resolutions of the Law of Procurement, approved by Supreme Decree 184-2008-EF, which reads as follows:

“Article 53.- Contesting Appeals

The disputes arising between the Entity and the participants or bidders within a tendering procedure may only cause to file an appeal. The activities ordered from the summons prior to enter into the contract can be contested by the appeal. The basis and its integration nor the resolutions or agreements approving the exemptions, shall not be contested by these procedures.

The appeal shall only be filed after the bid is awarded. The regulations shall establish the procedure, requirements and term for its submission and resolution.

The appeal shall be known and decided by Procurement Court when it is about direct awarding tendering procedures, tenders and public bids, including procedures for lesser amounts when those procedures are declared not awarded. In procedures for lesser amounts and in direct selective awarding, the Entity Holder has the power to decide. The decision made by the appeal ends all available administrative remedies.

The Entity Holder is entitled to delegate the power of deciding the appeal. The officer to

whom this power is granted shall be responsible for the issuance of the action resolving the appeal.

When the appeal is filed before the Procurement Court, the Entity is required to submit the corresponding record, within a maximum term of three (3) days after being requested, under the responsibility of the Entity Holder. The non-compliance of this obligation by the Entity shall be informed to the Government Accountability Office.

The appealing guarantee shall be granted in favor of the Procurement Supervising Agency (OSCE) and the Entity, when applicable. This guarantee shall be equivalent to the 3 percent (3%) of the tendering procedure or the item to be contested. In any case, the guarantee shall not be less than fifty percent (50%) of one (1) UIT.

The contentious-administrative appeal proceeds against the decision in the final administrative instance, without putting off its execution.

By the agreements adopted in Plenary Chambers, which constitute precedents of mandatory observance, the Procurement Court understands expressly and generally that the rules established in this rule and its Regulations.”

CONFORMITIES: **LAW No. 29289, Thirtieth Final Order**
 SUPREME DECREE 184-2008-EF (Regulations) Article 112
 URGENCY DECREE No. 078-2009, Articles 14, 26 y 36

Article 54.- Suspension of procurement process

Procurement process shall be suspended until the appeal is solved by the competent instance, in accordance with the provisions of the preceding article, and pursuant to the provisions of Regulations; the subsequent actions are invalid until the resolution.

Article 55.- Denial by default

In case the Entity or the Government Procurement Court, as appropriate, does not solve and notify their resolutions within the term set by the Regulations, the interested parties shall deem their appeal as denied, being allowed to file the contentious-administrative action against the denial by default within the pertinent legal term.

In these cases, the Entity or the Procurement Court shall return the payment made by the interested parties as guarantee at the moment of filing their appeal.

Article 56.- Nullity of the actions originated from the selection processes

The Government Procurement Court, if appropriate, shall declare the issued actions null, when these have been dictated by a non-competent body, do not comply with the legal regulations, have a legal impossibility or disregard the essential regulations of the procedure or the form provided by the rules in force, being required to state in the Resolution the issuance of the stage whereby the selection process shall take effect.

The Holder of the Entity shall officially declare the nullity of the selection process for the same reasons stated in the preceding paragraph only before signing the contract, without prejudice to the possibility of being declared in the resolution set in the appeal.

After signing the contracts, the Entity may officially declare the nullity in the following cases:

- a) Registration violating article 10 of these regulations.*
- b) After verifying the infringement of the principle of presumption of veracity during the selection process or for signing the contract.*
- c) When the contract has been signed despite an appeal is in process.*
- d) When the corresponding selection process has not been used.*

In case of contracting goods, services or works without the previous applicable selection process, the process and the contract shall be deemed null, being the officers and workers of the contracting Entity required to assume responsibility together with the contractors who signed such irregular contracts.

When the Single Arbitrator or the Arbitration Board assesses the nullity of the contract, the causes provided in this Legislative Decree and its Regulations shall be first considered, and then the reasons for nullity in the applicable public law. ()*

(*) Article amended by the Sole Article of Law No. 29873, released on June 01, 2012, effective from the thirtieth working day after the release of the amendment of the Regulations of Procurement Law, approved by Executive Order 184-2008-EF, which reads as follows:

“Article 56.- Nullity of the actions caused by the selection processes

The Procurement Court, if applicable, shall declare the issued actions null, when these have been dictated by a non-competent body, do not comply with the legal regulations, have a legal impossibility or disregard the essential regulations of the procedure or the form provided by the applicable norm, being required to state in the Resolution the issuance of the stage whereby the selection process shall take effect.

The Holder of the Entity shall officially declare the nullity of the selection process for the same reasons stated in the preceding paragraph only before signing the contract, without prejudice to the possibility of being declared in the resolution set in the appeal.

After signing the contracts, the entity may officially declare the nullity in the following cases:

- a) Registration violating article 10 of these regulations.
- b) After verifying the infringement of the principle of presumption of veracity during the selection process or for signing the contract.
- c) When the contract has been signed despite an appeal is in process.
- d) In case of failure to comply with the conditions and/or requirements stated in the regulations for the configuration of any of the reasons for exoneration.
- e) When the procedures provided in the herein law have not been used, despite that the contracting was under its application field. In this case, the officers and workers of the contracting Entity are required to take responsibility along with the contractors who signed such irregular contract.

In case of contracting goods, services or works without the previous corresponding selection process, the process and the contract shall be considered null, being the officers and workers of the contracting Entity required to take responsibility along with the contractors who signed such irregular contracts.

When the Unique arbitrator or the Arbitration Board assesses the contract nullity, the foreseen causes shall be first considered in this Legislative Decree and its Regulations, and then the reasons for nullity recognized in the national law.”

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Articles 22 and 144

TITLE VI

GOVERNMENT PROCUREMENT SUPERVISING AGENCY

Article 57.- Definition

The Government Procurement Supervising Agency - OSCE is a public organism attached

to the Ministry of Economy and Finance, with legal status of public law, with technical, functional, administrative, economical and financing autonomy, with own legal representation, without prejudice to the contributing defense of the Public Attorney General Office of the Ministry of Economy and Finance. Its personnel are subject to the labor system of the private activity.

CONFORMITIES: **Supreme Decree No. 006-2009-EF (Regulations on the Organization and Functions of the Government Procurement Supervising Agency - OSCE)**

Article 58.- Functions

The Government Procurement Supervising Agency - OSCE has the following functions:

- a) To protect and promote the compliance and diffusion of this Rule, its Regulation and complementary norms, and to propose the necessary modifications;*
- b) To issue guidelines on the matters of its competence provided that they refer to the application of the present regulation and its provisions;*
- c) To resolve the matters of its competence in the administrative last instance;*
- d) To supervise and oversee, selectively and/or randomly, the processes of procurement carried out under this rule and its Regulation;*
- e) To administer and manage the Suppliers/Providers National Registry (RNP, in Spanish), as well as any other instrument necessary for the implementation and operation of the different processes of Procurement by the Government;*
- f) To develop, administer and manage the Electronic System for Government Procurement and Contracting (SEACE);*
- g) To organize and manage arbitrations in accordance with the Regulations passed for such purpose;*
- h) To appoint arbitrators and decide on challenges on the same in arbitrations not being subject to an arbitral institution, in the form established by the Regulations;*
- i) To answer queries on matters of its competence. All queries by the Entities shall be free of charge;*
- j) To impose penalties to suppliers registered in the Suppliers/Providers National Registry (RNP) which contravene the dispositions of this rule, its regulations and complementary rules;*
- k) To inform the General Finance Office of the Republic about the cases in which it has been detected transgressions against the rules of public procurements provided there are reasonable signs of economic prejudice against the State or offense;*
- l) To suspend the procurement processes in which as a consequence of the exercise of its functions, transgressions to the rules of public procurements are found, provided that there are reasonable signs of economic prejudice against the Government, duly notifying to the General Comptrollership of the Republic without prejudice to the attributions of the Holder of the Entity executing the process, of declaring the legal nullity of such;*
- m) To promote Reverse Auction, determining the technical features of the goods or services that shall be provided through this modality, and to establish yearly institutional goals regarding the number of technical specifications of the goods or services to be contracted;*
- n) To reduce concentration of functions of its regional or local bodies in accordance with the provisions of its Regulations of Organization and Functions;*
- ñ) To propose strategies and carry out studies aimed to the efficient use of public resources and reduction of costs, and,*
- o) Other functions established in the rules. (*)*

(* Article amended by the Sole Article of Law No. 29873, published on June 01, 2012, effective from the thirtieth working day after the release of the amendment of the Regulations of Procurement Law, approved by Supreme Decree 184-2008-EF, which reads as follows:

“Article 58.- Functions

The Government Procurement Supervising Agency (OSCE) has the following functions:

- a) To watch over and promote the implementation and dissemination of this Law, its regulations and complementary regulations, and to propose necessary amendments.
- b) To implement activities and mechanisms of development of skills and competencies in the management of procurement.
- c) To issue directives, guidelines, manuals, and statements on matters within its competence.
- d) To resolve the issues of its competence in the last administrative instance.
- e) To supervise and control, selectively and / or randomly, the procurement processes made by the Entities to source themselves with goods, services or works, assuming the payment with public funds, regardless of the legal regime. This supervision also extends to the procurements provided in paragraphs i), o), s), t) and v) of paragraph 3.3 of Article 3 of this law.
- f) To manage and operate the Suppliers/Providers National Registry (RNP), as well as any other instrument necessary for the implementation and operation of the different processes of procurement.
- g) To develop, manage and operate the Electronic System for Government Procurement and Contracting (SEACE).
- h) To organize and manage arbitrations in accordance with the regulations adopted for such purpose.
- i) To appoint arbitrators and resolve challenges in arbitration not subject to an arbitration institution, in the manner provided in the regulations.
- j) To respond to queries on matters within its competence. Queries made by the Entities are free.
- k) To impose sanctions to providers who fail to comply with the provisions of this Law, its regulations and complementary rules, as well as to arbitrators in the cases provided in this Law.
- l) To inform the General Comptrollership of the Republic, in a founded way, the transgressions observed in the performance of their duties when there are reasonable signs of economic prejudice to the State, or crime, or serious or very serious offences by functional administrative responsibility according to the current legal framework.
- m) To suspend the procurement processes when transgressions against the applicable regulations are observed as a result of executing their functions, adopting and/or arranging the necessary measures for such purpose, including the failure to issue the certificates required for signing the pertinent contract, without prejudice to the attribution of the Head of the Entity, to officially declare the nullity of such processes.
- n) To promote Reverse Auction by determining the technical characteristics of the goods or services to be provided through this modality.

o) To decentralize its functions in their regional or local bodies according to the provisions of its Regulations of Organization and Functions.

p) To conduct studies aimed to evaluate the performance of the Government procurement regimes, analyze and propose new appropriate procurement mechanisms according to markets, as well as proposing strategies for the efficient use of public resources.

q) Any other duties established in the rules.”

CONFORMITIES: Supreme Decree No. 184-2008-EF, Second Final Complementary Disposition

Article 59.- Organization and Resources

The organization of the Government Procurement Supervising Agency - OSCE, the characteristics of the registers referred to in this Legislative Decree and other complementary rules for its operation shall be provided in its Regulations of Organization and Functions.

The resources of the Government Procurement Supervising Agency - OSCE are:

a) Those generated by the tax collections stated in the Sole Text on Administrative Procedures of the Government Procurement Supervising Agency - OSCE;

b) Those generated by the selling of goods and provision of services;

c) Those generated by the execution of guarantees;

d) Those generated by the training and dissemination of the regulations in matters of its competence;

e) Those generated from the national or international technical cooperation;

f) Those generated from donations made in its favor;

g) Those generated from penalties; and

h) Others provided by the rules.

The administration and collection of resources and taxes referred to in this article is competence of the Government Procurement Supervising Agency - OSCE, for which it has coercive faculties.

CONFORMITIES: Supreme Decree No. 184-2008-EF (Regulations) Article 238

Article 60.- Board of Directors and Executive Presidency of the Government Procurement Supervising Agency - OSCE

The Board of Directors is the highest authority of the Government Procurement Supervising Agency - OSCE. It is comprised of three (3) members who are appointed for a period of three (3) years, through Executive Resolution signed by the Minister of Economy and Finance. The members of the Board of Directors receive allowances except the Executive President.

The functions of the Board of Directors are:

a) To approve the Directives referred to in section b) of Article 58 of this Legislative Decree;

b) To propose strategies of institutional management;

c) To propose strategies aimed to promote the efficient use of public resources and reduction of costs on Government procurement;

d) To approve management guidelines of its decentralized bodies;

e) Other functions provided in the Regulations of Organization and Functions.

The Executive President of the Board of Directors will be one of its members, who will be appointed through Executive Order signed by the Minister of Economy and Finance. The position of Executive President is paid.

The functions of the Executive President are:

a) To call and lead the Board of Directors' meetings;

b) To act as the Entity Head, highest administrative authority and legal representative of the Government Procurement Supervising Agency - OSCE;

c) To control the institutional and administrative progress;

d) To appoint senior officials according to the applicable standards; and,

e) Other functions provided in the Regulations of Organization and Functions. (*)

(*) Article amended by the Sole Article of Law No. 29873, published on June 01, 2012, effective from the thirtieth day after the release of the amendment of the Regulations of Procurement Law, approved by Executive Order 184-2008-EF, which reads as follows:

“Article 60.- Board of Directors and Executive Presidency of the Government Procurement Supervising Agency (OSCE)

60.1. The Board of Directors is the highest authority of the Government Procurement Supervising Agency - OSCE. It is comprised of three (3) members who are appointed for a period of three (3) years renewable for an additional period, through Executive Resolution signed by the Minister of Economy and Finance. The members of the Board of Directors receive allowances except the Executive President.

The functions of the Board of Directors are:

a) To approve the Directives referred to in section b) of Article 58 of this Law

b) To propose strategies of institutional management.

c) To propose strategies aimed to promote the efficient use of public resources and reduction of costs on Government procurement.

d) To approve management guidelines of its decentralized bodies.

e) Other functions provided by the Regulations of Organization and Functions.

60.2. The Executive President of the Board of Directors is one of its members, who is appointed through Executive Order signed by the Minister of Economy and Finance. The position of Executive President is paid.

The functions of the Executive President are:

a) To call and lead the Board of Directors' meetings.

b) To act as the Entity Head, highest administrative authority and legal representative of the Government Procurement Supervising Agency (OSCE).

- c) To control the institutional and administrative progress.
- d) To appoint senior officials according to the applicable standards.
- e) Other functions provided by the Regulations of Organization and Functions.”

CONFORMITIES: Supreme Decree No. 007-2008-EF

Article 61.- Requirements and Impediments

In order to be appointed as member of the Board of Directors or Executive President of the Government Procurement Supervising Agency - OSCE, the following is required:

- a) Accredited solvency and professional suitability. This requirement is accredited by proving no less than three (3) years of experience in an executive management position; or, no less than five (5) years of experience in related matters regulated in this standard;
- b) University professional degree;
- c) Not being ineligible to practice public function due to a court sentence or resolution of the Congress of the Republic;
- d) Not have been declared insolvent or have performed in direct positions in legal entities declared bankrupt, during at least one (1) year before declared bankrupt;
- e) Not to be ineligible to contract with the Government;
- f) Not to have participation in legal entities contracting with the Government; and,
- g) Not being involved in a cause of impediment to practice any public function according to the rules on the matter.

Article 62.- Causes of termination and vacancy

The members of the Board of Directors and the Executive President of the Government Procurement Supervising Agency - OSCE might be terminated by Executive Order signed by the Minister of Economy and Finance.

Vacancy can also be originated by resignation. ()*

(*) Article amended by the Sole Article of Law No. 29873, published on June 01, 2012, effective from the thirtieth day after the release of the amendment of the Regulations of Procurement Law, approved by Executive Order 184-2008 - EF, which reads as follows:

“Article 62.- Causes of termination

The members of the Board of Directors and the Executive President of the Government Procurement Supervising Agency (OSCE) can be terminated by Executive Order, due to permanent physical disability or supervening moral disability, a serious offense or lack of trust. Termination causes the vacancy of the position, which can also be produced by resignation.”

TITLE VII

GOVERNMENT PROCUREMENT COURT

Article 63.- Government Procurement Court

The Government Procurement Court is a judging authority, which is part of the administrative structure of the Government Procurement Supervising Agency - OSCE. It has autonomy and independence in the execution of its functions.

It has the following functions:

a) To solve, if necessary, the controversies arising between the Entities, the participants and the bidders during the selection process;

b) To apply the sanctions of temporary and definitive ineligibility to the independent providers, participants, bidders, contractors, entities and experts, as appropriate for each case; and,

c) Other functions provided by the rules.

Its constitution and the number of Courts will be established by Executive Order, signed by the Minister of Economy and Finance. ()*

(*) Article amended by the Sole Article of Law No. 29873, published on June 01, 2012, effective from the thirtieth day after the release of the amendment of the Regulations of Procurement Law, approved by Executive Order 184-2008 - EF, which reads as follows:

“Article 63.- Government Procurement Court

The Government Procurement Court is a judging authority, which is part of the administrative structure of the Government Procurement Supervising Agency - OSCE. It has autonomy and independence in the execution of its functions.

It has the following functions:

a) To solve, if necessary, the controversies arising between the Entities, the participants and the bidders during the selection process;

b) To apply the sanctions of temporary and definitive ineligibility to the independent providers, participants, bidders, contractors, arbitrators and experts, as appropriate for each case; and,

c) Other functions provided by the rules.

Its constitution and the number of Courts are established by Executive Order, signed by the Minister of Economy and Finance.”

CONFORMITIES: Resolution No. 391-2009-OSCE-PRE (Orders the release of Directive No. 008-2009-OSCE/CD on the provisions regulating the issuance of Decrees of the Government Procurement Court and its personal notification or through the SEACE)
Supreme Decree No. 099-2010-EF (Establishes the number of courts and constitution of the Government Procurement Court)
Resolution No. 189-2012-OSCE-PRE (Approves the Directive about “Guidelines for the Procedure of Designation of Files in the Government Procurement Court”)

Article 64.- Requirements and Impediments to become Member of the Government Procurement Court

The Members of the Government Procurement Court are elected by public tender. The requirements are:

a) University professional degree;

b) Accredited experience not less than five (5) years in the matters related to this Regulation;

c) Accredited specialized studies in relation to the matters of this Regulation;

d) Recognized moral competence;

e) *Not being ineligible to execute the public function due to a court sentence or a resolution of the Congress of the Republic;*

f) *Not have been declared insolvent or have performed in direct positions in legal entities declared bankrupt, during at least one (1) year before declared bankrupt;*

g) *Not to be ineligible to contract with the State;*

h) *Not to have participation in legal entities contracting with the Government; and,*

i) *Not being involved in a cause of impediment to practice any public function.*

The President of the Government Procurement Court will be elected according to the rules of this Regulation. ()*

(*) Article amended by the Sole Article of Law No. 29873, published on June 01, 2012, effective from the thirtieth day after the release of the amendment of the Regulations of Procurement Law, approved by Executive Order 184-2008-EF, which reads as follows:

“Article 64.- Requirements and Impediments to become Member of the Government Procurement Court

The Members of the Government Procurement Court are elected by public tender for a three (3)-year-period. The requirements are:

a) University professional degree;

b) Accredited experience not less than five (5) years in the matters related to this Regulation;

c) Accredited specialized studies in relation to the matters of this Law;

d) Recognized moral competence;

e) Not having guilty sentence for a crime committed, or being ineligible to practice the public function due to a court sentence or a resolution of the Congress of the Republic;

f) Not have been declared insolvent or have performed in direct positions in legal entities declared bankrupt, during at least one (1) year before declared bankrupt;

g) Not to be ineligible to contract with the State;

h) Not to have participation in legal entities contracting with the Government; and;

i) Not being involved in cause of impediment to practice any public function.

The President of the Government Procurement Court is elected according to the regulations of this law, pursuant to the framework provided therein.”

CONFORMITIES: Supreme Decree No. 184-2008-EF, Seventh Transitory Complementary Provision

Article 65.- Cause of termination and vacancy

The Members of the Government Procurement Court might be terminated by Executive Order signed by the Minister of Economy and Finance due to a serious offense, permanent physical incapacity or supervening moral incapacity.

Vacancy can also be originated by resignation.

Article 66.- Release of resolutions

The Government Procurement Court will have to release in the Electronic System for Government Procurement and Contracting (SEACE) resolutions issued as the latest administrative instance.

CONFORMITIES: Resolution No. 391-2009-OSCE-PRE (directs the release of Directive No. 008-2009-OSCE/CD about the provisions regulating the issuance of Decrees of the Government Procurement Court and its personal notification or through the SEACE)

TITLE VIII**ELECTRONIC SYSTEM FOR GOVERNMENT PROCUREMENT AND CONTRACTING (SEACE)**

CONFORMITIES: Resolution No. 390-2009-OSCE-PRE (A Directive on electronic selection processes of Lesser Amount Adjudication for the procurement of services is approved)

Article 67.- Definition

The Electronic System for Government Procurement and Contracting (SEACE) is the electronic system which allows the exchange of information and dissemination of the State procurement activities as well as the electronic transactions performance.

CONFORMITIES: R. No. 424-2010-OSCE-PRE (Directive No. 008-2010/OSCE-CD which establishes provisions applicable to the record of selection processes and others activities information in the Electronic System for Government Procurement and Contracting (SEACE))

Article 68.- Mandatory Nature

Entities shall be obliged to use the Electronic System for Government Procurement and Contracting (SEACE) notwithstanding the use of other government procurement special regimes, as defined in the Regulations.

The Regulations shall establish the criteria of gradual incorporation of Entities to the Electronic System for Government Procurement and Contracting (SEACE), considering the technological infrastructure and conditions they possess or, means available for this purpose. ()*

(*) Article amended by the Sole Article of Law No. 29873, published on June 1, 2012, in force as of the thirtieth business day after the publication of the amendment of the Regulations of State Contracting Law, approved by Supreme Decree 184-2008-EF, which shows the following text:

“Article 68.- Mandatory Nature

Entities are obliged to use the Electronic System for Government Procurement and Contracting (SEACE) notwithstanding the legal system of procurement or financing source to which the contracting is subject, in accordance with the requirements defined in the regulations.

In processes in which the amount is less, procurement is to be made mandatorily electronically through the Electronic System for Government Procurement and Contracting (SEACE), except as otherwise stated in the regulations.

The regulations establish the criteria of gradual incorporation of Entities to the Electronic System for Government Procurement and Contracting (SEACE), considering technological infrastructure and conditions that they possess or the means available for this purpose as well as the way that the electronic procurement to public bidding processes, public tender, direct public award and direct selective award in their various forms are progressively and compulsorily applied.

Entities are obliged to monthly register, their procurements for amounts from one (1) to three (3) Penalty Tax Units (UIT), in the Electronic System for Government Procurement and Contracting (SEACE).”

CONFORMITIES: Resolution No. 424-2010-OSCE-PRE (Directive No. 008-2010/OSCE-CD which establishes the provisions applicable to the record of selection processes and others activities information in the Electronic System for Government Procurement and Contracting (SEACE)
Resolution No. 282-2012-OSCE-PRE (Approving Directive No. 007-2012 CD-OSCE "Provisions Applicable to the Record of Information in the for Government Procurement and Contracting (SEACE)" is approved)

Article 69.- Management

The Government Procurement Supervising Agency - OSCE will develop, manage and operate the Electronic System for Government Procurement and Contracting (SEACE). Regulations regarding this matter will establish its organization, functions and procedures, strictly subject to the guidelines of the policy of electronic procurement of the Government stipulated by the Presidency of the Council of Ministers.

Article 70.- Validity and effectiveness of activities

The activities carried out by the Electronic System for Government Procurement and Contracting (SEACE) complying with the current provisions have the same validity and effectiveness as the activities carried out by manual means, which may be substituted for all legal purposes.

The intervention of notaries public is made on the opportunities and forms stipulated by the Regulations. ()*

(*) Article amended by the Sole Article of Law No. 29873, published on June 1, 2012, in force as of the thirtieth business day after the publication of the amendment of the Regulations of State Contracting Law, approved by Supreme Decree 184-2008-EF, which shows the following text:

"Article 70.- Validity and effectiveness of activities

The activities carried out by the Electronic System for Government Procurement and Contracting (SEACE) complying with the current provisions have the same validity and effectiveness as the activities carried out by manual means, which may be substituted for all legal purposes.

All acts carried out through the Electronic System for Government Procurement and Contracting (SEACE), including those carried out by the Government Procurement Supervising Agency (OSCE) in the exercise of their duties, are understood as notified on the same day of their publication, unless the provisions of paragraph 52.6 of Article 52 of this law when applicable.

The intervention of notaries public is made on the opportunities and forms stipulated by the Regulations."

FINAL SUPPLEMENTARY PROVISIONS

First.- Official Gazette "El Peruano" will insert a special section exclusively devoted to public procurements.

Second.- By Supreme Decree endorsed by the Minister of Economy and Finance, the Regulations of this rule shall be approved, within forty-five (45) business days after its publication, which will contain a Glossary of Terms.

CONFORMITIES: Viceministerial Resolution No. 016-2008-EF-15.01 (Decree for the publication of the draft Regulations of the State Contracting Law in the institutional website of the Ministry)

Third.- By Supreme Decree endorsed by the Minister of Economy and Finance, the Regulations of Organization and Functions and the Single Text on Administrative Procedures of the Government Procurement Supervising Agency (OSCE) shall be approved.

Fourth.- The staff of the Government Procurement Supervising Agency - OSCE will be subject to the labor regime of private activity.

Fifth.- *In addition to the traditional notification methods, the Entities may use electronic means of communication for the compliance of the various activities that are provided in this rule and its Regulations.*

In all cases, the necessary technologies to ensure the identification of the participants and the confidentiality of proposals must be used.

The Regulations of this rule stipulates the necessary conditions for the utilization of electronic means of communication. ()*

(*) Provision amended by the Sole Article of Law No. 29873, published on June 1, 2012, in force as of the thirtieth business day after the publication of amendment of the Regulations of the State Contracting Act, approved by Supreme Decree 184-2008-EF, which text sets out as follows:

“Fifth. The Government Procurement Supervising Agency (OSCE) shall use the electronic means of communication to report all activities issued in the exercise of their duties, which have the same validity and effectiveness as those carried out by manual means.

In addition to the traditional notification methods, the Entities may use electronic means of communication for the compliance of the various acts that are provided in this rule and its regulations.

In all cases, the necessary technologies to ensure the identification of the participants and the confidentiality of the proposals must be used.

The Regulations of this rule stipulates the necessary conditions for the utilization of electronic means of communication.”

Sixth.- In those contracts being under the scope of treaties and other international commitments, involving the application of the principles of National Treatment and Non-Discrimination, the Contracting entities shall unconditionally grant to the goods, services and suppliers of the other party, a similar treatment or no less favorable than the granted by Peruvian regulations to the goods, services and national suppliers in accordance with the rules, requirements and procedures established in the present rule, its regulation and the standards regarding this matter.

^{vi} CONFORMITIES WITH THE PERU - USA FREE TRADE AGREEMENT

Seventh.- The General Comptrollership of the Republic shall have access to the information recorded in the Electronic System for Government Procurement and Contracting (SEACE).

Eighth.- The supplies directly used in production processes by the state companies engaged in the production of goods or provision of services may be contracted to national and international suppliers through the lesser amount awarding process, at market prices, provided that it is verified a shortage situation accredited by the Head of the Entity. The verification of a shortage situation is not required in the case of companies that by the nature of their activity require a periodic or continuous supply, including the delivery in a single act of supplies, goods or services.

The list of supplies directly linked in production processes, corresponding to each company, is established by Ministerial Resolution of the Ministry of Economy and Finance.

The contracts shall be approved by resolution from the Head of the Entity and monthly reported to the National Fund for Financing State Entrepreneurial Activity - FONAFE, and the General Comptrollership of the Republic, under the responsibility of the Board.

In the process, it is necessarily appointed a Special Committee according to the rules of state contracting. The awarding contract is made by public act.

The bodies of institutional control participate as inspectors in the lesser amount awarding process, according to the regulations of the National Control System.

All acts carried out within the processes referred to in this provision are obligatorily communicated to the Electronic System for Government Procurement and Contracting, on opportunity and form pointed out in this rule, the Rules and the directives issued by the Government Procurement Supervising Agency - OSCE.

All contracts performed according to this provision do not require the granting of the performance bond, provided that the provision is satisfied in advance.

Ninth.- From this point forward, any reference to the Higher Council for State Contracting and Procurement (CONSUCODE) and to the Tribunal of State Contracting and Procurement shall be construed as made to the Government Procurement Supervising Agency - OSCE and to the Tribunal of State Contracting and Procurement respectively. Likewise, all references made to CONSUCODE or the competences, functions and attributions performed by it, as well as its budgetary, accounting, financial, treasury, investment aspects and other administrative systems shall be construed as made to the Government Procurement Supervising Agency - OSCE.

The governing entities of the Administrative Systems are authorized to issue, when applicable, the provisions that may be necessary for the best application of the preceding paragraph provisions.

CONFORMITIES: **Supreme Decree No. 006-2009-EF (*Regulations of Organization and Functions of the Government Procurement Supervising Agency - OSCE*)**

Tenth.- For purposes of the provisions set out in the Article 60 of this rule, the Supreme Resolution No. 007-2008-EF shall be effective regarding the designation of a Governing Council member and the Chief Executive Officer of the Government Procurement Supervising Agency - OSCE, under the terms of this rule.

Eleventh.- The Board Members of the Tribunal of State Contracting and Procurement shall hold their commission until the compliance of the term for which they were designated, notwithstanding the provisions of Articles 64 and 65 of this rule.

Twelfth.- This rule shall come into force after thirty (30) calendar days counted from the publication of its Rules and the Rules of Organization and Functions of the Government Procurement Supervising Agency - OSCE, except the Second and Third Final Supplementary Provisions, which shall take effect from the day following the publication of this rule in the Official Gazette "El Peruano" (*)

(*) In accordance with Article 1 of the Urgency Decree No. 014-2009, published on January 31, 2009, this Legislative Decree shall be effective from February 1, 2009.

Thirteenth.- *To define the instance that shall resolve the impugned resources brought in the selection processes in which there is the participation of suppliers from countries with which the Republic of Peru has a current international treaty or commitment, including provisions regarding procurements the criteria set forth therein shall apply, if applicable. (*)*

CONFORMITIES: **Supreme Decree No. 184-2008-EF (*Regulations*) Art. 104**

(*) Provision repealed by the Fourth Final Supplementary Provision of Law No. 29873, published on June 1, 2012, in force as of the thirtieth business day after the publication of the amendment of the Regulations of the Public Contracting Law, approved by the Supreme Decree 184-2008-EF.

TRANSITIONAL SUPPLEMENTARY PROVISIONS

First.- By agreement of the Board, the Private Investment Promotion Agency (PROINVERSION) may exempt from the total or partial application of the following rule to the contracts linked to the processes referred to in the Legislative Decree No. 674, Supreme Decree No. 059-96-PCM, Legislative Decree No. 1012, and their amendments.

Second.- The contracting processes initiated before the effective date of this Legislative Decree are governed by their own rules.

Third.- *The Government Procurement Supervising Agency - OSCE shall approve as of July 31, 2009 a minimum of 1,500 technical datasheets to be used in the form of an Electronic Reverse Auction. (*)*

(*) Provision repealed by the Fourth Final Supplementary Provision of Law No. 29873, published on June 1, 2012, in force as of the thirtieth business day after the publication of the amendment of the Regulations of the Public Contracting Law, approved by the Supreme Decree 184-2008-EF.

AMENDING SUPPLEMENTARY PROVISION

Unique.- Amend the Fifth Final Provision of Law No. 28411, General Law of Public Budget System, in the following terms:

“FIFTH.- The execution of additional works shall only proceed when budget availability has been previously granted, and with the approval of the Head of the Entity through the corresponding resolution, or in the case of companies, including those under the scope of FONAFE, by accordance of the Company’s Governing Body, and in the cases when its value, after subtracting the deductive budgets linked to such additional ones, does not exceed the fifteen percent (15%) of the total amount in the original contract.

In the case of the additional works exceeding fifteen percent (15%) of the original contract, after being approved by the Head of the Entity or the Company’s Governing Body, as applicable, it is required to previously have, for its execution and payment, the available funding and express authorization of the General Comptrollership of the Republic, regardless of the date of the contract of work. For these purposes, the Office of the Comptroller General of the Republic shall observe the terms and procedures set forth in the State Contracting Law and its regulations.

In the case of the execution of additional works in the context of a public investment project, whose viability would have been visibly affected, the competent authority shall carry out the verification.”

REPEALING SUPPLEMENTARY PROVISION

Unique.- From the effective date of this rule, repeal the following provisions:

- a) Law No. 26850, Contracting and Procurement Public Law and its amendments.
- b) The other laws opposing to the provisions in this rule.

THEREFORE:

I order this law to be published and informed to the Peruvian Congress.

Given in the Government House in Lima, this third day of June of the year two thousand and eight.

ALAN GARCÍA PÉREZ
President of the Republic

JORGE DEL CASTILLO GÁLVEZ
President of the Council of Ministers

LUIS CARRANZA UGARTE
Minister of Economy and Finance

MERCEDES ARÁOZ FERNÁNDEZ
Minister of Foreign Trade and Tourism

CONFORMITIES TO LEGISLATIVE DECREE No. 1017

Ministerial Resolution No. 789-2011-EF-10 (ROF of the Government Procurement Supervisory Authority - OSCE)

Supreme Decree No. 006-2009-EF (ROF of the Government Procurement Supervising Agency - OSCE)

LEGISLATIVE DECREE No. 1018 (Legislative Decree created by the Government Procurement Central Bureau - Peru Compras)

Resolution No. 258-2008-CONSUCODE-PRE (The Code of Ethics for the Arbitration in State Contracting and Procurement is approved)

Viceministerial Resolution No. 016-2008-EF-15.01 (The publication of the draft Regulations of State Contracting Law in the Institutional website of the Ministry is ordered)

Supreme Decree No. 159-2008-EF, First Final Supplementary Provision, (Regulations of the State Contracting Law through Commodity Exchanges)

Ministerial Resolution No. 061-2009-EF-43 (Various functions and powers under the Public Contracting Law to the Head of the General Office of Administration are delegated)

Urgency Decree No. 020-2009, First Final Supplementary Provision and Second Transitional Supplementary Provision

Resolution No. 105-2009-P-PJ (It is ordered that the Presidents of the High Courts of Justice of the country, the General Management of the Judiciary Branch and its dependent premises, as well as the Administrators of the Judicial Districts, must comply with the regulations on Public Contracts)

Resolution No. 168-2009-OSCE-PRE (A Directive on "Guidelines for the Implementation of the Special Selection Method through Reverse Auction" is approved)

Resolution No. 169-2009-OSCE-PRE (A Directive on "Annual Procurement Plan" is approved)

Resolution No. 170-2009-OSCE-PRE (A Directive on "Rising of Observations to the Bases and Statements Issuance" is approved)

Resolution No. 080-2009-CG (Directive No. 001-2009-CG/CA "Provisions applicable to the report of information about state contracts that public entities must submit to the General Comptrollership of the Republic" is approved)

AGREEMENT OF THE BOARD OF DIRECTORS No. 002-2009-009-FONAFE (A Directive on Programming, Formulation and Approval of the Operating Plan and Budget of Companies under the scope of FONAFE for the year 2010 is approved)

Resolution No. 357-2009-OSCE-PRE (A Directive on guidelines on the implementation of performance bond for accessory provisions.)

Resolution No. 358-2009-OSCE-PRE (A Directive on guidelines for the contracting in which it is referred to certain brand or type of product is approved)

Resolution No. 390-2009-OSCE-PRE (A Directive on electronic selection processes of Lesser Amount Awards for contracting services is approved)

Resolution No. 391-2009-OSCE-PRE (It is ordered the publication of the Directive No. 008-2009-OSCE/CD on provisions regulating the issuance of Decrees from the Tribunal of State Contracting and its personal notification through SEACE)

Law No. 29465, Forty-Eighth and Sixty Final Provisions (Law of the public sector budget for fiscal year 2010)

Jurisdictional Resolution No. 205-2009-SIS (Directive “Procedures for contracts of goods and services of the Integral Health Insurance” is approved)

Supreme Decree No. 292-2009-EF (The Single Text on Administrative Procedures - TUPA of the Government Procurement Supervising Authority - OSCE is approved)

Resolution No. 195-2010-OSCE-PRE (A Directive establishing provisions on the contents of the Standardized Bases that the State entities shall necessarily use in selection processes is approved)

Resolution No. 004-2010-OEFA-CD (The Registry of Supervisors and Inspectors is created and the Directive “Procedure for contracting Third Supervisors and Inspectors to work in Environmental Supervision and Inspection” is approved)

Resolution No. 418-2010-OSCE-PRE (Directive No. 007-2010/OSCE-CD on Framework Agreement is approved)

Resolution No. 414-2010-OSCE-PRE (Directive providing the Rules of Austerity, Rationality and Discipline in Public Expenditure for the fiscal year 2010 is approved)

Resolution No. 415-2010-OSCE-PRE (Directive for the implementation of eco-efficiency measures is approved)

Resolution No. 424-2010-OSCE-PRE (A Directive No. 008-2010/OSCE-CD stipulating provisions applicable to the registration of information of the selection processes and other acts in the State Contracting Electronic System (SEACE) is approved)

Resolution No. 505-2010-OSCE-PRE (A Directive that stipulates the provisions regulating the issuance of Decrees and Resolutions and/or Agreements of the Tribunal of State Contracting and its notification, as well as scheduling of hearings and reading of dossiers is approved)

Resolution No. 519-2010-OSCE-PRE (A Directive establishing the “Procedure for certification of officers and servants who work in the body responsible for the procurement in the Entity” is approved)

Ministerial Resolution No. 0275-2010-JUS (A list of goods and services included in the Annual Procurement Plan of the Department of Justice for the Fiscal Year 2010 is approved, to which the selection process shall be applied regulated in U.D. No. 078-2009)

Supreme Decree No. 006-2011-EF (The Single Text on Administrative Procedures - TUPA from the Pension Administration Office - ONP, is approved)

Ministerial Resolution No. 066-2011-TR (The Manual of Procedures for contracting goods and services through selection processes and direct contracts in the Implementation Unit 001: Ministry of Labor and Employment Promotion - General Administration Office, Tender 012: Ministry of Labor and Employment Promotion is approved)

Resolution No. 159-2011-OSCE-PRE (A Directive establishing the “Procedure for certification of officers and servants who work in the body responsible for the procurement in the Entity” is approved)

Resolution No. 226-2011-OSCE-PRE (A Directive on “Electronic Selection Processes of Lesser Amount Awards for contracting goods and services” is approved)

Urgency Decree No. 048-2011 (Measures in procurement are dictated to improve the efficiency in public expenditure)

Supreme Decree No. 172-2011-EF (Measures contributing to the strengthening of the Government Procurement Supervisory Authority are dictated)

Supreme Decree No. 189-2011-EF (The procedure for the Public Auction of evaluation and selection of the board members of the Tribunal of State Contracting is approved)

Resolution No. 020-2012-OSCE-PRE (The Directive “Incorporation of the Major of Engineer of Fluid Mechanics in the National Registry of Suppliers” is approved)

Resolution No. 127-2012-OSCE-PRE (The Directive on “Guidelines for the Procedure of File Assignment in the Tribunal of State Contracting” is approved)

Resolution No. 189-2012-OSCE-PRE (The Directive on “Guidelines for the Procedure of File Assignment in the Tribunal of State Contracting” is approved)

Resolution No. 284-2012-OSCE-PRE (Directive No. 009-2012 OSCE-CD “Subsequent Random Inspection of administrative procedures followed before the National Registry of Suppliers” is approved)

Resolution No. 285-2012-OSCE-PRE (Directive No. 010-2012-OSCE-CD “Provisions relating to the process of assignment, update and deactivation of the SEACE Certificate granted to the SEACE users” is approved)

Resolution No. 287-2012-OSCE-PRE (Directive No. 012-2012-OSCE-CD “Procedure and deadlines for registration and renewal of registration of goods and/or services suppliers in the National Registry of Suppliers (RNP) is approved)

Law No. 29951, Final Thirty-fifth Supplementary Provision

Law No. 29951, Thirtieth Supplementary Provision (Law of Public Sector Budget for Fiscal Year 2013)

LEGISLATIVE DECREE No. 1128, First Transitional Supplementary Provision (Legislative Decree creating the Purchasing Agency of the Armed Forces)

Resolution No. 0663-2012-ANR (A cooperative agreement and service contract of delivery of certificates of registration in the National Registry of Degrees and Titles between the National Board of University Presidents (ANR for its acronym in Spanish) and Banco de la Nación is approved)

Resolution No. 047-2013-OSCE-PRE (Directive No. 001-2013-OSCE-CD on "Electronic selection processes of Lesser Amount Awards for contracting goods and services approved)

Resolution No. 100-2013-OSCE-PRE (The Directive No. 002-2013-OSCE-CD "Guidelines for the Procedure of File Assignment in the Tribunal of State Contracting" is approved)

Resolution No. 101-2013-OSCE-PRE (Twenty technical datasheets of the Medicine and Pharmaceutical Products category of the List of Common Goods and Services subject to the Modality of Reverse Auction are approved)

Resolution No. 270-2013-OSCE-PRE (Directive No. 004-2013-OSCE-CD "Provisions on the content of the Executive Summary of the study of possibilities offered by the market" is approved)

ii CONFORMITIES TO USA - PERU FREE TRADE PROMOTION AGREEMENT

Free Trade Promotion Agreement, Chapter Nine (Procurement), Article 9.4

iii CONFORMITIES TO USA - PERU FREE TRADE PROMOTION AGREEMENT

Free Trade Promotion Agreement, Chapter Nine (Procurement), Article 9.4

iv CONFORMITIES TO USA - PERU FREE TRADE PROMOTION AGREEMENT

Free Trade Promotion Agreement, Chapter Nine (Procurement), Article 9.4

v CONFORMITIES TO USA - PERU FREE TRADE PROMOTION AGREEMENT

Free Trade Promotion Agreement, Chapter Nine (Procurement), Article 9.4

vi CONFORMITIES TO USA - PERU FREE TRADE PROMOTION AGREEMENT

Free Trade Promotion Agreement, Chapter Nine (Procurement), Articles 9.2.1 and 9.2.2