

REGULATION OF THE NATIONAL PUBLIC PROCUREMENT AGENCY OF  
THE REPUBLIC OF INDONESIA  
NUMBER 29 OF 2018  
ON

PROCEDURES FOR IMPLEMENTING BUSINESS ENTITY PROCUREMENT IN  
INFRASTRUCTURE PROVISION THROUGH PUBLIC PRIVATE PARTNERSHIP  
INITIATED BY MINISTERS/HEADS OF AGENCIES/ HEADS OF REGION

BY THE BLESSINGS OF ALMIGHTY GOD

HEAD OF THE NATIONAL PUBLIC PROCUREMENT AGENCY,

- Considering :
- a. that a public private partnership in infrastructure provision plays a strategic and important role in supporting national economic development to achieve a fair and prosperous society;
  - b. that in the effort to ensure business entity participation in a public private partnership can run smoothly, the implementing business entity procurement must be carried out in accordance with the procurement principles;
  - c. that the procedures for implementing business entity procurement as specified in Regulation of the Head of National Public Procurement Agency Number 19 of 2015 on Procedures for Implementing Business Entity Procurement of Public Private Partnership in Providing Infrastructure is no longer in line with the legal development and needs, hence it is necessary to be refined by a new National Public Procurement Agency Regulation;
  - d. that based on considerations as referred to in point a, point b, and point c, and in order to implement Article 40,

Presidential Regulation Number 38 of 2015 on Public Private Partnership for Infrastructure Provision, it is necessary to issue a Regulation of National Public Procurement Agency on Procedures for Implementing Business Entity Procurement in Infrastructure Provision through Public Private Partnerships initiated by Ministers/Heads of Agency/ Heads of Region;

- Observing : 1. Presidential Regulation Number 106 of 2007 on National Public Procurement Agency as amended by Presidential Regulation Number 157 of 2014 on Amendment to President Regulation Number 106 of 2007 on National Public Procurement Agency (State Gazette of 2014 Number 314);
2. Presidential Regulation Number 38 of 2015 on Public Private Partnership for Infrastructure Provision (State Gazette of 2015 Number 62);
3. Regulation of the Head of National Public Procurement Agency Number 4 of 2017 on Organization and Administration of National Public Procurement Agency (State Bulletin of 2017 Number 1372);

HAS DECIDED:

To issue : REGULATION OF THE NATIONAL PUBLIC PROCUREMENT AGENCY ON PROCEDURES FOR IMPLEMENTING BUSINESS ENTITY PROCUREMENT IN INFRASTRUCTURE PROVISION THROUGH PUBLIC PRIVATE PARTNERSHIP INITIATED BY MINISTERS/HEADS OF AGENCIES/HEADS OF REGION.

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

In this Agency Regulation:

1. Public Private Partnership hereinafter referred to as PPP, means a partnership between the Government and a Business Entity for the provision of public infrastructure

which refers to specifications previously determined in the Minister/Head of Agency/Head of Region/State-Owned Enterprises/Regional-Owned Enterprises, which partially or wholly utilizes Business Entity resources regarding risk allocation between the parties.

2. Implementing Business Entity Procurement hereinafter referred to as Procurement means a series of activities for selecting a partner of the Government Contracting Agency for the implementation of the PPP Project.
3. Business Entity means a State-Owned Enterprise, a Regional-Owned Enterprise or a private-owned enterprise in the form of a Limited Liability Company, a foreign legal entity, or a cooperative.
4. PPP Implementing Business Entity hereinafter referred to as IBE means a Limited Liability Company established to implement the PPP Project by the tender winner or a business entity/consortium which has been directly appointed.
5. Government Contracting Agency hereinafter referred to as GCA, means a Minister/Head of Agency/Head of Region or Board of Director of State-Owned Enterprise/Board of Director of Regional-Owned Enterprise that is responsible for infrastructure under legislation.
6. PPP Project means Infrastructure Provision conducted through the PPP Contract between the GCA and the Implementing Business Entity.
7. Infrastructure means technical, physical, system, hardware and software type of facility that is required to provide public services and structural support in order to encourage economic and social development of the community.
8. Infrastructure Provision means activities that include construction works to build or improve the capacity and/or quality of infrastructure and/or infrastructure management and/or infrastructure maintenance in order to improve the benefit derived from the infrastructure.

9. PPP Contract means a written agreement between the GCA and an Implementing Business Entity for Infrastructure Provision.
10. PPP Preparation hereinafter referred to as a Preparation means an activity conducted by the Minister/Head of Agency/ Head of Region/Board of Directors of the State-owned/Regional-owned Enterprises as the CGA among which result in a pre-feasibility study, plan for Government Support and/or Government Guarantee, determination of procedures for Return of an Investment, and land acquisition for the PPP.
11. PPP Transaction hereinafter referred to as a Transaction, means an activity consisting of a Procurement of an Implementing Business Entity, a signing of a PPP Contract, and financial close of provision of infrastructure by the Implementing Business Entity.
12. Prior Information Notice means non-binding information issued by the Procurement Committee relating to a PPP Project that will be procured.
13. Pre-qualification means an assessment process of a competency and capability business as well as the fulfillment of other specific requirements from the Participants in order to participate in the selection process.
14. Tender means a method of selecting Implementing Business Entity in the event that there is more than 1 (one) Participant passing Pre-qualification.
15. Direct Appointment means a method of selection conducted in the event that Pre-qualification results only 1 (one) Participant or there are special conditions for the PPP Project.
16. Procurement Documents means the documents prepared by a Procurement Committee consisting of a Request for Qualification (RfQ) and a Request for Proposal (RfP).
17. Qualification Document means a document submitted by a Participant to fulfill requirements as stated in the Request for Qualification/RfQ.

18. Proposal means a document submitted by a Participant in accordance with the terms of the Request for Proposal/RfP.
19. Optimized Proposal means a Proposal submitted by a Dialogue Participant after the Optimization Dialogue.
20. Minimum Requirements means the GCA's essential technical and financial requirements, and/or contractual terms which must be addressed in a Participant's Proposal and are required to be fulfilled by the Implementing Business Entity.
21. Additional Requirements mean the technical, financial requirements, and/or contractual terms which are expected by GCA to be addressed in a Participant's Proposal and to be fulfilled by the Implementing Business Entity.
22. Optimization Dialogue in Two- Stage Tender hereinafter referred to as Optimization Dialogue means dialogues between Procurement Committee and each Dialogue Participant to discuss optimization of the respective Dialogue Participant's proposals in order to facilitate the development of its most beneficial Proposal with the best value for money for the GCA.
23. PPP Team means a team established by the GCA to help a PPP in PPP Preparation stage and Transaction stage.
24. Procurement Committee means a team established by the GCA whose roles and responsibilities are to prepare and conduct an Implementing Business Entity Procurement process, assist the GCA during preparation of signing the PPP Contract and preparation of financial close.
25. Government Support means a financial contribution and/or other forms of contribution given by the Minister/Head of Agency/Head of Region and/or Minister carrying out government affairs in the field of finance and state assets according to each jurisdiction under legislation in improving financial feasibility and PPP effectiveness.
26. Government Guarantee means financial compensation provided by the minister carrying out government affairs in

the field of finance and state assets to an Implementing Business Entity through risk allocation scheme for the PPP Project.

27. Data Room means physical and/or electronic data room prepared by the GCA and managed by the Procurement Committee to provide ease of access and to ensure security of the documents related to the Implementing Business Entity Procurement.
28. Procurement Participant(s) or hereinafter referred to as Participant(s) means a Business Entity or a Consortium participating the Procurement process from the stage of Qualification Document Submission until the Determination of Winner or the Determination of Direct Appointment Result.
29. Dialogue Participant(s) means Participant(s) who are invited to the Optimization Dialogue.
30. Confidentiality Letter means a statement of commitment from Participants to keep the confidentiality of information related to the Tender.

#### Article 2

- (1) The scope of this National Public Procurement Agency Regulation is the Implementing Business Entity Procurement for PPP Projects initiated by a Minister/Head of Agency/Head of Region.
- (2) Further provisions on the Procedures for Implementing Business Entity Procurement in Infrastructure Provision through Public Private Partnership initiated by Ministers/Heads of Agencies/Heads of Region is regulated in the Annex which is an integral part of this National Public Procurement Agency Regulation.

#### Article 3

- (1) The Procurement is conducted according to the following principles:
  - a. efficiency;

- b. effectiveness;
  - c. transparency;
  - d. openness;
  - e. competition;
  - f. fairness/non-discrimination; and
  - g. accountability.
- (2) The Procurement conducted according to the principle of efficiency as referred to in section (1) point a, means that the Procurement minimizes the cost and effort to achieve the determined quality, targets and time or use the determined fund to get the best results and reach the maximum quality.
- (3) The Procurement conducted according to the principle of effectiveness as referred to in section (1) point b, means that the Procurement is in accordance with the determined needs and targets and achieves optimum benefits.
- (4) The Procurement conducted according to the principle of transparency as referred to in section (1) point c, means that all terms and information on the Procurement process are completely and clearly publicized and widely known by all interested Participants as well as the public in general.
- (5) The Procurement conducted according to the principle of openness as referred to in section (1) point d, means that all potential Participants which meet certain requirements may participate in the Procurement based on determined requirements and clear procedures.
- (6) The Procurement conducted according to the principle of competition as referred to in section (1) point e, means that the Procurement is conducted through a fair competition among as many qualified Participants as possible, so that the infrastructure/service which is competitively offered is obtained by the GCA and there is no intervention which disrupts the market mechanism in the Procurement.
- (7) The Procurement conducted according to the principle of fairness/non-discrimination as referred to in section (1) point f, means that all Participants receive equal treatment and no privilege is given to a specific party subject to maintaining the national interest.

- (8) The Procurement conducted according to the principle of accountability as referred to in section (1) point g, means that the Procurement must be accountable in accordance with the provisions of legislation.

CHAPTER II  
PROCUREMENT ORGANIZATION

Part One  
Government Contracting Agency

Article 4

- (1) The tasks and responsibilities of the GCA in the Procurement process are as follows:
- a. to prepare the budget for the implementation of the Procurement;
  - b. to establish the Procurement Committee;
  - c. to issue a statement stating that the PPP Project is feasible based on the documents produced during the PPP Preparation stage;
  - d. to provide the Data Room;
  - e. to approve the Procurement Documents and any revisions ;
  - f. to determine a sole Participant in the Direct Appointment process;
  - g. to approve for repetition of Optimization Dialogue;
  - h. to determine the winner of the Tender;
  - i. to respond to the objections to Tender result;
  - j. to declare that the Pre-Qualification process or the Selection process has failed;
  - k. to determine follow-up action to the failed Pre-qualification or selection process;
  - l. to issue the Letter of Award for the Tender;
  - m. to determine the result of Direct Appointment;
  - n. to approve any changes to consortium members and/or changes to consortium structure after the Tender winner has been determined (if any); and



- o. to sign the PPP Contract.
- (2) The cost of the Procurement implementation as referred to in section (1) point a includes:
  - a. cost for the announcements;
  - b. production of documents;
  - c. honorarium for the Procurement Committee; and
  - d. other required costs.

## Part Two

### Public Private Partnership Team

#### Article 5

The tasks and responsibilities of the PPP Team during the procurement process are:

- a. to coordinate with the Procurement Committee throughout the Procurement process ; and
- b. to assist the GCA in monitoring the Procurement implementation.

## Part Three

### Procurement Committee

#### Article 6

- (1) The tasks and responsibilities of the Procurement Committee are:
  - a. to confirm the readiness of the PPP Project to be continued to Procurement stage;
  - b. to conduct market interest confirmation, if necessary;
  - c. to issue the Prior Information Notice, if necessary;
  - d. to develop the Procurement Documents;
  - e. to determine the Procurement Documents after obtaining approval from the GCA;
  - f. to develop any revisions to the Procurement Documents;
  - g. to determine revisions to the Procurement Documents after obtaining approval from the GCA;

- h. to manage the data and information in the Data Room;
  - i. to announce the Procurement process;
  - j. to provide the explanation of the Procurement Document to Participants;
  - k. to evaluate the Participants' qualifications;
  - l. to determine and announce the Pre-qualification result;
  - m. to respond to objections to the Pre-qualification result;
  - n. to report to the GCA on the reasons which caused the Pre-qualification to be failed;
  - o. to evaluate each Participant's Proposal;
  - p. to respond to objections to the Proposal evaluation result in Two-Stage Bidding (if any);
  - q. to report the objections to Proposal evaluation result which declared valid to the GCA in Two-Stage Bidding (if any);
  - r. to approve changes in consortium members and/or changes to consortium structure prior to the Proposal submission;
  - s. to determine Dialogue Participants;
  - t. to conduct Optimization Dialogue;
  - u. to evaluate each Participant's Optimized Proposal;
  - v. to conduct negotiations during Direct Appointment process;
  - w. to propose the winner of the Tender;
  - x. to propose the determination of the Business Entity through Direct Appointment;
  - y. to report the Procurement process to the GCA periodically;
  - z. to submit the original documents of the Procurement process to the GCA after the completion of the Procurement process; and
  - aa. to support the GCA in the preparation of signing of the PPP Contract and preparation of financial close.
- (2) Decisions made by the Procurement Committee are taken based on a deliberative consensus.

- (3) In the event that a consensus cannot be reached, decisions are taken based on the majority of votes.
- (4) In the event that a decision is taken based on the majority of votes as referred to in section (3), each member will have 1 (one) voting right which cannot be delegated to other members.

In carrying out its tasks and responsibilities, the Procurement Committee may be assisted by professional experts and coordinate with the PPP Team.

#### Article 7

The Procurement Committee that fulfils the following requirements:

- a. amounts odd number with a minimum of 5 (five) persons and may be increased as needed;
- b. is originated from the GCA itself and may be from associated agencies/work units;
- c. consists of members which are competent in:
  1. Procurement procedures;
  2. PPP procedures;
  3. scope of the PPP Project;
  4. contract laws and the provisions of legislation in the related infrastructure sector;
  5. technical aspects related to the PPP Project; and
  6. business and financial aspects related to the PPP Project.
- d. signs the Integrity Pact.

### CHAPTER III CONFLICT OF INTEREST

#### Article 8

- (1) The parties involved in the Procurement have to avoid and prevent any conflict of interest between the parties directly or indirectly.

- (2) The conflict of interest as referred to in section (1) includes:
- a. any parties involved in the Preparation and/or Transaction Stage as consultant that acts as:
    1. a Participant or member of a consortium in the Procurement of Implementing Business Entity for the same PPP Project;
    2. a consultant for a Participant or member of a consortium in the Procurement of Implementing Business Entity for the same PPP Project;
    3. a member of the board of directors or commissioners of a Business Entity which becomes a Participant or member of a consortium in the Procurement in the same PPP Project;
    4. a shareholder who has direct or indirect control over a Participant; and/or
    5. a financier or a guarantee issuer for the same PPP Project.
  - b. a party acting as a consultant for more than 1 (one) Participant in the same PPP Project;
  - c. a member of the board of directors or commissioners of a Business Entity which becomes a Participant or a member of a consortium and at the same time, also holds a position as a member of the board of directors or commissioners of another Business Entity which also becomes a Participant or a member of a consortium in the same PPP Project;
  - d. a member of the Procurement Committee/PPP Team/GCA who has direct or indirect control over a Participant;
  - e. 2 (two) or more Participants or members of different consortium participating in the Procurement being directly or indirectly controlled by the same party(ies); and/or
  - f. activities or actions which may potentially cause unfair business competition as referred to in the legislation on the prohibition of monopoly practices and unfair business competition.

- (3) The parties which have conflict of interest are prohibited from being involved in the Procurement process.
- (4) The GCA is actively responsible to avoid and prevent conflicts of interest by replacing part or all members of PPP Team and/or Procurement Committee who are found to have a conflict of interest as referred to in section (2).
- (5) The GCA/PPP Team/Procurement Committee/Participants or other parties involved in the Procurement must each sign the Integrity Pact as a commitment to avoid conflicts of interest.

CHAPTER IV  
IMPLEMENTING BUSINESS ENTITY PROCUREMENT

Part One  
General

Article 9

- (1) The Procurement is conducted by the GCA.
- (2) Procurement is conducted by referring to the documents produced during the PPP Preparation Stage and market sounding.
- (3) Procurement is conducted after the GCA issues a statement stating that the PPP Project is technically, economically and financially feasible based on the documents produced during the PPP Preparation Stage.
- (4) In the event that the PPP Project as referred to in section (3) requires a Viability Support, the GCA must obtain the principle approval of Viability Support in accordance with the provisions of legislation.

Article 10

The Procurement consists of:

- a. the preparation; and
- b. the implementation.

Part Two  
Preparation of Procurement

Article 11

- (1) The Preparation of the Procurement is conducted by the Procurement Committee.
- (2) Preparation of Procurement as referred to in section (1), comprises the following activities:
  - a. confirmation of PPP Project readiness to commence Procurement stage;
  - b. market interest confirmation, if necessary;
  - c. issuance of Prior Information Notice, if necessary;
  - d. preparation of schedule and draft announcement of Procurement;
  - e. preparation and determination of Procurement Documents; and
  - f. management of Data Room.

Part Three  
Procurement Implementation

Article 12

- (1) The Procurement Implementation covers the following activities:
  - a. a Pre-qualification; and
  - b. a selection of Implementing Business Entity.
- (2) The selection of Implementing Business Entity as referred to in section (1) point b, is conducted through:
  - a. a Tender; or
  - b. a Direct Appointment.

Paragraph 1  
Pre-qualification

Article 13

- (1) The requirements for the Pre-qualification of Participants in the Procurement are at least:
- a. to comply with the provisions of legislation to carry out business activities;
  - b. to possess the experience and the capability to implement similar Infrastructure Provision projects;
  - c. to possess the experience and the capability to finance projects related to Infrastructure Provision;
  - d. to fulfill their tax liabilities;
  - e. not to be in the process of insolvency, not to have their business license suspended, and/or in the process of litigation which potentially disrupt the PPP Project implementation;
  - f. to have no conflict of interest as referred to in Article 8;
  - g. to be able in the form of a single Business Entity or a consortium;
  - h. in the event that the Participant is a consortium, the following terms must be fulfilled:
    1. at least one of the consortium members has the experience and the capability to implement similar Infrastructure Provision projects; and
    2. the consortium, as a whole, has the experience and the capability to finance projects related to Infrastructure Provision.
    3. the Consortium members have signed a consortium agreement which at least covers:
      - a) the obligations and the responsibilities of each Business Entity;
      - b) the appointment of the consortium leader;
      - c) the obligations and the responsibilities of the consortium leader;
      - d) the consortium leader has to possess more

- than 50% of the equity of the Implementing Business Entity if the consortium is determined or appointed as the winner of the selection;
- e) the consortium leader may consist of more than 1 (one) Business Entity; and
  - f) in the event of more than 1 (one) consortium leader, one of them is appointed as an authorized representative of the consortium.
- (2) In preparing the Pre-qualification requirements, the Procurement Committee is prohibited from adding qualification requirements which aim at discriminating and giving unfair advantages to certain parties.
- (3) Provisions as referred to in section (1) must be included in the Procurement Document.

#### Article 14

- (1) The Pre-qualification stage of the Procurement covers the following activities:
- a. the announcement of the Pre-qualification;
  - b. the registration and the collection of RfQ;
  - c. the explanation of the PPP Project, the scope of work of the PPP Project and the RfQ;
  - d. the submission of Qualification Document;
  - e. the evaluation of Qualification Document;
  - f. the determination and the announcement of the Pre-qualification results; and
  - g. the objection to the Pre-qualification results.
- (2) The evaluation of Qualification Document in the Pre-qualification stage as referred to in section (1) at least covers:
- a. the fulfillment of the administrative requirements;
  - b. the technical capability; and
  - c. the financial capability.



- (3) In the event that the evaluation of Qualification Document as referred to in section (2) results in more than 1 (one) qualified Participant, the Procurement stage proceeds with the Tender.
- (4) In the event that the evaluation of Qualification Document as referred to in section (2) results in only 1 (one) qualified Participant, the Procurement stage may proceed with the Direct Appointment.

#### Article 15

- (1) The Pre-qualification is failed in the event that:
  - a. there is no Participant who submits the Qualification Document;
  - b. the Pre-qualification does not result in any qualified Participant;
  - c. an objection of the Pre-qualification result is declared valid by the Procurement Committee;
  - d. a violation of fair business competition principles in the Pre-qualification process declared valid by the Procurement Committee; or
  - e. the RfQ is not in accordance with this Agency Regulation; or
  - f. there is a document(s) which demonstrates an allegation of Corruption, Collusion and Nepotism practice (KKN) which involved the Procurement Committee.
- (2) The Procurement Committee submit a report to the GCA in the event one of the conditions as referred to in section (1) point a to point e occurs.
- (3) Based on the report from the Procurement Committee as referred to in section (2), the GCA declares the Pre-qualification failed and assess the follow-up action.
- (4) Based on the assessment as referred to in section (3), the GCA instructs the Procurement Committee to:
  - a. repeat the evaluation of Qualification Document;

- b. repeat the Pre-qualification process; or
  - c. terminate the Procurement process.
- (5) If the repeat of the Pre-Qualification as referred to in section (4) point b fails, the Procurement is terminated and the GCA conducts a review on the PPP Preparation stage.
- (6) In the event that there is a document(s) which demonstrates an allegation of corruption, collusion and nepotism practice (KKN) involving the Procurement Committee as referred to in section (1) point f, the GCA declares the Pre-qualification failed and terminates the Procurement.

## Paragraph 2

### Selection

#### Article 16

The selection of IBE is conducted through:

- a. a Tender; or
- b. a Direct Appointment.

#### Article 17

A Tender as referred to in Article 16 point a, consists of:

- a. a one-stage tender; or
- b. a two-stage tender.

#### Article 18

- (1) The selection of IBE through a One-Stage Tender is conducted for PPP Projects that have the following characteristics:
- a. all requirements for Infrastructure Provision can be formulated clearly; and
  - b. there is no need to have Additional Requirements and Optimization Dialogue to obtain the most beneficial Proposal with the best Value for Money.
- (2) The evaluation methods for Proposals in the selection of Implementing Business Entity through one-stage Tender are as follows:

- a. pass/fail system and best financial proposal; or
  - b. merit point system.
- (3) The selection of Business Entity with One-Stage Tender as referred to in section (1) at least covers the following activities:
- a. sending invitations to the Participants passing the Pre-qualification step by attaching the Confidentiality Letter;
  - b. submission of the Confidentiality Letter by the Participants and delivery of RfP by the Procurement Committee;
  - c. explanation of RfP (and site visit, if required);
  - d. submission of Proposals (envelope I and envelope II);
  - e. opening of Proposals of envelope I (administrative and technical Proposal);
  - f. evaluation of Envelope I Proposals ;
  - g. announcement of the envelope I Proposal evaluation result;
  - h. opening of envelope II Proposals (financial Proposal);
  - i. evaluation of envelope II Proposals;
  - j. issuance of the Minutes of the Tender Result;
  - k. determination of the winner;
  - l. announcement of the Tender result;
  - m. objections to the Tender result (if any);
  - n. issuance of the Letter of Award;
  - o. preparation of signing the PPP Contract; and
  - p. preparation of financial close

#### Article 19

- (1) The selection of Business Entity through Two-Stage Tender is conducted for PPP Projects that have the following characteristics:
- a. Minimum Requirements for the Infrastructure Provision have been clearly defined and cannot be changed; and
  - b. there are Additional Requirements and the GCA needs

- to conduct Optimization Dialogue to obtain the most beneficial Proposal with the best Value for Money;
- (2) Additional Requirements as referred to in section (1) point b can only be changed based on the results of Optimization Dialogue.
  - (3) Responses to the Additional Requirements as referred to in point (1) b are conducted through submission of Proposals and can be changed through submission of Optimized Proposals.
  - (4) The evaluation method for Proposals and Optimized Proposals in Two-Stage Tender uses the pass/fail system for the Minimum Requirements and the merit point system for the Additional Requirements.
  - (5) The selection of Business Entity through Two-Stage Tender as referred to in section (1) at least covers the following activities:
    - a. sending of invitations to the Participants passing the Pre-qualification step by attaching the Confidentiality Letter;
    - b. submission of Confidentiality Letters by Participants and delivery of RfP by the Procurement Committee;
    - c. explanation of RfP (and site visit, if required);
    - d. submission of Proposals;
    - e. opening of Proposals;
    - f. evaluation of Proposals;
    - g. notification of the evaluation result to each Participant;
    - h. objection to the Proposal evaluation result;
    - i. invitation to the Dialogue Participants;
    - j. Optimization Dialogue based on the result of Proposal evaluation;
    - k. submission of Optimized Proposals;
    - l. opening of Optimized Proposals;
    - m. evaluation of Optimized Proposals;
    - n. issuance of the Minutes of the Tender Result;
    - o. determination of the winner;

- p. announcement of the Tender result;
  - q. objection to the Tender result;
  - r. issuance of the Letter of Award;
  - s. preparation of signing the PPP Contract; and
  - t. preparation of financial close.
- (6) If deemed necessary, the invitation to the Dialogue Participants to evaluation of Optimized Proposals activities as referred to in section (5) may be re-performed by the Procurement Committee subject to GCA's approval in the case of the result of Optimized Proposal evaluation fulfil the conditions as below:
- a. one of the following conditions applies:
    - 1. the financial offer in the best rank of Optimized Proposal is not better than the Participant's previous Proposal; or
    - 2. The Optimized Proposal submitted by the best-ranked Participant is not aligned with the Minutes of Optimization Dialogue.
  - b. the Optimized Proposal of the best-ranked Participant is not deemed the most beneficial Proposal with the best value for money due to material factors which may adversely impact the Procurement result compared to its objective as stated in the RfP.

#### Article 20

- (1) The Procurement through Direct Appointment as referred to in Article 16 point b may be conducted, if:
- a. there are certain conditions for the PPP; or
  - b. Pre-qualification only produces one qualified Participant.
- (2) The certain conditions as referred to in section (1) point a are:
- a. the expansion and/or further development of existing infrastructure which should ideally be carried out by the same IBE that built or currently operates it;
  - b. infrastructure provision which may only be conducted

with the use of a new technology and there is only one possible service provider which has access to the technology; or

- c. the Business Entity has acquired most or the whole plot of land required for the implementation of the PPP.
- (3) The Direct Appointment under certain conditions as referred to in section (2) may be conducted as long as it does not contradict legislation of the relevant sector.
  - (4) The Direct Appointment under certain conditions as referred to in section (2) point a can be conducted only if:
    - a. the performance of the Implementing Business Entity in constructing and/or operating the PPP Project is considered excellent based on the result of an independent audit; and
    - b. based on the GCA study, the PPP project will be more effective and efficient if it is conducted by the same Implementing Business Entity.
  - (5) The Direct Appointment under special conditions as referred to in section (2) point c can be conducted only if:
    - a. the land required to implement the PPP is a specific area and the PPP cannot be implemented in another location; and
    - b. the PPP is technically, economically and financially feasible without Viability Support.
  - (6) In the event of a Direct Appointment under special conditions as referred to in section (2) point c for which not all of the land needed has been acquired, the acquisition of the rest of the land is the responsibility of the Implementing Business Entity.
  - (7) The selection of IBE through Direct Appointment as referred to in section (1) point a covers the following activities:
    - a. sending invitation to the IBE candidate that fulfills the terms in section (1) point a by attaching the RfQ, the RfP and the Confidentiality Letter;
    - b. submission of the Qualification Document;
    - c. evaluation of the Qualification Document;

- d. notification of the qualification result;
  - e. explanation of the PPP Project;
  - f. submission of the Proposal;
  - g. evaluation of the Proposal, clarification and negotiation;
  - h. notification of the Direct Appointment result to the GCA in order to obtain approval from the GCA attaching the Minutes of Direct Appointment Result;
  - i. determination and announcement of the Direct Appointment result;
  - j. preparation of signing the PPP Contract; and
  - k. preparation of financial close
- (8) The selection of IBE by Direct Appointment as referred to in section (1) point b, at least covers the following activities:
- a. the GCA determine the qualified Participant as referred to in section (1) point b as a Sole Participant;
  - b. sending invitations to the Sole Participant as referred to in point a by attaching the RfP;
  - c. explanation of the PPP Project;
  - d. submission of the Proposal;
  - e. evaluation of the Proposal, clarification and negotiation;
  - f. notification of the Direct Appointment result to the GCA in order to obtain approval from the GCA attaching the Minutes of Direct Appointment Result;
  - g. determination and the announcement of the Direct Appointment result;
  - h. preparation of signing the PPP Contract; and
  - i. preparation of financial close.
- (9) The Direct Appointment is declared failed in the event that:
- a. the Participant does not pass the qualification;
  - b. the Participant does not submit a Proposal;
  - c. the Proposal evaluation results shows that the Participant does not meet the requirement;
  - d. the negotiation does not result in an agreement; or
  - e. the Participant withdraws.
- (10) In the event that the Direct Appointment fails, the GCA reviews the cause of failure and follows it up by:
- a. terminating the Direct Appointment process; or

- b. re-starting the Procurement process.

Article 21

- (1) The Tender is declared failed in the event that:
  - a. there is no Participant who submits a Proposal;
  - b. there is a mistake in formulating the evaluation criteria, weighting, and the procedure of evaluation in the RfP;
  - c. there is an error in the evaluation process;
  - d. the Tender does not result in a Winner;
  - e. all Participants are involved in an unfair competition;
  - f. an objection to the Proposal evaluation result in Two-Stage Tender is declared valid by the Procurement Committee;
  - g. an objection to the Tender results is declared valid by the GCA;
  - h. there is a document(s) which demonstrates an allegation of corruption, collusion and nepotism (KKN) involving the Procurement Committee;
  - i. there is a violation of fair business competition during the Tender; or
  - j. the RfP does not comply with this Agency Regulations.
- (2) In the event that the Tender is declared failed as referred to in section (1), the GCA declares the Tender failed and reviews the follow-up plan on the failed Tender.
- (3) Based on the review as referred to in section (2), the GCA follows up by instructing the Procurement Committee to:
  - a. re-start the Tender process;
  - b. re-start the Tender process by adding Participants through additional Pre-Qualifications;
  - c. conduct re-evaluation on Proposals;
  - d. conduct re-evaluation on Optimized Proposals; or
  - e. terminate the Procurement process.



Paragraph 3  
Procurement Bond

Article 22

- (1) Procurement Bonds comprise of:
  - a. the bid bond; and
  - b. the performance bond.
- (2) Procurement Bonds as referred to in section (1) is issued by a national general bank, a foreign bank with a branch in Indonesia.
- (3) Procurement Bonds is unconditional, must be liquidated in Indonesia as much as the values of the Bond.

Article 23

- (1) The bid bond as referred to in Article 22 section (1) point a is submitted by the Participant at the time of the Proposal submission.
- (2) The amount of the bid bond as referred to in section (1) is determined in the Procurement Document and stated in a nominal value.
- (3) The amount of the bid bond is determined by considering the characteristics, complexity and the risks of the PPP Project.
- (4) The validity of bid bond is from the submission of the Proposal until the signing date of the PPP Contract as specified in the RfP.
- (5) The bid bond must be able to be liquidated not later than 14 (fourteen) work days after the statement of non-performance from the Procurement Committee is received by the issuer of the bond.

Article 24

- (1) The IBE submits the performance bond as referred to in Article 22 section (1) point b as one of the conditions precedent for the PPP Contract to be effective.
- (2) The maximum amount of the performance bond is 5% of the

Participant's proposed capital expenditure or investment value of the PPP Project.

- (3) The amount of the performance bond as referred to in section (2) may be reduced gradually according to the progress of the PPP Project as determined in the PPP Contract.
- (4) The performance bond must be capable of being liquidated not later than 14 (fourteen) work days after the statement of default from the GCA is received by the issuer of the bond.

## CHAPTER V ELECTRONIC PROCUREMENT

### Article 25

- (1) The Procurement may be conducted electronically.
- (2) The National Public Procurement Agency develops the Procurement system and determines the architecture of the information system that supports the implementation of electronic procurement.

## CHAPTER VI MISCELLANEOUS PROVISIONS

### Article 26

- (1) A PPP Project can be initiated by a Business Entity.
- (2) Procedures for Procurement in Infrastructure Provision through PPP initiated by a Business Entity (unsolicited) as referred to in point (1) is regulated under an Agency Regulation which preforms government affairs in the policy of public procurement of goods/services.

## CHAPTER VII TRANSITIONAL PROVISIONS

### Article 27

- (1) An ongoing Procurement in Infrastructure Provision through

PPP initiated by Ministers/Heads of Agencies/Heads of Region which has already entered the selection process before this Agency Regulation comes into force, the process will be continued in accordance with the Regulation of the Head of National Public Procurement Agency Number 19 of 2015 on Procedures of Procurement of Public Private Partnership in Providing Infrastructure.

- (2) An ongoing Procurement in Infrastructure Provision through PPP initiated by Ministers/Heads of Agencies/Heads of Region in which the Pre-qualification process has not been finished before this Agency Regulation comes into force, the process will be continued until the Pre-qualification step finished in accordance with Regulation of the Head of National Public Procurement Agency Number 19 of 2015 on Procedures of Procurement of Public Private Partnership in Providing Infrastructure, thereafter the selection process must be in accordance with the procedures determined in this Agency Regulation.

## CHAPTER VIII CLOSING PROVISIONS

### Article 28

At the time this National Public Procurement Agency Regulation comes into force, Article 1 to Article 35 of Regulation of the Head of National Public Procurement Agency Number 19 of 2015 on Procedures of Procurement of Public Private Partnership in Providing Infrastructure (State Bulletin of the Republic of Indonesia of 2015 Number 1281) is declared not valid to be used for Procurement in Infrastructure Provision through Public Private Partnership initiated by Ministers/Heads of Agencies/Heads of Region.

### Article 29

This National Public Procurement Agency Regulation comes into force on the date of its promulgation.

In order that every person may know hereof, it is ordered to promulgate this National Public Procurement Agency Regulation by its placement in the State Bulletin of the Republic of Indonesia.

Issued in Bandung  
on 31 October 2018

HEAD OF THE NATIONAL PUBLIC  
PROCUREMENT AGENCY,

signed

AGUS PRABOWO

Promulgated in Jakarta  
on 6 November 2018

DIRECTOR GENERAL OF LEGISLATION  
OF MINISTRY OF LAW AND HUMAN RIGHTS  
OF THE REPUBLIC OF INDONESIA,

signed

WIDODO EKATJAHJANA

STATE BULLETIN OF THE REPUBLIC OF INDONESIA OF 2018 NUMBER 1513

Jakarta, 19 July 2019

Has been translated as an Official Translation  
on behalf of Minister of Law and Human Rights  
of the Republic of Indonesia

DIRECTOR GENERAL OF LEGISLATION,



WIDODO EKATJAHJANA