

LEGISLATIVE DECREE N° 1017

THE PRESIDENT OF THE REPUBLIC

WHEREAS,

The Congress of the Republic in accordance with Act N°29157, has delegated the power to the Executive to legislate, for a term of one hundred and eighty (180) calendar days, on several topics related with the implementation of the Agreement of Commercial Promotion between Peru and the United States, and with the support of the economic competitiveness for its progress; among which are the improvement of the regulative framework, the administrative simplification and the modernization of the State.

In accordance with the Article 104 of the Political Constitution of Peru;

With the approving vote of the Cabinet, and

To be reported to the Congress of the Republic;

Has issued the following Legislative Decree:

**LEGISLATIVE DECREE PASSING THE
LAW FOR GOVERNMENT CONTRACTINGS**

TITLE I

GENERAL REGULATIONS

Article 1.- Scope

The herein regulation contains the provisions and guidelines to be observed by Public Bodies in all contracting processes on property, services or works and controls the rights and obligations derived from them.

Concordance: RLCE: 2° Article.

Article 2.- Objective

The objective of the Present Legislative Decree is to establish the regulations in order to maximize the taxpayer's money value in contracts carried out by Public Bodies, so that they may be made in time and under the best terms in price and quality, complying with the principles stated in article 4° of the present regulation.

Article 3.- Area of Application

3.1 They are within the scope of the present regulations, under the generic term of the entities:

- a) The National Government, departments and offices

- b) The Regional Governments, their departments and offices.
- c) The Local Governments, their departments and offices.
- d) The Constitutional Autonomous Bodies;
- e) The Public Universities;
- f) Welfare Societies and Social Boards;
- g) The Armed Forces and the Police Department of Peru;
- h) The Funds for Health, Housing, Welfare and others of equal nature of the Armed Forces and the National Police of Peru
- i) The private and public Government enterprises, either belonging to the National or Local Government, and joint companies under the Government control as partner.
- j) The projects, programs, funds, decentralized bodies, Executive Power, public bodies, institutions and other organic, functional, executive and / or operative units of the Power of the State; as well as the bodies alluded to in the Political Constitution of Peru and others created and recognized by the legal national clasification.

3.2 The herein regulation is applied to all contracts to be carried out by Entities in order to provide themselves with assets, services or works, assuming payment of the price or of the corresponding remunerations with public funds, and other obligations derived.

3.3 The herein regulation is not of application for:

- a) The hiring of workers, employees, government officers subject to the system of administrative or labor career of the private activity;
- b) The hiring of external auditors in or for the Government bodies which shall be subject to the norms and procedures that govern the National System of Control. All other contracts and hirings carried out by the Government General Control Office are subjected to the regulations provided by the herein Legislative Decree and its regulations.
- c) The government indebtedness operations and administration of the national debt;
- d) The hiring of legal and financial consultancy, and other specialized services linked directly or indirectly with the internal or external indebtedness and administration of the public debt;
- e) The banking and financial procurements carried out by government entities;
- f) The service hiring or nonpersonal services carried out by Entities with individuals, with the exception of the contracts of consultancy. Likewise, the contracts of hiring services carried out with the presidents of board of directors with full time offices in government bodies or public companies are out of the scope of the herein regulation;
- g) The actions of disposition and management and handling of government possessions;
- h) The procurements whose values are equal or lower than three (3) Tax Units currently in force at the moment of the transaction; apart from the property and services included in the Catalog of the Framework of Agreements;

- i) The hiring of notary's offices to carry out the tasks planned in the present regulation and its provisions;
- j) The services provided by conciliators, referees, conciliatory centers, arbitration institutions and others derived from the conciliatory and arbitration function;
- k) The contractings to be carried out with certain supplier, by law or legal authority;
- l) The granting of natural resources and public works of infrastructure, assets and public services;
- m) The transfer to the private sector of shares and assets belonging to the State, within the framework of privatization;
- n) The mode to carry out a direct budgetary operation contemplated in the regulations of such matter, apart from the required procurement of assets and services for it;
- ñ) The contracts with suppliers residing out of the country and whose higher estimated provision value are performed out of the country;
- o) The hirings carried out by the Missions of the Department of Foreign Affairs of the Republic, exclusively for their function and management, out of the national territory;
- p) The hiring of lawyers, legal advisors and of any other type of advisory necessary for the defense of the State in international controversies on investments in arbitral or judicial forums;
- q) The purchase of goods carried out by Departments of the government through public tender, which shall be in accordance with the rules in such cases;
- r) The cooperation agreements, management or others alike, agreed upon between Departments or Government Bodies, or between the latter and international bodies, when the goods, services or works are given according to law, with no chase for profit;
- s) The contracting of public services, without the possibility of contracts with more than one supplier; and,
- t) The contractings carried out in accordance with the requirements and specific procedures of international bodies, States or cooperative bodies, as long as they are associated to donations or official credit operations.

Concordances: RLCE; Article 2º, 5th and 8th, Complimentary Transitory Provision.

Article 4,- Articles governing the contractings

The processes for contractings regulated by this regulation and its provisions are ruled by the following principles, without prejudice of the application of other general principles of the public law:

- a) Principle for Promoting Human Development: The public contracting must contribute to the human development throughout the national territory in accordance with the standards universally accepted on the matter.

- b) Principle of Morality: All procedures related with the contracting of government bodies shall be subject to the rules of honesty, veracity, intangibility, justice and probity.
- c) Principle of Free Concurrence and Competence: In the contracting processes regulations or treatments to promote the widest, objective and unbiased concurrence, plurality and bidders' participation shall be included.
- d) Principle of Impartiality: The agreements and resolutions issued by government officers and bodies responsible of the contractings performed by government bodies or Entity shall be adopted in strict application of the present regulation and its provisions; as well as the consideration of technical criteria allowing objectivity in the treatment of bidders and contractors.
- e) Principle of Reasonableness: In all the processes of selection the objective of the contracts must be reasonable, in quantitative and qualitative terms, in order to satisfy the public interest and expected result.
- f) Principle of Efficiency: The contractings carried out by government bodies must be under the best conditions of quality, price and period of execution and delivery, and with the best use of material resources and available human beings. The contractings must observe criteria of speed, economy and efficiency.
- g) Principle of Publicity: The call for the processes of selection of all proper actions must be announced and properly diffused in order to guarantee the free concurrence of potential bidders.
- h) Principle of Transparency: Any contracting must be realized on the basis of criteria and sustained facts on objective qualifications and accesible to bidders. The bidders will have access during the process of selection to the corresponding documentation, apart from the exceptions foreseen in the present regulation and its provisions. The call and the awarding of the bid as well as the result of the bidding must be of public knowledge.
- i) Principle of Economy: In every contracting the criteria of simplicity, austerity, concentration and saving in the use of resources shall be applied in the phases of selection and in the agreements and solutions agreed upon, avoiding demands, and unnecessary expensive formalities in the Basis and contractings.
- j) Principle of Technology in Force: The goods, services or the execution of works must meet the conditions of quality and technological modernity necessary to fulfill effectively the ends for which they are required, from the moment they are contracted, and for the foreseen time of duration, with the possibility of being adapted, intergrated and being up-dated if necessary with the current scientific and technologic developments.
- k) Principle of Fair and Equal Treatment: Every bidder for goods, services or works must have participation and access in order to come into contract with Government Offices and Departments in equal terms, being prohibited all type of privileges, advantages or prerogatives.

l) Principle of Equity: Charges and rights from each party shall keep a reasonable relation of equivalence and proportion, without affecting the Government faculties in handling a general interest.

m) Principle of Environmental Sustainability: In any contracting criteria shall be exercised to guarantee the environmental sustainability, trying to avoid environmental negative impacts in conformity with the procedure of the matter.

This principle will be the framework to use interpretative and integrating criteria when applying the herein regulation and its provisions and as a parameter for the behavior of civil officers and bodies in charge of contractings.

Article 5.- Speciality of the regulation and delegation.

The herein Legislative Decree and its provisions prevail over the procedure of public law and over those private laws that are applicable.

The Holder of the Entity may delegate, by written resolution, the authority that the herein regulation bestows. The approval of exonerations, the declaration of nullity, and the authorization for additional work funds and others established by Regulations cannot be delegated.

Conformities: RLCE : Article 3th and 5th

Article 6.- Bodies participating in contractings

Every Entity shall establish in its Regulation of Organization and Functions and other instruments of organization, the organ and responsible organs for programming, preparing, executing and supervising the processes of contracting up to their culmination stating the activities and competence of every government officer in order to establish the inherent responsibilities.

The government officers and civil officers making up the organs in charge of the contractings carried out by the Entity must be qualified in matters related with public contractings, as per requirements established in the Regulation.

Through agreement, the Government Entities may entrust other offices of the Public and/or Private Sector, national or international, the execution of the processes for contractings including the preparatory and necessary steps, in accordance with the procedures and formalities established in the Regulations.

Concordances. - RLCE Articles 5th, 86th to 89th, 2nd and 8th Complementary Transitory Disposition

Article 7.- Contracting File

The Government Entity shall keep a File of Contracting with all the proceedings of the process of the contracting, with the requirements up to the culmination of the contract, including the non-winning bidders. Such file shall be kept

under custody by the organ in charge of the contractings, as established in the Regulations.

Concordances: RLCE: Article 10°

Article 8.- Yearly Plan of Contractings

Every Entity shall prepare its Yearly Plan of Contractings, which shall have to foresee all the contractings of goods, services and works that shall be needed during the fiscal year, independently from the system regulating them or the source of financing, as well as the estimated amounts and types of processes of selection foreseen. The estimated amounts to be used during the corresponding fiscal year should be considered in the institutional budget. The Yearly Plan for Contractings must be accepted and passed by the Chief of the Entity and must be announced in the Electronic System of Contractings of the State (SEACE).

The Regulation shall determine the requirements, contents and procedures for the formulation and modification of the Yearly Plan of Contractings.

Concordances: RLCE: Articles 6° to 9°.

TITLE II

ABOUT THE PROCESSES OF SELECTION

**CHAPTER I
GENERAL PROVISIONS**

Article 9.- The National Record of Suppliers.

In order to be participant, bidder and/or contractor, it is needed to be registered in the National Registry of Suppliers (RNP) and not being unfit, sanctioned or disqualified for contractings with the State.

The Regulation shall establish the organization, function and procedures of the National Registry of Suppliers (RNP), as well as the requirements for the registration, assignment of categories and specialities, the incorporation and periodicity with which the list of accepted suppliers shall be announced in the Official Gazette "El Peruano". In no case these requirements shall constitute a barrier to competition.

Those suppliers whose registration in the National Registry of Suppliers (RNP) has been void for having submitted false documentation or inaccurate information, may ask to be reconsidered for their registration in such Record two (2) years later from the date they were administratively considered void.

The National Registry of Suppliers (RNP) shall not demand the functioning license in the registration process.

In no case, the Basis of the procedures for selection shall ask the bidders for the documentation that they had to submit for their registration in the National Record of Suppliers (RNP).

The Supervising Agency of the Government Procurement carried out by the State - OSCE shall administer the National Registry of Suppliers (RNP) shall have to keep it updated on its institutional website.

The Entities are prohibited to keep records of suppliers. They are only authorized to have and maintain an internal list of suppliers with a database containing a list of them. Under no circumstance, the incorporation in this list shall be a requisite to participate in the processes of selection that the Entity calls. The incorporation of suppliers to this list shall be discrete and free of charge.

The National Record of Suppliers (RNP) shall be decentralized to avoid any detriment or higher costs of transaction to small and micro companies located in the different regions of the country.

Under the responsibility and within the framework of the current legislation on the matter, The National Record of Identification and Civil Status (RENIEC), The National Superintendence of Tax Administration (SUNAT), The National Superintendence of Public Records (SUNARP), the National Institute of Defense of the Competition and of the Protection of the Intellectual Property (INDECOPI), the Judicial Power and the Police Department of Peru (PNP) shall provide access to the pertinent information, safeguarding the tributary reservation, with the purpose that the National Record of Suppliers (RNP) may have updated information to enable exercise the later taxation of the information presented by the suppliers.

Through Supreme Decree countersigned by the Department of Economy and Finance the relevant information for the National Registry of Suppliers (RNP) that other Entities have may be accessed.

Concordances: RLCE: Articles 52°, 251° to 282

Article 10.- Impediments to be bidder and/or contractor

In any legal system of applicable contracting, the following persons are unfit to be participants, bidders or contractors:

- a) In any process of contracting, up to twelve (12) months after having left the post or office, the Congress Members of the Republic, the President and Vice-President of the Republic, the Secretaries and Deputy Ministers of State, the Members of the Supreme Court of Justice of the Republic, the holders and members of the collegiate organization of the Constitutional Autonomous Organisms;

- b) In the regional areas, up to twelve (12) months having left the post, the President, Vice-President and the Counselors of the Regional Governments;
- c) In the area of their jurisdiction, up to twelve (12) months after leaving the post, the Members of the Top Parliament of Justice, and the Regional Mayors;
- d) In the Entity to which they belong, the holders of institutions or of public organisms of the Executive Power, the directors, managers and workers of the companies of the State, the government employees, confidence employees and public officers, in accordance with the special law on the matter,
- e) In the corresponding process of contracting, the individuals or legal entities with direct intervention in determining the technical characteristics and referential value, preparation of the Basis, selection and evaluation of offers of a process of selection and in the authorization of payments for the contractings derived from the above mentioned process, except in the case of contracts for supervision;
- f) In the area and period of time established for the individuals mentioned in the preceding items, the spouse, partner or relatives up to fourth degree of consanguinity and second degree of affinity;
- g) In the area and period of time established for the individuals indicated in the preceding items, the legal entities in which they have or have had a participation higher to five per cent (5%) of the capital or social assets, within the twelve (12) months prior to the call;
- h) In the jurisdiction and period of time established in the preceding items, the legal entities and without intention of profit in which they participate or have participated as partners or members of their directive boards, within the twelve (12) months prior to the call.
- i) In the area and period of time established for the persons indicated in the precedings items, the legal entities whose members of the administrative organisms, attornies or legal representatives are the persons indicated in the preceding items. Prohibition is also extended to the individuals who have as attornies or representatives to the persons indicated in the preceding items;
- j) The individuals or legal entities who have been sanctioned administratively by temporary or permanent incapacitation in exercising their right to participate in the processes of selection and to contract with Entities, abided by the hereim regulation and its provisions;
- k) The legal entities whose partners, shareholders, participants, holders, members of administrative organs, attornies or legal representatives are or have been part, in the twelve (12) months of the sanction imposed, of legal entities who are currently sanctioned administratively with temporal or

permanent disqualification to participate en processes of selection and to go into contractings with the State; or having actuated as individuals having been sanctioned due to the same offense; in accordance with the criteria stated in the present Legislative Decree and its Regulation. In the case of partners, shareholders, participants or holders, this impediment shall applied provided that the participation is higher that five per cent (5%) of the capital or social asset, and as long as the santion is in force;

- 1) Others established according to law or Regulation of the herein regulation.

The offers that contradict what is established in the herein article shall be understood as not presented. The contractings realized contradicting what is established in the present article are void, without detriment of the responsibilities, if any, of the officers and civil servants of thge contracting Entity and contractors who signed such contracts.

Concordance: RLCE: Article 237°.

Article 11.- Banning of Restrictive Practices

Bidders in a process of selection are prohibited to arrange among them or with third persons, in order to establish restrictive practices of the free competence, under penalty of being banned for contracting with the State, without detriment of other current penalties established by regulations in force.

Concordance: RLCE: Article 237°.

Article 12.- Requirements to call a process

It is a requirement to call to a process of selection, under penalty of nullity, that the same be included in the Yearly Plan of Contractings jointly with the File of Contracting duly approved in accordance with what the Regulation orders, the same that shall include the availability of resources and financing source, as well as the Basis duly approved, apart from exceptions established in the Regulation.

Processes whose contractual execution takes longer than one (1) fiscal year can be carried out, in whose case the pertinent budgetary reserve shall have to be adopted in the corresponding exercise, in order to guarantee the honoring of the obligations.

**Concordances: LCE: Article 8°.
RLCE: Articles 10° and 35°**

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

Upon the basis of the Annual Plan of Contractings, the correspondig area shall need to contract the goods, services and works, considering the times of duration established for every process of selection, in order to guarantee the timely satisfaction of its needs.

When planning the requirement, the area in question shall have to describe the goods, service or work to contract defining with accuracy the amount and quality, stating the public purpose for which it must be contrated.

The formulation of the technical specifications shall have to be carried out by the area in coordination with the organism in charge of the contractings of the Entity, evaluating in every case the technical alternatives and the possibilities that the market offers to satisfy the requirement. This evaluation shall have to permit the concurrence of the plurality of suppliers in the market to the call for the respective process of selection, avoiding including unnecessary requirements whose fulfillment shall only favor some suppliers.

The technical specification shall have to meet the technical regulations in a compulsory way, also meet the national sanitary and/or methological norms if any. They shall have to meet the determined conditions in the technical norms, if any.

Further more, in the case of works, the physical availability of the land or location where the work shall be executed should be considered and with the technical file accepted, meeting the the requisite established in the Regulation. The Entity shall take precautionary steps for the proper formulation in order to guarantee the technical quality and to reduce to a minimum the reformulation due to errors or technical deficiencies that may affect the execution of the works.

In the processes of selection according to the list of items, phases, stretches, packages or plots may be called to contractings of goods, services and works in a single process, establishing a referencial value for each item, phase, stretch, package or plot. The Regulation shall establish the additional procedures to follow in these cases or issues.

Concordances: RLCE: Article 11°

Article 14.- Contents of the call and selection deadlines

The contents for the call in the processes of selection shall be stated in the Regulation with a reasonable period of time between the call and the presentation of bids in accordance with the specific characteristic of every process.

The deadlines for the processes of selection count in working days, establishing in the Regulation those that correspond to every phase of the process.

Concordances: RLCE: Articles 22° to 24°

CHAPTER II
THE PROCESSES OF SELECTION

Article 15°.- Contracting mechanisms

The selection processes are: Tendering, Bidding, *Adjudicación directa* and *Adjudicación de menor cuantía*, which may be carried out corporately or subject to the types of selection of Reverse Auction or Framework Agreement, in accordance with what the Regulation states.

The characteristics, requisites, procedures, methodology, types, deadlines, exceptions and applicable systems in every process of selection shall be determined in the Regulation.

Concordances: RLCE: Articles 21°, 80° to 85°, 90° to 103°.

Article 16.- Tendering and Bidding

The Tendering is called for the contracting of goods, supplies and works. The Bidding is called to contract all type of services. In both instances, the margins are established by the Budget Law of the Public Sector.

Article 17.- *Adjudicación directa*

The *Adjudicación directa* is applied for the contracts carried out by the Entity, within the margins established by the Budget Law of the Public Sector. The *Adjudicación directa* may be public or selective. The Regulation shall state the way, requirement and procedure in each case.

Article 18.- *Adjudicación de menor cuantía*

The *Adjudicación de menor cuantía* is applied to contracts carried out by the Entity and whose value is lower than the tenth part of the minimum limit established by the Law of Budget of the Public Sector for Tendering and Bidding.

The Regulation states the requirements and minimum formalities for the processes of selection referred to in the herein article. The Entities or departments shall announce on the website of the institution the need for goods or services to be procured under the mode of *Adjudicación de menor cuantía*.

In the *Adjudicaciones de menor cuantía*, contractings shall be carried out obligatorily through the Government Procurement Electronic System (SEACE), with the exceptions stated in the Regulation.

The Regulation of the herein regulation, shall establish the way in which the contractings shall be progressively and in a compulsory way shall be applied electronically to the processes of public tender and direct awarding in the different modes,

Comentario [d1]: Es recomendable mantener algunas denominaciones en español de algunos tipo de procesos debido a que las propuestas de traducción no concordarían en su totalidad con la descripción del proceso en español. *Adjudicación directa* y *Adjudicación de menor cuantía*.

Article 19.- Prohibition for fractionation

It is prohibited to fraction the contractings of goods, services and execution of works in order to modify the corresponding type of process of selection in accordance with the annual need. Fractionation to contractings by phases, stretches, packages, or possible plots in accordance with the nature of the object of the contracting or in order to promote the participation of the small and micro enterprises in those economic sectors where there is competitive offer.

The Ministry of Economy and Finance, with previous favorable opinion of the Ministries of Labor and Social Assitance, shall establish through a Supreme Decree the sectors of intrest to the State to promote the participation of the micro and small enterprise.

The organism in charge of the contractings in every Entity is responsible in case of failure to comply with the prohibition referred to in the herein article.

Concordances: RLCE: Article 20°.

Article 20°.- Exoneration of processes of selection

The following contractings are exonerated of the processes of selection:

- a) Between entities, provided that the cost of opportunity is more efficient and technically feasible to meet the need without contravening article 60° of the Political Constitution of Peru.
- b) In cases of emergency derived from catastropic events, situations that may cause serious risks or affect the national security.
- c) In situation of shortage of supplies duly checked affecting or preventing the Entity from complying with its activities or operations in which case the responsibilities of the officers or public servants whose behavior might have caused the situation must be determined.
- d) As a secret, military secret or due to reasons of internal order from part of the Armed Forces, the Police Department of Peru and the department or organisms that make up the National System of Intelligence, that must be maintained in secret in accordance with the law, and previous favorable opinion of the General Comptroler's Office of the Republic.
- e) When there is a unique supplier of goods or services that cannot be replaced or substituted, or when due to technical reasons or related to the protection of rights, the exclusivity of the supplier has been established, and
- f) For very personal services with the proper objective back up.

The Regulation shall establish the formalities, conditions and complementary requisites that correspond to each of the reasons for exoneration.

Conformities: RLCE: Articles 127° to 132°

Article 21.- Formalities of the exonerated contractings

The contractings derived from exoneration of processes of selection shall be performed directly, with the previous approval and through Resolution of the Holder or Chief of the Entity, Agreement of the Board of Director, Regional Board or Town Council, depending on the case, as a result of previous technical and legal reports that obligatorily shall be issued.

Copy of such Resolutions or Agreements and the reports that back them up must be remitted to the Comptroller's Office of the Republic and must be announced in the Government Procurement Electronic System (SEACE), within the ten (10) working days of the approval, under the responsibility of the Holder of the Entity. The cases referred to in item d) of article 20° of the present regulation are exonerated of publication.

The approval of exonerations in the process of regularization is prohibited, except in the case of emergency.

Concordances: RLCE: Articles 133° to 136°

Article 22.- Situation of shortage of supplies

It is considered a situation of shortage of supplies the situation of imminent, extraordinary and unforeseeable situation in which the absence or lack of goods, service or work threatens directly and imminently the continuity of the functions, services, activities or operations in charge of the Entity. Such a situation authorizes the Entity to contract goods, services or works only for the period or amount, as per the case, necessary to solve the situation and carry out the corresponding process of selection.

The approval of the exoneration by virtue of the grounds for a situation of shortage of supplies does not constitute dispensation exemption or liberation of the responsibilities of the officers of the Entity whose behavior had originated the presence or configuration of such reasons. It constitutes an aggravating circumstance of responsibility if the situation was generated by deceit or inexcusable fault on the part of the civil officer of the Entity. In these cases, the competent authority to authorize the exoneration shall have to order, in the approbatory act, of the same, the beginning of the actions that correspond, in agreement with article 46th of the present Legislative Decree.

When it does not correspond to realize a later selection, in the previous technical and legal reports that sustain the Resolution or the Agreement that authorizes the exoneration, the reasons that motivate the definite contracting that caused the exoneration shall have to be supported. This disposition is also applicable, being the case, for a situation of emergency.

Concordances: RLCE: Article 129°

Article 23.- Situation of emergency

It is understood as a situation of emergency when the Entity has to act immediately due to catastrophic events, situations that threaten or serious dangers that may affect the defense and national safety.

In this case, the Entity is exonerated of processing the administrative process and can order the carrying out what is strictly necessary to remedy the event and satisfy the need, not paying attention to the formal requisite of the present Legislative Decree. The Regulation shall establish the mechanisms and period for the regularization of the corresponding procedure.

The other necessary activities to complete the proposed objective by the Entity shall not have the treatment of emergency and shall be contracted in agreement with what is established in the herein regulation.

Concordance: RLCE: Article 128°

Article 24.- The Special Committee.

In the public tenders and public contests, the Entity shall designate a Special Committee that shall have to lead the process.

For *adjudicación directa*, the Regulation shall establish the rules for the designation and conformation of Special Permanent Committees or the appointment of a Special ad hoc Committee.

The organ in charge of the contractings shall have the responsibility of carrying out the processes of adjudication of minor quantity. In these instances the Holder of the Entity may appoint a Special ad hoc or permanent Committee when convenient.

The Special Committee shall be made up by three (3) members, of which one (1) shall have to belong to the user area of the goods, services or works matter of the call, and other to the organ in charge of the contractings of the Entity. It is necessary that one of the members have technical knowledges in the contracting matter. In case of sophisticated goods, specialized services, works or when the Entity does not have a specialist, the Special Committee may be intergrated by one or more independent experts, who may be individuals or legal entities who do not work in the contractor Entity or civil servants who work in other Entities.

The Special Committee shall be in charge of elaborating the basis and the organization conduction and execution of the process of selection until the bid is awarded or administratively firm, or the process of selection is cancelled.

If the special Committee learns that in the proposals there is a document whose veracity or accuracy is reasonably doubtful, the Special Committee shall report of the fact to the organ in charge

of the contractings take the immediate steps of control. In no case it shall put off the continuity of the process of selection.

In the cases referred to in article 32° of the present Legislative Decree, the processes of selection shall be conducted by the same Special Committee that was in charge of the original process of selection.

Concordances: LCE: Article 32°

RLCE: Articles 27°,28°,30° to 31°

Article 25.- Responsibility

The members of the Special Committee are responsible in solidarity that the process of selection is in accordance with the law and are administrative and /or judicially responsible for any irregularity imputed for fraud, negligence and/or inexcusable fault. It may be applied to members of the Special Committee what is established in article 46° of the present Legislative Decree.

In case the responsibility is determined on the independent experts of the Special Committee who may be individuals or legal entities, the issue shall be reported to the Court of Contractings of the State so that after previous evaluation they may be included in the Chapter of Disqualifications to contract with the State of the National Registry of Suppliers (RNP).

Concordance: LCE: Article 46°

RLCE: Article 34°.

CHAPTER III THE BASIS

Article 26°.- Minimum conditions of the Basis

The Basis of a process of selection shall be approved by the Holder of the Entity or by a civil officer to whom this faculty has been delegated and they must have obligatorily, with the exceptions established in the Regulation for awardings in case of small amounts, the following:

- a) The mechanisms to promote the highest number or participants to the bid considering the objective of the process and the procurement and most favorable technical and economical offer. It is not a case of discrimination the exigency of technical and commercial requisites of general nature of the Basis;
- b) The details of the technical features of the goods, services or works to contract; the delivery location, elaborations or buildings, as well as the deadlines, in accordance with the case. This detail can be in an Appendix of Technical Specifications or, Technical Dossier;
- c) The guarantees, according to the Regulation;

- d) The periods and mechanisms of publicity to warrant the effective participation of bidders;
- e) The definition of the system and/or mode to be used, as established in the present regulation and its provisions;
- f) The chronology of the process of selection;
- g) The method of evaluation and grading of bids;
- h) The pro-forma contract, stating the terms of the contract, unless it corresponds to the issue of an order of purchase or services. In the case of a contract for works, the General Chronology of Execution of the work, the Chronology of budgetary Payments foreseen and the Technical File, shall be shown in an Appendix;
- i) The Referential Value and formulas of adjustment determined in the Regulation;
- j) The regulation that shall be applied in case of financing awarded by Multilateral entities or Governmental Agencies; and,
- k) The mechanisms that assure confidentiality of the bids.

What is established in the Basis, in the herein regulation and its provisions oblige all bidders and the Entity which organized the call.

The Supervising Agency of the Government Procurement - OSCE, through Guidelines, shall approve Standardized Basis, whose use shall be obligatory to the Entities.

**Concordances: RLCE Articles 35° to 49°,
Temporary Complementary Provision**

Article 27°.- Referential Value

The organism in charge of the contractings in each Entity shall determine the contracting Referential Value in order to establish the type of the corresponding selection process and to arrange the necessary budgetary allotment of resources.

The Referential Value shall be determined on the basis of a study of the possibilities of prices and terms that the market offers, carried out upon an analysis of the levels of trading, from the technical specifications and referential terms and costs stimated in the Annual Plan of Contractings, in accordance with the criteria specified in the Regulation. When it is about investment projects, the referential value shall be established according to the amount of investment consigned in the study mof preinvestment supported by the declaration of feasibility.

For works, the Referential Value cannot be older than six (6) months from the date of the call of the respective process.

Concordances: RLCE: Articles 13° to 17°

Article 28.- Consultations and Observations to the Basis

The chronology referred to in item f) of article 26° of the herein regulation must establish a deadline for the presentation of consultations and observations regarding the contents of the Basis and another for their aquittal.

Through consultations, requests are made regarding clarification of the dispositions of the Basis and through observations the same are questioned about the noncompliance of the minimum conditions or of any other disposition regarding the State contractings or other complementary or related regulations in relation with the process of selection.

The answer to questions and observations must be based and sustained and shall be reported timely and simultaneously to all participants through the Government Procurement Electronic System (SEACE), considered as part of the Basis.

In the case that the Special Committee would not receive the observations made by the participants, they may ask that the Basis and acts of the process be submitted to the Supervising Agency of the Government Procurement- OSCE, provided that Referential Value of the process of selection is equal or higher than three hundred (300) Tax Units (UIT).

If the Referential Value is lower than the amount stated in the preceding paragraph, the observations shall be absolved by the Holder of the Entity ultimately.

The procedure and deadline to deal with the quests and observations shall be fixed in the Regulation.

Concordances: RLCE: Article 54°, 56° and 58°

Article 29.- Legal Subordination of the Bases

The preparation of the Bases shall include what is established in the herein regulation and its provision and other complementary norms or connected procedures that have relation with the process of selection, which shall be obligatorily applied. Only in the case of normative emptinesses, the principles and norms of public shall be considered.

Concordances: RLCE: Articles 35° to 49°

**CHAPTER IV
THE PROCEDURES**

Article 30.- Presentation of offers and bid awarding

The presentation of offers and bid awarding, in the cases that the Regulation indicates, shall be carried out in a public act in one or more dates indicated in the call, with the presence of a notary public or Justice of the Peace whenever the location where it is carried out there is no notary public. The procedures and requirements of the above presentation shall be regulated by the provision.

The stages and acts of the process of selection may be extended or postponed by the Special Committee provided the reasons for executing so are well justified, informing of such postponement to all participants of the process of selection. Furthermore, a report shall be presented to the Holder of the Entity explaining the reasons for the extension or postponement.

The extension or postponement shall not drive the Entity to a situation of shortage of supplies, under the responsibility of the Holder of the Entity.

A minute of the act of presentation of offers and the awarding of the bid shall be taken which shall be signed by all the members of the Special Committee, all the witnesses or seers and bidders who may want to sign.

The procedure for the presentation of the offers, the awarding of the bid and publication of the results through the Government Procurement Electronic System (SEACE) shall be stated in the Regulation.

Concordances RLCE: Articles 26°, 64°, 72° and 75°

Article 31.- Evaluation and qualification of offers

The method of evaluation and qualification of offers that shall be established in the Regulation must permit objectively a selection of the quality and technology needed within the most convenient periods of time and the best total cost.

The method should demand the presentation of the strictly necessary documentation by the bidders.

The Regulation shall establish the criteria, methods and applicable factor for every type of goods, service or work to be done.

In the contractings under the mode of Reverse Auction, the awarding of the bid shall be given to the offer with the lowest cost, not being applicable scores, bonuses, promotions or other additional benefits implying a different evaluation.

Concordances: RLCE: Articles 43° to 47°, 69°.

Article 32.- Deserted Process of Selection

The Special Committee awards the bid in a public tender, public contest or direct adjudication even in the instances in which it is considered as valid a unique offer.

The process of selection shall be taken as deserted when no offer is considered valid; and, partially deserted when none of the offers is valid in any of the items particularly identified.

The declaration as deserted of a process of selection obliges the Entity to issue a report evaluating the causes that motivated such declaration and corrective steps must be taken before calling once again.

In the case that a public tender, public contest or direct awarding is considered deserted, a process of awarding of minor value shall be called.

In order to award the bid in the processes of selection called under the mode of Inverse Auction the requirement shall be the existence of two (2) valid offers as a minimum; otherwise, the process shall be understood as desert.

Conformities: RLCE: Articles 10° and 78°

Article 33.- Validity of the offers

In all the processes of selection the offers that shall be considered as valid are those that comply with the requisites established in the Bases

The offers that exceed the Referencial Value shall be returned by the Special Committee, taken as not presented; except in the case of execution of works, in which case the offers exceeding the Referencial value in more than ten per cent (10%) of the same shall be returned.

The Regulation of the present norm shall establish the lower limits in the case of execution and consultancy of works.

In order to award the bid to offers exceeding the Referencial Value up to the limit previously established, it is necessary to have the approval of the Holder of the Entity and available resources.

Conformities: RLCE: Articles 39° and 76°

Article 34.- Cancellation Process

In any stage of the process selection, until before the awarding of the bid, the calling Entity may cancel it due to major force or fortuitous case, when the need to contract disappears, or persisting the need, the assigned budget has to be used for other ends of emergency expressly stated, under its exclusive responsibility. In such case, the Entity shall reimburse the cost of the Bases to those who paid for them.

The formalization of the process cancellation should be carried out through Resolution or Agreement duly sustained, by the person of the same level or higher who started the contracting dossier, publication of which must be carried out in accordance with what the Regulation establishes.

Concordances: RLCE Article 79°

**TITLE III
THE CONTRACTS**

GENERAL STIPULATIONS

Article 35.- The contract

The contract shall be written and adjusted to the proforma in the Bases with the modifications approved by the Entity during the process of selection. The Regulation shall establish the cases in which the contract can be formalized with an order of purchase or service, in these cases the provisions referred to in article 40° of the herein regulation not necessarily have to be included, without detriment of its legal application.

The contract comes into force upon compliance of the conditions established for such effect in the Bases and other modifications expressly established in the Regulation can be incorporated.

Concordances: RLCE: Article 138°.

Article 36.- Offers in consortium

In the processes of selection different bidders in consortium can participate, without entailing the creation of a different legal entity. For this, it shall be necessary to provide evidence of the existence of a formal promise of consortium, which shall be completed once the awarding of the bid is agreed and before the signing of the contract.

The parts of the consortium must be registered in the National Record of Suppliers (RPN) and capable of signing contracts with the State.

Conformities: RLCE: Articles 42° and 48°

Article 37.- Subcontracting

The contractor may subcontract, with the previous approval of the Entity, portions of their provisions in the contract, unless it is expressly prohibited in the Bases.

The contractor shall be responsible for the total execution of the contract before the Entity without detriment of the responsibility corresponding to the subcontractor.

In order to be subcontractor it is necessary not to be disqualified to come into contract with the State and to be registered in the National Record of Suppliers (RPN).

Without detriment of what is stated in the preceding paragraphs, the foreign contractors may subcontract their similar domestic contractors assuring training and transference of technology to the subcontractors.

Concordances: RLCE: Articles 146° and 253°

Article 38.- Advances

Upon request from the contractor, provided it has been anticipated in the Bases, the Entity may make advances in the cases, amounts and conditions stated in the Regulation.

In order to proceed with the granting of advances, the contractor shall guarantee the total amount.

The advance shall be amortized in the way established in the Regulation.

Concordances: RLCE: Articles 162°, 186°, 171° to 173°.

Article 39.- Guarantees

The guarantees that shall be extended by bidders and/or contractors, as it corresponds, are the seriousness of the offer, faithful compliance of the offer, regarding advances and differential amount of offer; the modalities, amounts and conditions shall be regulated by the Regulation.

The guarantees accepted by the Entities must be unconditional, solidary, irrevocable and of automatic accomplishment in the country as soon as the respective Entity requires, under the responsibility of the companies extending them which shall have to be within the area of supervision of the Superintendence of Banking and Insurance and Administrators of Pension Funds or considered in the last list of foreign banks of first category that from time to time is published by the Central Bank of Reserve of Peru.

By virtue of the immediate accomplishment upon the first request, the issuing companies cannot object to the execution of the guarantees but just to honor them immediately and in the maximum deadline of three (3) days. Any delay shall generate solidary responsibility on the part of the issuer of the guarantee, and to the bidder or contractor, and when payment of interest to the Entity shall be made.

The Regulation shall establish the steps to be taken in the case of leaseings or those where the provision is made in advance to payment.

In the periodic contracts of provision of goods or services, as well as in contracts of execution and consultory of works signed by Entities with Micro and Small companies, the latter shall grant as guarantee of faithful compliance ten per cent (10%) of the total amount of the contract; such percentage shall be retained by the Entity.

In the case of contracts for the execution of works, such benefit shall be effective when:

- a) Due to the amount, the contract to be signed derives from a process of selection of minor amount awarding, to a direct selective awarding, or to a direct public awarding.
- b) The deadline for the execution of the work is equal or longer than sixty (60) calendar days.

- c) When payment in favor of the contractor considers, at least, two (2) periodic payments as a result of the progress of the work.

Without detriment of the definite keeping of the retained amount, the unjustified failure to comply on the part of the benefited contractor with what the present article establishes, motivating the cancelation of the contract, shall disqualify temporarily such contractor to sign with the State for a period of time no shorter than one (1) year nor longer than two (2) years.

Concordances RLCE: Articles 141°, 156° to 164°.

Article 40.- Obligatory clauses in the contracts

Contracts regulated by the present norm shall necessarily include and under responsibility clauses regarding:

- a) Guarantees: The Entity shall establish in the contract the Guarantees to be extended to assure the good execution and compliance of the same.
- b) Settlement of controversies: Any controversy arising during the phase of execution of the contract should be settled by means of conciliation or arbitration. In case that in the Bases or contract the corresponding clause is not included, the model clause established by the Regulation shall be taken as included.
- c) Contract cancellation due to breach: In case of breach of contract on the part of the contractor in any of their obligations previously observed as failure by the Entity and not having been rectified, the latter can cancel the whole contract or part of it through a note or document sent via notary public about such decision and the motives justifying it. Such document shall have to be approved by an authority or official of the same or higher hierarchical level who signed the contract.

The contract becomes legally cancelled as soon as the contractor receives such document. The previous requirement on the part of the Entity may be omitted in the cases established in the Regulation. Equal right has the contractor upon breach by the Entity of the essential obligations, provided the contractor may have notified the Entity through notary public and no action to rectify the breach has been taken.

Concordance: RLCE: Article 167°

Article 41.- Additional provisions, reductions and expansions

Exceptionally and previous sustentation by the user area of the contracting, the Entity may order and pay directly for the execution of additional provisions in the case of goods and services for up to twenty five per cent (25%) of the value, provided that they are indispensable to execute the contracting. Likewise, the goods, services or works can be reduced in the same percentage.

In case of works, the additional provisions can be made for up to fifteen per cent (15%) of the total amount of the original contract, deducting the corresponding amount derived from the substitutions of works directly related with the additional provisions of works, provided both have the same purpose as the original contract. To that effect, the corresponding payments shall be signed by the Holder of the Entity.

In case additional provisions of work are indispensable due to deficiencies of the Technical File or unforeseeable situations subsequent to the signature of the contract larger than those established in the second paragraph of the present article and up to a maximum of fifty per cent (50%) of the amount originally signed, without detriment of the responsibility corresponding to the designer, the Holder of the Entity may decide the authorization of the same. For that effect it shall be necessary the authorization of the Holder of the Entity, being necessary for the execution and payment to have the the previous authorization of the General Finance Office of the Republic and checking that the necessary resources are available. In the case of additional provisions of emergency nature, such authorization shall be issued previous to payment. The General Finance Office of the Republic shall have a maximum deadline of fifteen (15) working days, under its responsibility, to issue such pronouncement.

Such situation must be reported to the Budget Committee and General Account of the Republic, the Congress of the Republic and the Ministry of Economy and Finance, under the responsibility of the Holder of the Entity.

Alternatively, the Entity can cancel the contract through written communication to the contractor.

The decision of the Entity or General Finance Office of the Republic to approve or not additional provisions cannot be subject to arbitration. Neither can be subject to arbitration the controversies regarding the executions of additional provisions for work and larger provisions that previously need to be approved by the General Finance Office of the Republic.

The contractor may ask for an extension of the deadline agreed upon due to delays and / or beyond their control, duly verified and that modify the chronology of the contract.

The discrepancies regarding the legitimacy of the extension of the deadline are decided in accordance with what is established in item b) of Article 40° of the present norm.

Concordances: RLCE: Articles 174°, 175°, 207°, 208°.

Article 42.- Culmination of the contract

The contracts of goods and services culminate with the conformity of the reception of the last provision agreed upon and the corresponding payment.

Regarding contracts of executions or consultancy of works, the contract culminates with the settlement and corresponding payment, which shall be prepared and presented to the Entity by the contractor in accordance with the deadlines and requirements established in the Regulation, who shall have to make a statement in a maximum deadline also established in the Regulation under the responsibility of the corresponding official. If no resolution or accord is agreed upon duly supported and within and within the deadline previously stated, the liquidation presented by the contractor shall be considered as accepted for all legal effects.

The contracting dossier shall be closed upon culmination of the contract.

Concordances: LCE 7°.
RLCE: Articles 149° and 177°.

Article 43.- Special requirements in work contracts

To the effects of execution of work contractings, the Regulation shall establish the requirements to be fulfilled by the engineer or resident registered architect appointed by the contractor and the inspector designated by the Entity or supervisor hired or named by the Entity, as well as the characteristics, functions and responsibilities agreed upon by them. Also, the Regulation shall establish the characteristic of the book or work log and the formalities for the acceptance or reception of works and liquidation of the contract.

Concordances RLCE: Articles 185°, 190°, 194°, 210°, 211°

Article 44.- Cancellation of contracts

Any of the parts may cancel the contract, without responsibility of any of them, due to a fortituous case or greater force preventing definitely the continuation of the contract.

When the contract is canceled due to causes attributed to any of the parts, compensation shall be made for any damage or detriment caused to the other part.

In case of cancelation or annulment of the contract for works and if there is a balance of work to be done, the contracting Entity may have as option to finish the work through direct administration agreement with other entity or, taking into consideration the respective Referencial Value.

Concordances: RLCE: Articles 167°, 168°, 209°

Article 45.- Registration of Processes and Contracts

The Entity, under its responsibility, shall register in the Government Procurement Electronic System (SEACE), all the actions in every process of selection called, the signed

contracts and their execution, in the way established by the Regulation.

The Entities exempted from registering information in the Government Procurement Electronic System (SEACE), shall be obliged to send within fifteen (15) days subsequent to the closing of every quarter a list of all calls made in such period, to the General Finance Office of the Republic, with the documentation that shall allow the appreciation of the results.

Concordance: RLCE 287°

**TITLE IV
RIGHTS, OBLIGATIONS AND PENALTIES**

**CHAPTER I
THE ENTITIES AND GOVERNMENT OFFICIALS**

Article 46.- Responsibilities and penalties

The officials and public servants, as well as the members of the Special Committee participating in the contracting processes of goods, services and works, are responsible of the compliance of the herein regulation and its provisions.

In case the regulation allows margins of discretionality for the performance of the public servant or official, he should exercise it according to the principles established in Article 4° of the present Legislative Decree.

The evaluation of the adequate conduct of the servants or officials in the discretionary decisions referred to in the preceding paragraph, is carried out by the highest authority of the pertaining Entity, in order to measure the performance of the members in their post. For that purpose, the Entity may dispose, periodically and selectively, examinations and special auditing.

In case of the State enterprises, such evaluation shall be carried out by the Board of Directors.

In case of failure to comply with the dispositionn established in the herein Legislative Decree, the following penalties, according to their seriousness, shall be applied:

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

Concordance: LCE: Article 25°

Article 47°.- Supervision

The Entity shall supervise directly or through third persons, all the processes of execution, for which the contractor shall offer the necessary facilities.

By virtue of this right to supervise, the Entity has the legal authority to apply the contracting terms to enable the contractor to adjust and amend any fault regarding the accurate compliance of the obligations agreed on.

The lack of supervision of the processes on the part of the Entity, does not exempt the contractor to comply with their duties nor responsibilities.

Concordances: RLCE: Article 190°

CHAPTER II CONTRACTORS

Article 48.- Interests and Penalties

In case of delay in payment on the part of the Entity, except due to a fortituous case or force majeure, the Entity shall recognize payment of the corresponding legal interests. Equal right has the Entity in case of being the creditor.

The contract shall establish the penalties to be applied to the contractor for failure unjustified of the contractual obligations agreed on, in accordance with the Regulation.

Concordances: RLCE: Articles 165°,168°,181.

Article 49.- Compliance agreed on

The contractors are obliged to fully comply with what was offered in the proposal and in any formal documented statement they may have additionally presented in the process of selection or in the signing of the contract, as well as the stipulations of items 2) and 3) of Article 1774° of the civil law.

Article 50.- The Contractor responsibilities

The contractor is the responsible part for the quality offered and for the unseen faults of the goods or services offered for a period not shorter than one (1) year counted from the conformity given by the Entity. The contract may establish exceptions for fungible and/or perishable goods provided the nature of these goods does not fit in to this period. In the case of works, the time of responsibility cannot be lower than seven (7) years, counted from the date of conformity of the total or partial reception of the work, as it corresponds.

The Bases shall establish the maximum period of responsibility of the contractor.

Article 51.- Infractions and administrative penalties

51.1 Infractions

Administrative penalties shall be imposed to suppliers, Participants, bidders and/or contractors that:

- a) Do not maintain their offer until the awarding of the bid, in case they become winners until the signing of the contract, or do not receive unjustifiably the contract, or unjustifiably the order of purchase or of service issued in their favor.
- b) Provoke the cancellation of the contract, order of purchase or services due to reasons ascribed to them.
- c) Have delivered the goods, provided the service or made the work with unseen faults, with previous judicial unappealable sentence or arbitral judgement.
- d) Come into contract with the State being disabled for it, in accordance with the present norm;
- e) Participate in selection processes or sign a contract without being registered in the National Registry of Suppliers (RNP);
- f) Sign a contract, in the case of execution or consultancy of works, for higher values to their capability of contracting or in different specialization; as appropriate;
- g) Sign contracts without the authorization of the Entity or for a higher percentage of the one allowed in the Regulation;
- h) Participate in practices restrictive to the free competition, previous to the statement of the competent national organism; and when making the mistake of being common partners not permitted by what the Regulation establishes;
- i) Present false documentation or inaccurate information to the Entities, State Board for Contractings or the State Supervising Organism for Contractings - OSCE;
- j) Interpose impugnative resources against unimpugnatable acts established in the Regulation
- k) When it is verified that after receiving the conformity they failed, without justification, to comply with the Obligations established in the Bases; and
- l) Other offences established in the Regulation.

51-2 Sanctions

In the cases that the herein regulation or its Regulation states, The Government Contracting Board shall impose to suppliers, participants, bidders and contractors the following:

- a) Temporary barring: It consists in depriving permanently suppliers, participants, bidders and contractors to exercise their right to participate in the process of selection and to come into contracting with the State. This deprivation in no case shall be less than six (6) months nor longer than three (3) years.
- b) Definite Barring: It consists in depriving permanently

Suppliers, participants, bidders and contractors to exercise their right to participate in processes of selection and contracts with the State. When during a period of time of four (4) years an individual or legal entity receives two (2) or more penalties that together add up to thirty six (36) months of temporary⁷ barring, the State Contracting Board shall decide the definite barring of the supplier, participant, bidder or contractor

c) Economical: The economical penalties are those resulting from the execution of guaranties granted upon presentation of resorts to appeal found unfounded or inadmissible by the Entity or the State Contracting Board, If the lodging of appeal is declared founded completely or in some part of it, the guarantee shall be returned by the Board or the Entity. In case of withdrawal, one hundred per cent (100%) of the guarantee shall be enforced.

The penalties imposed do not constitute an impediment or obstacle for the contractor to comply with the obligations derived from contracts previously signed on with Entities; therefore, the execution of the contract signed on shall have to continue until culmination.

The suppliers, participants, bidders or contractors who make the errors established in item g) of numeral 51.1 of the present article, shall be sanctioned with a temporary barring to come into contract with the State for a period of time not shorter than six (6) months nor longer than one (1) year.

The suppliers, participants, bidders or contractors incurring in causes established in item a), b), c), d), e), f), h), i), j) and k) numeral 51.1 of the present Article 51°, shall be sanctioned with temporary barring to come into contract with the State for a period not shorter than one (1) year nor longer than three (3) years.

The imposition of the penalties is independent from the civil or penal responsibility that might be originated due to errors made. Likewise, the Supervising Agency of the Government Procurement - OSCE may impose economic sanctions to Entities who break the regulations of public contractings.

Concordances RLCE: Articles 235° to 250°

**TITLE V
SETTLEMENT OF CONTROVERSIES AND IMPUGNATIONS**

Article 52.- Settlement of controversies

Controversies resulting between the parts about the execution, interpretation, resolution, non-existence, inefficiency, annulment or invalidity of the contract, shall be settled through conciliation or arbitration, as agreed on by the parts being the beginning of such procedures any moment prior to the date of

culmination of the contract; commencement of such procedures should be requested in any moment prior to the date of culmination of the contract, considered it as independent. This period is spiry, except for claims formulated by Entities due to errors unseen in the goods, services and works delivered by the contractors, in which case the expiring period shall be the one established in Article 50° of the present norm, and shall be counted from the date of the conformity given by the Entity.

Arbitration shall be by law, to be solved or settled by unique arbitrator or arbitrator court applying the herein Legislative Decree or its Regulation, as well as the norms of public law and those of private law; keeping this order of preference in the application of the law obligatorily.

The unique arbitrator and the president of the arbitral court must be necessarily lawyers, with accredited specialization in administrative law and contractings with the State, and the other members can be experts or professionals in other fields. The appointment of the arbitrators and other experts of the making up of the arbitrator court shall be regulated by the Regulation.

The arbitrators must comply with the obligation to inform timely if there is any circumstance that prevents them to exercise their post with independence, impartiality and autonomy, being subject to what is established in the Code of Ethics that the Supervising Agency of the Government Procurement OSCE approves.

The arbitrator who breach this obligation shall be sanctioned according to the Regulation and Code of Ethics. The obligation to inform is maintained through the whole arbitration process. The parts can waive the reasons for objection from the part of the arbitrators that do not constitute absolute impediment.

When there is an arbitration in process and a new controversy arises derived from the same contract and being an ad-hoc arbitration, either of the parts may ask the arbitrator for accumulation of the pretensions of such arbitration, but doing it within the period of expiration established in the first paragraph of the present article. Nevertheless, in the arbitration agreement, it can be established that the accumulation of pretensions can be carried out when both parts agree to it and the established formalities in the arbitration are complied; the accumulation shall not be effective if it is not agreed upon.

The arbitration decision is unappealable, definite and obligatory for the parts from the moment it is notified, and must be remitted by the unique arbitrator or arbitration court to the Supervising Agency of the Government Procurement - OSCE, within the period established by the Regulation. The State Contracting Boardd shall impose economic penalties in case of breach in sending the court decision accordingly and as the Regulation states.

The arbitration referred to in the herein regulation is developed complying with the Principle mof Transparency, the Supervising Agency of the Government Procurement -OSCE must order

the publication of the decisions and minutes, as well as their use in the specialized studies in cases of administrative arbitration.

Likewise, the conciliation and arbitration procedures shall be subject additionally to what the laws establish, provided they do not contradict what the herein regulation and its provision states.

Concordances: RLCE: Articles 214° to 234°

Article 53.- Impugnative Resources

The discrepancies arising between the Entity and the participants or bidders in a selection process, shall only give rise to the lodging of appeal. Through the lodge of appeal the acts announced since the call until before the signing of the contract can be impugned. It shall not be possible to impugnate neither the Bases and its integration, nor the resolutions or agreements that the exonerations approve.

The lodge of appeal can only be brought after the awarding of the bid. The Regulation shall establish the procedure, requisite and terms for its presentation and resolution.

The lodge of appeal shall be known and solved by the Holder of the Entity provided the referential value of the process does not overcome six hundred (600) Tax Tributary Units (UIT). In case the process referential value is higher than the above mentioned value, the lodge of appeal shall be known and solved by the State Contracting Court in the form and opportunity established in the Regulation of the present norm, except what the the Thirteenth Complementary Final Disposition establishes. The resolution that settles the lodge of appeal exhausts the administrative route.

The Holder of the Entity can delegate the legal authority to solve the lodge of appeal. The official or public servants to whom the above mentioned faculty is granted shall be the person responsible for the act that settles the appeal.

When the appeal has been lodged before the State Contracting Board, the Entity is obliged to remit the corresponding dossier within the maximum term of three (3) days under the responsibility of the Holder of the Entity. The breach of such obligation on the part of the Entity shall be reported to the General Finance Office of the Republic.

The guarantee to bring the lodge of appeal shall have to be granted in favor of the State Contracting Supervising Organism - OSCE and of the Entity when it corresponds.

This guarantee shall be equivalent to three per cent (3%) of the selection process referential value or of the item decided to be impugned. In either case, the guarantee cannot be lower than fifty per cent (50%) of one (1) Tax Tributary Unit (UIT)

The lodging of the contentious-administrative action proceeds against what was decided in the last administrative instance without suspending its execution.

By means of agreements adopted in Full Court which constitute precedents of obligatory observance, the State Contracting Court

interprets expressly and with a general character the norms established in the present norm and its Regulation.

Concordances: RLCE: Articles 104 to 126°

Article 54.- Suspension of the selection process

The lodging of the appeals in conformity with what the preceding article establishes shall suspend the selection process until the appeal is resolved upon by the competent instance, in conformity with what is established in the Regulation, being void the subsequent actions made up to the moment of the issuing of the respective resolution.

Concordances: RLCE Articles 108°

Article 55.- Closed Denial (FICTA)

In case the Entity or when the State Contracting Court, as it corresponds, do not resolve and modify their resolutions within the term set by the Regulation, the interested parties shall consider their lodge of appeal denied, and they may lodge the actions contentious-administrative against denial (ficta) at the moment of lodging their appeal.

Concordances: RLCE: Articles 115° and 121°

Article 56.- Nullity of the proceeding derived from the selection process

The State Contracting Court, in the cases known, shall declare void the acts issued, when they have been dictated by an incompetent organ, contravene the legal norms, have a legal impossible, or disregard the essential norms of the procedure or the form prescribed by the applicable rule or regulation, having to state in the Resolution it issues, the stage to which the process of selection applies.

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

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

- a) For having registered in violation of the Article 10° of the herein regulation;
- b) When it is verified the infringement of the principle of presumption of veracity during the selection process or for the signing of the contract
- c) When the contract has been signed in spite of the fact that a lodge of appeal is in process; or
- d) When the corresponding process of selection has not been used.

It shall be considered reasons for the nullity of the process and contract, when contracting goods, services or works without

the previous corresponding process of selection, In such case the officials and public servants of the contracting Entity together with the contractors who signed such irregular contract, shall be responsible.

When it corresponds to the unique arbitrator or Arbitral Court, the reasons that appear in the herein Legislative Decree and its Regulation shall be considered first and then the reasons for nullity stated in the applicable public law.

Concordance: RLCE: Article 144°

TITLE VI

THE SUPERVISING AGENCY OF THE GOVERNMENT PROCUREMENT

Article 57.- Definition

The Supervising Agency of the Government Procurement - 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 with detriment of contributing defense of the Public Attorney General Office of the Ministry of Economy and Finance. Its personnel is subject to the labor system of the private activity.

Article 58.- Functions

The State Supervisor Organism for Contractings - OSCE has the following functions:

- a) To protect and promote the compliance and diffusion of this Norm, its Regulation and Complementary norms, and to propose the modifications considered necessary;
- b) To issue guidelines in 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 administrative last resource;
- d) Supervise and oversee, selectively and/or at random, the processes of contracting carried out under the present norm and its Regulation;
- e) Administer and manage the National Registry of Suppliers (RNP), as well as any other instrument necessary for the implementation and operation of the different processes of Contractings by the State;
Develop, administer and manage the Government Procurement Electronic System (SEACE);
- f) Organize and administer arbitrations, in accordance with the Regulations approved for such effect;

- g) Appoint administrators and decide on challenges or objections on the same, in arbitrations not being subject to an arbitration institution, in the form established by the Regulation;
- h) Answer questions and consultations on matters of its competence. All consultations and questions shall be free of charge;
- i) Impose penalties to suppliers registered in the National Record of Suppliers (RNP) who contravene the dispositions of this norm, its regulations and complementary norms;
- j) Inform the General Finance Office of the Republic about the Cases in which it has been detected transgressions to the rules of public contractings if reasonable signs of economic detriment against the State or offense;
- k) Suspend the selection processes in which as a consequence of The exercise of its functions, transgressions to the rules of Public ontractings are found, when reasonable signs of economnic detriment or ofense against the State exist, information that must be reportede to nthe General Finance Office of the Republic without detriment to the attributions of the Holder of the Entity who executes the process, of declaring the legal nullity of the same;
- l) Promote Reverse Tender, determining the technical features Of the goods or serfvices that shall be supplied through this modality and establish yearly institutional goals regarding the number of technical specifications of the goods or services to be supplied;
- m) Reduce concentration of functions of its organs of regional or local scope in accordance with what the Regulation of Organization and Functions establishes;
- ñ) Propose or suggest strategies and carry out studies aimed to the efficient use of public resources and reduccion of costs, and,
- o) The others that the Regulation establishes.

Concordances: RLCE: Article 4°, 2nd Final Complementary Disposition

Article 59.- Organization and Resources

The organization of the Supervising Agency of the Government Procurement- OSCE, the characteristics of the files referred to in the present Legislative Decree and other complementary norms for its functioning shall be established in its Organization and Functions Regulator.

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

- a) Those generated by the tax collections stated in the Unique Text of Administrative Procedures of the State Contracting Supervising Organism - OSCE;
- b) The ones generated by the selling of goods and provisions of services;

- c) The ones generated by the execution of warrants;
- d) The ones generated by the training and diffusion of the regulations in matters of its competence;
- e) The ones coming from the national or international technical Cooperation;
- f) The ones coming from donations made in its favor;
- g) The ones coming from penalties; and
- h) Others assigned by the rules.

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

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

The Directive Board is the highest organ of the Supervising Agency of the Government Procurement- OSCE. It is made up of three (3) members who shall be appointed for a period of three (3) years, through Supreme Resolution signed by the Ministry of Economy and Finance. The members of the Directive Board receive fees except the Executive President.

The functions of this Directive Board are:

- a) To approve the Regulations referred to in item b) of the Article 58° of the herein Legislative Decree;
- b) Suggest institutional management strategies;
- c) Suggest the strategies in order to promote the efficient use of the public resources and reduction of costs in matters of State contractings;
- d) To approve the management guidelines of organs not concentrated; and,
- e) Others assigned in the Regulation of Organization and Functions.

The Executive President of the Directive Board shall be one of its members, who shall be appointed through Supreme Resolution countersigned by the Ministry of Economy and Finance. The office of Executive President is remunerated.

The functions of the Executive President are:

- a) Call and chair the Directive Board meetings;
- b) Act as Holder of the Position, the highest administrative authority and legal representative of the Supervising Agency of the Government Procurement -OSCE;
- c) Supervise the administrative and institutional course;
- d) Appoint to high officials in accordance with applicable norms; and,
- e) Others assigned to him in the Regulation of Organization and Functions.

Article 61.- Requirements and Impediments

In order to be appointed as member of the Directive Board or Executive President of the Supervising Agency of the Government Procurement it is necessary:

- a) To have a recognized trustworthiness and professional suitability. This requirement is accredited proving a three (3) year experience in office of executive management; or not less than five (5) years of experience in subjects related matters regulated in this norm;
- b) To have a professional university degree;
- c) Not to be disqualified or barred to hold a public office by judicial sentence or resolution by the Congress of the Republic

Article 62.- Reasons for dismissal and vacancy

The members of the Directive Board and the Executive President of the Supervising Agency of the Government Procurement- OSCE can be dismissed from office by Supreme Resolution countersigned by the Ministry of Economy and Finance.

The office vacancy can also be due to resignation.

TITLE VII THE COURT OF STATE CONTRACTINGS

Article 63.- Court of State Contractings

The Court of Contractings of the State is a resolving organism that forms part of the administrative structure of the Supervising Organism for the State Contractings -OSCE,

It enjoys complete autonomy and independence in carrying out its functions.

It has the following functions:

- a) To resolve the cases of controversies, arising between the Entities, participants and bidders during the selection process
- b) To impose the sanctions of temporary and definite disqualification to suppliers, participants, bidders, contractors, entities and independent experts, accordingly in any case; and.
- c) The other functions that the norms grants.

Its making up and the number of Courtrooms shall be established by Supreme Decree countersigned by the Ministry of Economy and Finance.

Article 64.- Requirements and Impediments to be appointed Member of the Court of Contractings of the State.

The members of the State Contracting Court are elected by public tender. In order to be appointed it is necessary:

- a) To have a university professional degree;
- b) To have an experience of not less than five (5) years in matters related with the herein regulation;
- c) To prove having studies of specialization in matters related with this norm;
- d) To have a recognized moral reliability;
- e) Not to be disqualified to have a public office due to judicial sentence or due to resolution from the Congress of the Republic;
- f) Not having been declared insolvent or having had direct office in legal entities declared in bankruptcy for one (1) year previous to the declaration;
- g) Not to have been declared disqualified to come into contracting with the State;
- h) Not to have participation in legal entities contracting with the State; and,
- i) Not to be immersed in reasons of impediment for public office.

The President of the State Contracting Court shall be appointed in accordance with what the Regulation of the present norm states.

Article 65.- Reasons for dismissal and vacancy

The members of the State Contracting Court may be dismissed through Supreme Resolution countersigned by the Ministry of Economy and Finance due to serious offense, permanent physically disabled or morally handicapped.

The vacancy is also produced by resignation.

Article 66.- Announcement of resolutions

The State Contracting Court shall announce through the State Contracting Electronic System (SEACE) the resolutions issued as administrative resort.

Concordances: RLCE; Article 287°

TITLE VIII

Government Procurement Electronic System (SEACE)

Article 67.- Definition

The **Government Procurement Electronic System (SEACE)**, is the electronic systems that enables the exchange of information and diffusion of contractings carried out by the State, as well as the realization made electronically.

Concordances: RLCE: Articles 285° to 290°

Article 68.- Obligatority

The Entities shall have the obligation to use the **Government Procurement Electronic System (SEACE)**, without detriment of the

use of other special regimes of state contractings, established in the Regulation.

The Regulation shall state the criteria of gradual incorporation of the Entities to the State Contracting Electronic System (SEACE), considering the infrastructure and technological conditions or the available means for these purposes.

Concordances: RLCE: Article 287°

Article 69.- Administration

The Supervising Agency of the Government Procurement OSCE shall develop, manage and operate the Government Procurement Electronic System (SEACE).

The Regulation shall establish its organization, functions and procedures, strictly subject to the guidelines policies on electronic contractings of the State ordered by the Presidency of the Cabinet.

Article 70.- Validity and efficiency of procedures

The acts carried out through the Government Procurement Electronic System (SEACE) complying the current dispositions have the same validity and efficiency as the acts made manually and can be replaced for all legal actions.

The intervention of the notaries public is carried out in chances and ways estgablished by the Regulation.

FINAL COMPLEMENTARY DISPOSITIONS

FIRST.- A special section given specially over to public contractings shall be inserted in the Official Newspaper El Peruano.

SECOND.- Through Supreme Decree countersigned by the Ministry of Economy and Finance, the Regulation of the herein regulation shall be approved within forty five (45) working days subsequent to its publication, which shall have a Glossary of Terms.

THIRD.- Through Supreme Decree countersigned by the Ministry of Economy and Finance, the Regulation of Organization and Functions and the Unique Text of Administrative Procedures of the State Contracting Supervising Organism- OSCE, shall be approved.

FOURTH.- The personnel of the Supervising Agency of the Government Procurement - OSCE shall be subject to the labor regimen of the private activity.

FIFTH.- Besides the methods of traditional notifications, the Entities may be able to use electronic means of communication for the fulfillment of the different actions stated in the present norm and its regulation.

In all cases, the necessary technologies guaranting the identification of the participants and the trustworthiness of the proposals.

The Regulation of the present norm establishes the necessary conditions to use the electronic means of communication.

Conformity: RLCE: Article 25°.

SIXTH.- In the contractings that are under the system of agreements or other international agreements, that entail the applications of principles of National Treatment and No Discriminaqtion, the Contracting Entities shall have to give unconditionally the goods, services and suppliers of the other part, a similar treatment and no less favorable than the one granted by the peruvian norm to the goods, services and domestic suppliers, in conformity with the rules, requirements and procedures established in the present norm, its Regulation and the norm on the matter.

SEVENTH.- The General Finance Office of the Republic shall have access to the information registered in the Government Procurement Electronic System (SEACE).

EIGHTH.- The imputs used directly in the productive processes that are used in producing goods or services provisions, may be contracted with domestic or international suppliers, when a situation of shortage of supplies accredited by the Holder of the Entity. It is not necessary to verify a situation of shortage of supplies in the case of companies that because of the nature of the activity they need a periodic or continuous supply, including the delivery in one single operation of the imputs, goods or services.

The list of imputs directly related to the productive processes that corresponds to every company is established through Ministerial Resolution of the Ministry of Economy and Finance.

The contractings must be approved through resolution signed by the Holder of the Entity and reported monthly to the National Fund of Financy and the State Enterprise Activity - FONAFE and to the General Finance Office of the Republic, under the responsibility of the Board.

In the process a Special Committee is designated in accordance with the rules for contractings of the State. The awarding of the bidis realized through public act.

The institutional control organs participate as watchers in the process of granting of minor value, in accordance with the rules of the National System of Control.

All the actions carried out in the processes referred to in the present disposition are obligatorily reported to the Government Procurement Electronic System (SEACE) in the opportunity and way stated by the present norm, the Regulation and the rules issued by the Supervising Agency of the Government Procurement - OSCE.

The contracts signed in accordance with the present disposition do not need the guarantee of faithful compliance, provided the provision is carried out in advance.

NINTH.- In the future, any reference to the Superior Court of Contractings and Adquisitions of the State - CONSUCODE and to the Court of Contractings and Adquisitions of the State shall be understood as made to the State Supervising Organism for Contractings - OSCE and to the Court for State Contracings, respectfully. Also, any reference made to CONSUCODE or competences, functions and attributes that the latter was carrying out, as well as to the budgetary, financing, countable, investment, treasury and other administrative systems shall be considered done to the State Supervising Organism of Contractings - OSCE.

The ruling entities of the administrative Systems are authorized to issue, if necessary, the dispositions necessary for the best appliance of what is established in the preceding paragraph.

TENTH.- In order to carry out what is established in Article 60° of the present norm, the Supreme Resolution N°007-2008 - EF shall produce effects regarding the designation of a member of the Directive Board and of the Executive President of the Supervising Agency of the Government Procurement - OSCE, under the terms of the present norm.

ELEVENTH.- The present norm shall be in force thirty (30) calendar days after the publication of its Regulation and Regulation of Organization and Functions of the Supervising Agency of the Government Procurement - OSCE except the Second and Third Final Complementary Dispositions, that shall be in force starting the following day of publication in the Official Gazette El Peruano.

THIRTEENTH.- In order to decide the organ that shall settle the impugnative appeals lodged in the processes of selection, in which suppliers coming from countries where the Republic of Peru had an agreement or international commitment or accord in force that include dispositions about public contractings, the criteria, in any case, established shall be applied.

COMPLEMENTARY TEMPORARY DISPOSITIONS

FIRST.- Through an agreement of its Board, the Agency for Promotion of Private Investment (PROINVERSION) may except the total or part of the application of the **herein regulation to the** contractings linked to the processes referred to in the Legislative Decree N°059-96-PCM, the Legislative Decree B°1012 and its modifying norms.

SECOND.- The contractings processes that started before the enforcement of the present Legislative Decree abide by their own norms.

**Concordances: Second Provisional Complementary Disposition of Decree of Urgency N°020-2009
Communiqué N°003-009-OSCE/PRE**

THIRD.- The Supervising Agency of the Government Procurement- OSCE shall have to approve by July 31st of 2009, a minimum of 1,500 technical specifications to be used under the mode of Reverse Auction.

MODIFYING COMPLEMENTARY DISPOSITION

UNIQUE.- The Fifth Final Disposition of Law N°28411, General Law of the Public Budget shall have to be modified under the following terms:

"FIFTH.- The execution of additional works shall only take place when counting on the budgetary availability, the approval of the Holder of the Entity through the corresponding resolution, or in the case of companies, including those under the scope of FONAFE, by agreement of the Board of Directors of the company, and in the cases that the value, deducting the deductive budget linked to such additional, is not higher than fifteen per cent (15%) of the total amount of the original contract.

For cases of additional works exceeding the fifteen per cent (15%) of the original contract, after being approved by the Holder of the Entity or the Board of the company, as it corresponds, it is previously necessary for its execution and payment, to have the budgetary availability and the express authorization of the General Finance Office of the Republic, regardless of the date of the signing of the work contract. For this purpose, the General Finance Office of the Republic must take into consideration the terms and procedures established in the law for contractings of the State and its regulation.

Regarding the execution of additional works in the framework of a project of public investment, whose feasibility has been considered affected, the competent organism shall have to proceed to verify it."

COMPLEMENTARY MODIFYING REGULATION

UNIQUE.- From the date of enforcement of the present norm, the following rules are abolished:

a) Law N°26850, Law of Contractings and Adquisitions of the State and modifying norms.

b) The other norms opposing what the present norm states.

THEREFORE:

I order to publish it and complied with it informing the Congress of the Republic.

Given at the Government Palace, in Lima, on the third day of the month of June of the year two thousand and eight.