

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 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

ANNEX

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
REGIONS

CHAPTER I

INTRODUCTION

A. Background

In conducting the Implementing Business Entity (IBE) Procurement for a Public Private Partnership (PPP) in a manner which complies with good governance principles in order to accelerate provision of infrastructure, it is necessary to provide more detailed provisions concerning procedures for the implementation of the Procurement of IBE.

B. Purpose and Objective

1. The purpose of the issuance of this National Public Procurement Agency Regulation is to provide a reference for all stakeholders in conducting IBE Procurement in Infrastructure Provision through PPP.
2. The objective of the issuance of this National Public Procurement Agency Regulation is to ensure the good governance of the IBE Procurement for Infrastructure Provision through PPP and in accordance with the principles of efficiency, effectiveness, transparency, openness, competition, fairness/non-discrimination and accountability.

CHAPTER II

IMPLEMENTATION OF PROCUREMENT

A. Preparation of Procurement

Preparation of the Procurement as referred to in Article 11 of this National Public Procurement Agency Regulation consists of the following activities:

1. Confirmation of the readiness of the PPP Project for the start of the Procurement phase
 - a. The PPP Project readiness confirmation is conducted by creating a PPP Project readiness checklist of documents/data completeness.
 - b. The completeness of documents/data as referred to in point a complies with a regulation of the minister administering government affairs in national development planning.
 - c. In the event that PPP Project readiness data have not fulfilled the provisions referred to in point b, the Procurement Committee returns the documents/data to the GCA through the PPP Team for revision or completion.
 - d. The revisions and the data completion as referred to in point c must be completed before the Procurement begins.
2. Market interest confirmation If deemed necessary
 - a. If deemed necessary, the Procurement Committee may conduct market interest confirmation to ensure that there is interest from Business Entities in the PPP Project.
 - b. The market interest confirmation may be conducted in various forms, among others by reviewing the result of any market sounding which has been conducted by the GCA or through discussions in Business Entity forums.
3. Issuance of Prior Information Notice If deemed necessary
 - a. If deemed necessary, the Procurement Committee may issue a Prior Information Notice to give brief information on the plan of the Procurement to Business Entities. Prior Information Notice is not an official announcement of the Procurement commencement.
 - b. The Prior Information Notice may include the following:
 - 1) name of the GCA;
 - 2) name of the PPP Project;

- 3) form and scope of the PPP Project;
 - 4) location of the PPP Project; and
 - 5) Procurement schedule.
- c. The Prior Information Notice is issued by the Procurement Committee through printed and/or electronic media not later than 30 days before the official announcement of the Procurement.
4. The schedule arrangement of the Procurement
 - a. the schedule arrangement of the Procurement allocates sufficient time to conduct all the process of Procurement.
 - b. the Procurement Committee prepares the announcement and decides the announcement media which are able to reach prospective Participants widely.
5. Preparation and determination of Procurement Document
 - a. The Procurement Committee prepares the Procurement Document, which consists of the RfQ and the RfP.
 - b. The Procurement Document is developed based on the result of PPP Preparation and Market Sounding.
 - c. The Procurement Document is determined by the Procurement Committee after obtaining approval from the GCA.
 - d. The RfQ at least covers:
 - 1) the background and brief description of the PPP Project;
 - 2) the objectives of the PPP Project;
 - 3) the scope of the PPP project;
 - 4) the important information related to the PPP Project;
 - 5) the Participants' qualification requirements which at least cover the items described in Chapter II B. 4. f.; and
 - 6) the Pre-qualification process details which include the schedule, criteria and qualification evaluation procedures, including the matters that can result in eliminations, the forms and the formats for filling out the Qualification Document.
 - e. The RfP at least covers:
 - 1) For One-Stage Tender:
 - a) General information on the PPP Project;
 - b) Instructions to the Participants which covers:
 - (1) General instructions, including but not limited to:

- (a) consortium terms of agreement, including the terms for change in consortium members;
 - (b) due diligence;
 - (c) procurement schedule;
 - (d) Data Room provision; and
 - (e) PPP Contract signing.
- (2) The preparation of Proposals, which includes:
 - (a) language to be used;
 - (b) structure and the content of the Proposal. The content of the Proposal at least covers the items described in Chapter II C. 1. d. 5);
 - (c) financial form to be used for financial Proposal;
 - (d) Proposal validity;
 - (e) format of cover letter; and
 - (f) Participant's statement of interest.
- (3) Submission of the Proposal, which includes:
 - (a) deadline for Proposal submission; and
 - (b) actions to be taken in the case of late Proposal submission.
- (4) Matters are related to confidentiality;
- (5) Conflict of interest and prohibition of corruption, collusion and nepotism practice (KKN) and fraud;
- (6) Fair business competition requirement;
- (7) Communication method with the Procurement Committee;
- (8) Responsibilities of the Participants; and
- (9) Consortium structure.
- c) Terms of the opening and the evaluation of the Proposals, including the weighting of evaluation criteria.
- d) Required specification for the Infrastructure Provision covering the following, but not limited to:
 - (1) output-based specification accompanied by qualitative and quantitative means of performance measurement;

- (2) input-based specification, in the event that it is not practical or effective to use output-based specification;
 - (3) specifications covering the condition of assets when the assets revert to the GCA in accordance with the PPP Contract; and/or
 - (4) price and other financial requirements.
- e) Risk allocation matrix;
- f) Payment mechanisms for PPP services including provisions for incentives and penalties.
- g) Financial model including the sources of funding;
- h) Format and requirements for financial model review letter;
- i) Requirements to submit support letter(s) and term sheet(s) from potential financing institutions;
- j) Requirements associated with legal (legislation), social, and environmental aspects;
- k) Terms, requirements, and format of bid bond and performance bond;
- l) Other matters deemed necessary by the Procurement Committee to be included and required in the RfP; and
- m) Draft PPP Contract documents which consist of:
 - (1) the draft PPP Contract;
 - (2) draft agreement on utilization of State Assets and/or Regional Assets as necessary in accordance with the legislation;
 - (3) main provisions of the guarantee agreement (if a government guarantee is required); and
 - (4) draft consent letter between GCA, IBE and financiers which gives or confirms certain rights to the lenders to the PPP project.
- n) Other required documents.

- 2) For Two-Stage Tender:
 - a) General information on the PPP Project;
 - b) Instructions to the Participants which covers:
 - (1) general instructions, including but not limited to:
 - (a) consortium terms of agreement, including the terms for change in consortium members;
 - (b) due diligence;
 - (c) Procurement schedule;
 - (d) Data Room provision; and
 - (e) PPP Contract signing.
 - (2) preparation of Proposal, which includes:
 - (a) language to be used;
 - (b) structure and the content of the Proposal.
The content of the Proposal at least covers the items described in Chapter II C. 2. d. 5);
 - (c) financial pro-forma to be used for financial Proposal;
 - (d) Proposal validity;
 - (e) format of cover letter; and
 - (f) Participant's statement of interest.
 - (3) Submission of the Proposal, which includes:
 - (a) deadline for Proposal submission; and
 - (b) actions to be taken in the case of late Proposal submission.
 - (4) Matters that are related to confidentiality;
 - (5) Conflict of interest and prohibition of corruption, collusion and nepotism practice and fraud;
 - (6) Communication method with the Procurement Committee;
 - (7) Fair business competition requirement;
 - (8) Responsibilities of the Participants; and
 - (9) Consortium structure.
 - c) Terms of the opening and the evaluation of Proposals, including the weighting of evaluation criteria;
 - d) Maximum number of Dialogue Participant considering the need for a fair competition climate;

- e) Explanation on Optimization Dialogue including its objective, terms and conditions;
- f) Terms of the opening and evaluation of Optimized Proposals;
- g) Minimum Requirements and Additional Requirements for Infrastructure Provision covering the following, but not limited to:
 - (1) output-based specification accompanied by qualitative and quantitative means of performance measurement;
 - (2) input-based specification, in the event it is not practical or effective to use output-based specification;
 - (3) specifications covering the condition of assets when the assets revert to the GCA in accordance with the PPP Contract; and/or
 - (4) price and other financial requirements.
- h) Risk allocation matrix;
- i) Payment mechanisms for PPP services including provisions for incentives and penalties;
- j) Financial model including the sources of funding;
- k) Format and requirements for financial model review letter;
- l) Requirement to submit letter(s) of support and term sheet(s) from potential financing institutions;
- m) Requirements associated with legal (statutory and regulatory), social, and environmental aspects;
- n) Format and requirements of bid bond and performance bond;
- o) Other matters deemed necessary by the Procurement Committee to be included and required in the RfP; and
- p) Draft PPP Contract documents which consist of:
 - (1) the draft PPP Contract;
 - (2) draft agreement on utilization of State Assets and/or Regional Assets as necessary in accordance with the Legislation;
 - (3) main provisions of the guarantee agreement (if a

government guarantee is required);

- (4) draft consent letter between GCA, IBE and financiers which gives or confirms certain rights to the lenders to the PPP project; and

q) Other required documents.

6. Data Room Management

- a. The Participants passing Pre-qualification and having submitted the Confidentiality Letter are granted access to the Data Room.
- b. The Data Room contains:
 - 1) documents associated with the PPP Project;
 - 2) the Procurement Document and their revisions (if any); and
 - 3) copies of the documents related to the Procurement which have been distributed to the Participants.

B. Pre-qualification

The Pre-qualification as referred to in Article 13 of this National Public Procurement Agency Regulation consists of the following activities:

- 1. The Pre-qualification announcement;
 - a. the Procurement Committee announces the Pre-qualification as the following terms:
 - 1) announcement through invitations to potential or prospective Participants, the national print media, and the GCA's official website.
 - 2) announcement can also be made through the national procurement portal.
 - 3) announcement through the national print media is conducted at least 1 (one) time.
 - 4) announcement period in the GCA's official website and/or national procurement portal is at least 7 (seven) work days.
 - 5) for projects that are expected to attract foreign prospective Participants, the announcement is posted in the print media with an international circulation and websites that provide information on infrastructure projects at the international level.

- b. the announcement at least consists of:
 - 1) the name and address of the GCA conducting the Procurement.
 - 2) a brief description of the PPP Project which covers:
 - a) the legal basis of the PPP Project;
 - b) the purpose and objective of the PPP Project;
 - c) the scope of the PPP Project; and
 - d) the form of the PPP Project.
 - 3) the estimate of PPP Project investment value.
 - 4) the requirements of prospective Participants.
 - 5) the place, date and time for collecting the RfQ.
- 2. The registration and collection of the RfQ;
 - a. prospective Participants register and collect the RfQ according to the day, date, time, and place of collection determined in the announcement.
 - b. registration and collection of the RfQ start from the date of the announcement until the deadline for the Qualification Document submission.
 - c. collection of the RfQ is conducted by the representative of the prospective Participants authorized to collect the document.
 - d. the Procurement Committee provides sufficient time for the prospective Participants to prepare the Qualification Document.
 - e. registration and RfQ collection may be conducted electronically.
- 3. Explanation of the PPP Project, the scope of work of the PPP Project and the RfQ;
 - a. explanation is conducted openly, transparently and non-discriminatively.
 - b. explanation is conducted through:
 - 1) a direct explanation of the PPP Project and contents of the RfQ at an explanation meeting attended by the applicants; and
 - 2) the Procurement Committee providing the chance for all prospective Participants to submit written clarification questions.

- c. the explanation meeting as referred to in point b point 1) is conducted at a set place and time.
- d. the explanation meeting as referred to in point b point 1) is carried out with the following terms:
 - 1) the Procurement Committee delivers the explanation directly to all prospective Participants together;
 - 2) prospective Participants may submit questions and/or give comments on the RfQ and/or the PPP Project;
 - 3) the absence of any prospective Participants from the explanation meeting cannot be used as the basis for eliminating/refusing the applicant's Qualification Document;
 - 4) the Procurement Committee delivers a general explanation to the prospective Participants at least on the following matters:
 - a) the Pre-qualification phases;
 - b) content of the RfQ;
 - c) scope of the PPP Project;
 - d) requirements at every phase of the Pre-qualification;
 - e) other documents related to the PPP Project.
 - 5) the explanation meeting is recorded in the Minutes of Pre-qualification Explanation Meeting;
 - 6) the Minutes of Pre-qualification Explanation Meeting are signed by the members of the Procurement Committee and the attending prospective Participants or the representatives of the prospective Participants;
 - 7) if no prospective Participant or its representative attends or is willing to sign the Minutes of Pre-qualification Explanation Meeting, the Minutes of Pre-qualification Explanation Meeting only needs to be signed by the attending members of the Procurement Committee; and
 - 8) the Minutes of Pre-qualification Explanation meeting are sent to all prospective Participants;
- e. The explanation as referred to in point b point 2) is conducted on the following terms:
 - 1) any prospective Participants may submit written questions since the collection of the RfQ until the deadline for questions submission as determined in the RfQ;

- 2) the Procurement Committee promptly responds to the questions and delivers the responses to all prospective Participants; and
 - 3) all submitted clarification questions and responses as referred to in point 1) and point 2) are recorded in the List of Clarification Questions and Responses which will then become an attachment of the Minutes of Pre-qualification Explanation Meeting.
- f. If there are new terms/important changes need to be included in the RfQ, the Procurement Committee issues a revision to the RfQ which must include these new terms or important changes to the RfQ and notify in written to all prospective Participants by attaching the revisions to the RfQ before the deadline for Qualification Document submission;
 - g. Revisions to the RfQ as referred to in point f are approved by the GCA. The GCA gives its approval not later than 5 (five) work days after the revisions are proposed by the Procurement Committee;
 - h. If the GCA does not give a response within the deadline as referred to in point g, the GCA is considered to not approve the proposed revision(s) to the RfQ;
 - i. If any of the new terms or other important changes as referred to in point f is not included in the revisions to the RfQ and has not been not notified in written to all applicants, then those new terms or other important changes are deemed non-existent and the prevailing provisions in the unrevised RfQ or previous revision will apply;
 - j. Each revision to the RfQ is an integral part of the RfQ, and is sent to all applicants;
 - k. In the event that there are revisions to the RfQ, the Procurement Committee may provide an extension of the deadline for the submission of the Qualification Document.
4. Submission of Qualification Document
 - a. Prospective Participants submit the Qualification Document and the power of attorney to act on behalf of the applicants (if power of attorney has been given) to the Procurement Committee according to the schedule determined in the RfQ.

- b. A person is not allowed to represent more than 1 (one) prospective Participant in submitting the Qualification Document.
- c. In the event of any changes in the power of attorney given during the Procurement process, the Participants submit new power of attorney to the Procurement Committee.
- d. Procurement Committee makes a receipt for the Qualification Document and prepares a list of the Participants who have submitted a Qualification Document.
- e. Submission, addition, replacement, reduction or withdrawal of a Qualification Document submitted to the Procurement Committee may only be conducted before the deadline for Qualification Document submission.
- f. The Qualification Document must include the following requirements:
 - 1) administrative documents which comprise of:
 - a) Integrity Pact, which at least covers the following:
 - (1) conflicts of interest;
 - (2) Prohibition of corruption, collusion and nepotism practice and fraud; and
 - (3) fair business competition requirement.
 - b) qualification forms, covering:
 - (1) business permits;
 - (2) deed of establishment and the articles of incorporation, including any changes;
 - (3) authority to sign the Qualification Document;
 - (4) in the event of the Participant's form:
 - (a) Business Entities attach the organizational structure of their board of directors, their board of commissioners and their shareholders; or
 - (b) Cooperatives attach the organizational structure of their administrators, their board of supervisors and the members of the cooperative.
 - (5) a letter stating that the Participant is not in the process of liquidation, not to have their business

- license frozen, and/or in the process of litigation which potentially disrupt the PPP Project implementation;
- (6) information on ongoing and/or resolved material disputes;
 - (7) experience and capability to implement similar Infrastructure Provision projects to the proposed PPP Project;
 - (8) experience of and capability to finance projects related to Infrastructure Provision
 - (9) in the event that the Participant is a consortium:
 - (a) the Participant submits its consortium agreement which include the role and the responsibilities of the each consortium member;
 - (b) the requirements as referred to in point (1) until point (6) above are fulfilled by each member of the consortium;
 - (c) the requirement to have experience and capability to implement similar Infrastructure Provision projects as referred to in point (7) above is fulfilled by at least one of the consortium members; and
 - (d) the requirement to have experience and capability to finance projects related to Infrastructure Provision as referred to in point (8) may be fulfilled by the consortium as a whole.
 - (10) in the event that the Participant is a foreign legal entity or an international institution/organization:
 - (a) documents issued in other countries which will be used in Indonesia are legalized according to the provision which is regulated further in a regulation of the minister administering foreign affairs; and

- (b) the Participant must fulfill its tax liabilities in accordance with laws and regulations applicable in the respective country.
- 2) technical capability documents:
 - a) documents that demonstrate the Participant's experience in similar Infrastructure Provision projects; and
 - b) if the Participant is a Business Entity established for less than a year, it needs to submit a sponsorship letter from a shareholder (a sponsorship agreement) and attaches other requirements as determined in the RfQ in relation to that shareholder.
- 3) financial capability:
 - a Participant must demonstrate financial capability to invest and have the experience to finance and/or secure finance for Infrastructure Provision project, with the following terms:
 - a) the Participant fulfills the financial capability criteria as determined in the RfQ;
 - b) the Participant submits the financial statements audited by a certified public accountant for the last 3 (three) years, and prepared based on the generally accepted accounting principles;
 - c) the Participant submits a bank reference letter stating that the Participant has a good financial standing and has the capability of obtaining the funds required for the implementation of the project; and
 - d) if the Participant is a Business Entity established for less than a year and/or it cannot fulfill the required financial capability, it needs to submit a sponsorship letter from a shareholder (a sponsorship agreement) and attaches other requirements as determined in the RfQ in relation to that shareholder.

5. Evaluation of Qualification Document

- a. Evaluation of Qualification Document is conducted by using the pass/fail system in relation to the fulfillment of the requirements as determined in the RfQ.
- b. In conducting the evaluation, the Procurement Committee may only eliminate due to substantial matters.
- c. The Procurement Committee cannot eliminate the Participants solely for non-fulfillment of non-substantial administrative requirements which may be completed at a time set in the RfQ.
- d. Evaluation of Qualification Document covers the assessment of the administrative documents, the technical capability and the financial capability.
- e. Implementation of the Qualification Document evaluation covers:
 - 1) Examination of completeness of the Qualification Document and evaluation of the fulfillment of the qualification requirements; and
 - 2) Confirmation and clarification on the Qualification Document.
- f. In the event that a Participant provides false data or information, the Participant is disqualified and the Business Entity and/or manager or any party involved in is reported to the relevant authority.
- g. If based on the evaluation result of Qualification Document a conflict of interest is found between Participants in accordance with this National Public Procurement Agency Regulation, the Procurement Committee may send a notification letter to the Participant requesting them to solve the conflict of interest.
- h. Participants with conflicts of interest as referred to in point g submit the result of conflict of interest resolution accompanied by supporting documents to be considered by the Procurement Committee as part of the Qualification Document evaluation result.
- i. The implementation of the Qualification Document evaluation is recorded in the Minutes of the Qualification Document Evaluation signed by all members of the Procurement Committee.
- j. If the Pre-qualification process fails to result in any qualified

Participant, the Procurement Committee report this matter to the GCA.

- k. Based on the report from Procurement Committee as referred to point j, the GCA declares the Pre-qualification failed and assesses the action plan on the failed Pre-qualification.
 - l. Based on the assessment as referred to in point k, the GCA proceeds in accordance to Article 15 section (4), section (5), and section (6) of this National Public Procurement Agency Regulation.
6. Determination and announcement of Pre-Qualification result
- a. The Procurement Committee determines the Pre-Qualification result based on evaluation of Participant's Qualification Document.
 - b. The Procurement Committee prepares and delivers a report to the GCA which is accompanied by the Minutes of the Qualification Document Evaluation.
 - c. The Procurement Committee delivers the results of the Pre-Qualification to every Participant by electronic mail and announces the list of qualified Participants according to the set schedule through the following media:
 - 1) GCA's official website; and/or
 - 2) print media.
7. Objection to the Pre-qualification result;
- a. Participants who do not qualify may address their objections on the Pre-Qualification result to the Procurement Committee accompanied by sufficient supporting evidence of the violation/breach of procedures on RfQ or Pre-Qualification process.
 - b. Objection may only be submitted within the timeline as determined in the RfQ.
 - c. Objection as referred to in point a may be done individually or collectively along with other Participants who have not qualified.
 - d. The Procurement Committee responds to all objections in writing within the timeline as determined in the RfQ.

- e. If an objection is declared valid by the Procurement Committee, the Procurement Committee report this matter to the GCA.
- f. Based on the report from Procurement Committee as referred to in point e, the GCA declares the Pre-qualification failed and assesses the action plan on the failed Pre-qualification.
- g. Based on the assessment as referred to in point f, the GCA decides the follow up action in accordance to Article 15 section (4), section (5), and section (6) of this National Public Procurement Agency Regulation.

C. Tender

- 1. One-Stage Tender as referred to in Article 18 of this National Public Procurement Agency Regulation consists the following activities:
 - a. Sending invitations to Participants passing the Pre-qualification by attaching the Confidentiality Letter.
 - b. Submission of Confidentiality Letter by Participants and delivery of RfP to Participants by the Procurement Committee.
 - 1) Participants submit the signed Confidentiality Letter to obtain the RfP and access to the Data Room.
 - 2) The Confidentiality Letter must be signed by the personnel authorized to represent the Participant.
 - 3) The Procurement Committee sends the RfP to all Participants who have submitted the signed Confidentiality Letter.
 - 4) Delivery of RfP may be conducted by electronic means.
 - 5) If the Procurement schedule needs to be changed, the Procurement Committee may send the revised schedule to all Participants through mail, electronic mail, or the Data Room.
 - 6) The revised Procurement schedule as referred to in point 5) is an integral part of the RfP.
 - 7) The Procurement Committee is not allowed to change, add and/or reduce the criteria, weighting, and/or the procedure of the evaluation after the RfP is issued.
 - 8) In the event that the Procurement Committee finds a mistake in the criteria, weighting, and/or the procedure of evaluation as referred to in point 7), the Procurement Committee reports this finding to the GCA.

- 9) Based on the report from the Procurement Committee as referred to in point 8), the GCA declares the Tender failed and assesses the action plan on the unsuccessful Tender.
 - 10) Based on the assessment as referred to point 9), the GCA decides the follow up action in accordance with Article 21 section (3) of this National Public Procurement Agency Regulation.
- c. Explanation of RfP (and site visit, if necessary):
- 1) Explanation is conducted openly, transparently and non-discriminatively to all Participants.
 - 2) The explanation process is conducted to allow Participants to give their suggestions.
 - 3) The Explanation of RfP is conducted by:
 - a) a direct explanation of the contents of the RfP at an explanation meeting attended by the Participants;
 - b) the Procurement Committee provides the chance for all Participants to submit written clarification questions; and
 - c) if deemed necessary, a site visit to the proposed project location may be conducted as part of the explanation meeting.
 - 4) Explanation of RfP as referred to in point 3) point a) and point c) is conducted at a set place and time.
 - 5) The explanation meeting as referred to in point 3) point a) is carried out under the following terms:
 - a) The Procurement Committee delivers the explanation directly to all Participants together;
 - b) The Participants may ask questions and/or give their comments about the RfP and/or the PPP Project;
 - c) In the event that the Participant is a consortium, it is represented by the consortium leader or other party authorized to represent the Participant through power of attorney given by the consortium leader;
 - d) the absence of any Participant(s) at the explanation meeting cannot be used as the basis for eliminating/refusing the Participant(s)' Proposals;
 - e) The Procurement Committee delivers a general

explanation to the Participants at least on the following matters:

- (1) the Tender phases;
 - (2) Content of the RfP; and
 - (3) Other documents related to the PPP Project.
- f) Explanation meeting is recorded in the Minutes of Explanation Meeting which are signed by the members of the Procurement Committee and the attending Participants or the representative of Participants;
 - g) If no Participant or its representative attends or is willing to sign the Minutes of Explanation Meeting, the Minutes of Explanation Meeting are signed by the attending members of the Procurement Committee; and
 - h) Minutes of Explanation Meeting are sent to all Participants.
- 6) Clarification questions as referred to in point 3) point b) are conducted under the following terms:
- a) Participants may submit written clarification questions from the date of the collection of the RfP until the deadline for clarification questions submission as determined in the RfP;
 - b) The Procurement Committee responds to the clarification questions and sends the responses to all Participants; and
 - c) All submitted clarification questions and responses as referred to in point a) and point b) are recorded in the list of clarification questions and responses which will then become the attachment of the Minutes of Explanation Meeting.
- 7) In the event of a site visit as referred to in point 3) point c), the site visit is conducted under the following terms:
- a) The site visit is conducted together with all Participants at a place and time determined by the Procurement Committee;
 - b) In the event that the Participant is a consortium, it is represented by the consortium leader or other party authorized to represent the Participant through power

- of attorney given by the consortium leader;
- c) the absence of any Participant(s) at the explanation meeting cannot be used as the basis for eliminating/refusing the Participant(s)' Proposals;
 - d) The site visit result is recorded in the Minutes of Site Visit which is signed by the members of the Procurement Committee and the attending Participants or the representative of Participants;
 - e) If no Participant/its representative attends, or is willing to sign the Minutes of Site Visit, the Minutes of Site Visit are signed by the attending members of the Procurement Committee; and
 - f) Minutes of Site Visit are sent to all Participants.
- 8) If based on the Minutes of Explanation Meeting and/or Minutes of Site Visit, new terms and/or important changes need to be included in the RfP, the Procurement Committee issues a revision to the RfP which includes these new terms or important changes to the RfP before the deadline for Proposal submission.
 - 9) The revisions of RfP as referred to in point 8) are approved by the GCA. The GCA gives its approval not later than 5 (five) work days after the revisions are proposed by the Procurement Committee.
 - 10) If the GCA does not give a response within the time period as referred to in point 9), the GCA is considered to not approve the proposed revisions of the RfP.
 - 11) Revisions to the RfP as referred to in point 8) are not allowed to change, add and/or reduce criteria, weighting, and/or the procedure for the evaluation.
 - 12) In the event that there are revisions to the RfP, the Procurement Committee informs Participants in writing by sending the revisions to the RfP to all Participants.
 - 13) If any of the new terms and/or other important changes as referred to in point 8) is not included in the revisions to the RfP and has not been notified in written to all Participants, then those new terms and/or other important changes are deemed non-existent and the prevailing provisions in the

unrevised RfP or previous revision will apply.

- 14) Each revision to the RfP is an integral part of the RfP, and must be sent to all Participants.
 - 15) Delivery of revisions to the RfP may be conducted through electronic mails.
 - 16) If there are revisions to the RfP, the Procurement Committee may provide an extension of the deadline for the submission of the Proposals.
- d. Submission of the Proposals (envelope I and II)
- 1) Participants submit their Proposals to the Procurement Committee according to the schedule determined in the RfP.
 - 2) The Proposal consists of 2 (two) envelopes. The Envelope I consists of the administrative and technical Proposal and Envelope II consists of the financial Proposal.
 - 3) The Envelope I and Envelope II are submitted together in a closed cover.
 - 4) Procurement Committee rejects the Proposals that are submitted after the time of the deadline for the Proposal submission.
 - 5) Participants submit their Proposal in accordance with the requirements in the RfP which consist of:
 - a) Administrative Proposal
Participants submit the administrative Proposal as required which at least covers:
 - (1) Cover letter which states the validity of the Proposal and confirms that the Proposal is formal and valid as an official document signed by the personnel authorized to represent the Participant;
 - (2) Consortium agreement;
 - (3) Confirmation of acceptance of the draft PPP Contract (with no changes)
 - (4) Bid bond with the following requirements:
 - (a) Nominal value of the bid bond is in accordance with the nominal value determined in the RfP;
 - (b) The name written on the bid bond is the same as the name of the Participant. In the

event the Participant is a consortium, the bid bond includes the name of the consortium according to the name written in the consortium agreement;

- (c) The PPP Project covered is the same as the PPP Project being tendered;
- (d) The bid bond is valid since the Proposal submitted until the PPP Contract has been signed in accordance with the RfP;
- (e) In the event there is a change in the Procurement schedule which causes determination of the winner to be delayed, Participant(s) must extend the validity of the cover letter and the bid bond to cover the extension period;
- (f) In the event the validity of the bid bond is not extended to cover the change in the Procurement schedule as referred to in point (e), the Participant(s) is deemed to have withdrawn from the Procurement and the bid bond is returned to the Participant;
- (g) The bid bond must be able to be liquidated unconditionally not later than 14 (fourteen) work days after a statement of non-performance from the Procurement Committee is received by the issuer of the bond;
- (h) The statement of non-performance is issued to the issuer of the respective bond if:
 - i. the prospective winner/winner withdraws from the Procurement process;
 - ii. a Participant withdraws their Proposal during the validity of the Proposal;
 - iii. a Proposal is found to contain false statements/information; or
 - iv. the IBE does not sign the PPP Contract within 40 (forty) work days from the

establishment of the IBE.

- (i) The proceeds from the liquidated bid bond must be deposited to the State/Regional Treasury

(5) Other statement letters required by the RfP.

b) Technical Proposal

Participants submit the technical Proposal which at least consists of:

(1) technical data which consists of:

- (a) approach and methodology to fulfil the GCA's Minimum Requirements and Additional Requirements;
- (b) technical drawings or basic design;
- (c) proposed performance data including the performance testing procedures which covers data and analysis related to the project and the environment, including assumptions used;
- (d) Operational and maintenance data, including but not limited to outline operational plan and outline maintenance plan; and
- (e) Asset transfer plans.

(2) supporting data;

(3) reference sites/locations which use similar technical solutions and/or operational procedures (if required);

(4) PPP Project implementation schedule and plan;

(5) PPP Project organizational plan and implementation management plan; and

(6) Proposed Sub-Contract Arrangements that consist of heads of terms for the EPC Sub-Contract and the Operating and Maintenance Sub-Contract(s).

c) Financial Proposal

Participants submit the financial Proposal which at least consists of:

(1) role and share of each member of the consortium in the case the Participant is a consortium;

(2) latest audited financial statements of the

- Participant (or each member of a Consortium);
- (3) financing plan (explanation of the method to finance the proposed capital expenditure and operational expenditure, letters of support and term sheets);
 - (4) financial model in hard copy and soft copy, including:
 - (a) initial equity capitalization plan;
 - (b) capital expenditure investment plan;
 - (c) operation and maintenance expenses;
 - (d) forecast cashflows;
 - (e) forecast balance sheets;
 - (f) forecast income statements;
 - (g) return on investment and discounted cash flow analysis which shows the participant's expected investment rate of return;
 - (h) financial ratios including debt service coverage ratio (DSCR) and profitability ratio;
 - (i) calculation of tariffs and/or third party revenue (if any);
 - (j) financial model data book including the assumptions used in the preparation of the financial model (which is consistent with the technical proposal) and the explanation for use of the financial model; and
 - (k) proposed government support which is consistent with the financing plan as referred to in (3) above, if required.
 - (5) Financial model review letter in the format specified in the RfP;
 - (6) Financial pro-forma in the form provided by the GCA with the RfP which is consistent with the financial model:
 - (a) pro-forma 1 – projected investment return (for example Availability Payments, user charges, tariffs or other form of revenue);

- (b) pro-forma 2 – projected capital expenditure (nominal);
 - (c) pro-forma 3 – projected maintenance expenditure (nominal);
 - (d) pro-forma 4 – projected operating expenditure (nominal);
 - (e) pro-forma 5 – projected Viability Gap Fund (if any);
 - (f) pro-forma 6 – financing Plan;
 - (g) pro-forma 7 – analysis of staffing; and
 - (h) other pro-forma as required.
- (7) Confirmation of accounting treatment;
 - (8) Confirmation of tax treatment; and
 - (9) Clawback given to the Government (if any).
- 6) The Procurement Committee may allow Participants who are in the form of a consortium to change their consortium structure and/or their consortium members before the deadline for Proposal submission, as long as this change to the consortium structure and/or consortium members does not negatively impact the competition.
 - 7) Change to the consortium structure and/or consortium members as referred to in point 6) is not allowed to include change of consortium leader if the consortium leader only consist of 1 (one) Business Entity. In the case of a consortium with more than 1 (one) Business Entity as the consortium leader, at least 1 (one) Business Entity must stay as the consortium leader.
 - 8) Terms regarding the change in consortium structure and/or consortium members as referred to in point 6) are included in the RfP.
 - 9) In the event there is a change in the Procurement schedule which causes determination of the winner to be delayed, Participant(s) must extend the validity of the cover letter to cover the extension period.

- 10) In the event the validity of the cover letter is not extended to cover the change in the Procurement schedule as referred to in point 9), the Participant(s) is deemed to have withdrawn from the Procurement.
 - 11) If there is no Proposal submitted by any Participant, the Procurement Committee send a report to the GCA.
 - 12) Based on the report as referred to in point 11), the GCA declares the Tender failed and asses the action plan on the failed Tender.
 - 13) Based on the assessment as referred to in point 11), the GCA decides the follow up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.
- e. Opening of envelope I of the Proposals (administrative Proposal and technical Proposal)
- 1) The opening of Envelope I of all Proposals is conducted by the Procurement Committee before the Participants at a set time and place.
 - 2) The Procurement Committee requests the representatives of the Participants to attend as witnesses. If no witness or only 1 (one) witness from the Participants attends, the opening of the Envelope I Proposal is postponed by the Procurement Committee for 1 (one) hour.
 - 3) If after the postponement for 1 (one) hour, no representative of any Participant attends or there is only 1 (one) participant as witness, the opening of Envelope I of the Proposals is carried out being witnessed by 2 (two) witnesses besides the Procurement Committee, as appointed in writing by the Procurement Committee.
 - 4) The Opening of Envelope I of the Proposals is recorded in the Minutes of the Opening of Envelope I and signed by all members of the Procurement Committee and the witnesses who attended.
 - 5) Copies of the Minutes of the Opening of Envelope I are distributed to all Participants.

- f. Evaluation of envelope I of the Proposals
- 1) Procurement Committee conducts an evaluation of envelope I of the Proposals based on the terms and procedures determined in the RfP.
 - 2) If deemed necessary, the Procurement Committee may request any Participant to clarify envelope I of their Proposal. Participants respond to clarification questions in written to the Procurement Committee.
 - 3) If deemed necessary, the Procurement Committee may give an opportunity to each Participant to present their technical Proposal. Each Participant has to be offered an equal opportunity to present.
 - 4) Terms of the clarification questions and technical Proposal presentation as referred to in point 2) and 3) are included in the RfP.
 - 5) Evaluation of Envelope I of the Proposals consists of:
 - a) Administrative Proposal evaluation:
 - (1) administrative Proposal evaluation is conducted using pass/fail system relating to the fulfillment of the administrative requirements.
 - (2) the Procurement Committee only eliminates Participants on the basis of substantial matters.
 - b) Technical Proposal evaluation:
 - (1) The technical Proposal evaluation is conducted in respect of Participants who fulfill the administrative requirements.
 - (2) The technical Proposal evaluation is conducted by considering the compliance of the technical Proposal by referring to the requirements determined in the RfP.
 - (3) The Procurement Committee will give score for fulfillment of technical requirements based on evaluation criterion determined in the RfP. Each evaluation criterion is weighted with a total weight of 100% (one hundred

percent).

- (4) The Procurement Committee prepares a list based on the total score of technical requirements evaluation result.
 - (5) The Proposal is considered to have passed the technical evaluation if the score for each evaluation criterion as well as aggregate of all evaluation criterion reaches the threshold as determined in the RfP.
 - 6) The Procurement Committee prepares the Minutes of Envelope 1 Evaluation Result which covers the administrative and technical Proposal evaluation results.
 - 7) In a case where there is no Participant who passes the Envelope 1 Evaluation:
 - a) the Procurement Committee delivers a report to the GCA.
 - b) based on the report received from Procurement Committee as referred to in point a), the GCA declares the Tender failed and assesses the action plan on the failed Tender.
 - c) Based on the assessment as referred to in point b), the GCA decides the follow up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.
 - d) The decisions on follow up action as referred to in point c) are informed to all Participants.
- g. Announcement of envelope I Evaluation Result
 - 1) The Procurement Committee announces the envelope I evaluation result to all Participants.
 - 2) To the Participants who do not have passed the evaluation of envelope I, the Procurement Committee sends the evaluation result accompanied by the reasons.
 - 3) To the Participants who have passed the envelope I Proposal evaluation, the announcement of envelope I evaluation result as referred to in point 1) is

accompanied by invitation for opening of envelope II (financial Proposal).

- 4) The delivery of announcement of evaluation result as referred to in point 1) may be conducted through electronic means.
- h. Opening of envelope II of the Proposals (Financial Proposal)
- 1) The Procurement Committee and the Participants who have passed the evaluation of envelope I attends the opening of envelope II of the Proposals.
 - 2) The opening of envelope II is conducted by the Procurement Committee before the Participants who have passed the evaluation of envelope I at a set time and place.
 - 3) The Procurement Committee requests the presence of representatives of the Participants as witnesses. If no witness or there is only 1 (one) Participant attend as the witness, the opening of the envelope II Proposal is postponed by the Procurement Committee for 1 (one) hour.
 - 4) If after the postponement for 1 (one) hour, no Participant attends or there is only 1 (one) Participant as witness, the opening of the envelope II Proposal remains to be carried out by being witnessed by 2 (two) witnesses beside the Procurement Committee, appointed in writing by the Procurement Committee.
 - 5) Opening of the envelope II Proposal is recorded in the Minutes of the Opening of the Envelope II Proposal and signed by all members of the Procurement Committee and the witnesses.
 - 6) Copies of the Minutes of the Opening of the envelope II Proposal are distributed to all Participants who have passed the envelope I Proposal Evaluation.
- i. Evaluation of envelope II of the Proposals;
- 1) The Procurement Committee conducts an evaluation of the envelope II Proposal based on the terms and procedures determined in the RfP.

- 2) If deemed necessary, the Procurement Committee may request the Participants to clarify their envelope II Proposal. Participants respond to the clarification request via electronic means to the Procurement Committee.
- 3) In the event that the evaluation uses the best financial proposal system, the Winner is the Participant who has passed the envelope I evaluation and in accordance with the RfP offers:
 - a. lowest price;
 - b. lowest tariff;
 - c. lowest availability payment;
 - d. lowest viability support;
 - e. shortest period of PPP; or
 - f. best offer in terms of other forms of monetary measures.
- 4) If the price/tariff/availability payment/other form of monetary measures in the Proposals as referred to in point 3) varies over time, the evaluation is based on the net present value of the cost to the GCA and/or to users over the period of the PPP Contract, discounted using a rate as determined in the RfP.
- 5) In the event of evaluation using the merit point system, the evaluation is conducted as follows:
 - a) Procurement Committee awards certain scores for the degree to which the Participant has fulfilled the technical and financial requirements according to the criteria, weighting, and procedure of the evaluation as determined in the RfP.
 - b) Each element of the technical and financial criteria is weighted with a total weight of 100% (one hundred percent).
 - c) Ranks are determined based on the sum of the combination of the technical and financial scores.
- 6) During the evaluation process, the Procurement Committee, at its discretion may request any Participant to undertake corrections of arithmetical

errors or numerical inconsistencies found in their Proposal.

- 7) Participants may only make changes in respect of arithmetical errors or numerical inconsistencies identified by the Procurement Committee as stated in the Minutes of Arithmetical Corrections.
 - 8) Results of the correction of arithmetical errors or numerical inconsistencies are delivered by the Participants who confirm that the corrections made become an integral part of the Proposal that is evaluated.
 - 9) The Procurement Committee prepares the Minutes of the envelope II Evaluation Result which is signed by all members of the Procurement Committee.
- j. Issuance of the Minutes of the Tender Result (BAHP)
- 1) Procurement Committee prepares the Minutes of the Tender Result.
 - 2) Minutes of the Tender Result is a summary of the Tender result made by the Procurement Committee and signed by all members of the Procurement Committee.
 - 3) Minutes of the Tender Result is confidential and only delivered to the GCA.
 - 4) Minutes of the Tender Result has to include the following:
 - a) name of each Participant;
 - b) evaluation method used;
 - c) evaluation criteria used;
 - d) evaluation result of each Participant;
 - e) the estimated capital expenditure and operational expenditure proposed by each Participant;
 - f) participants' ranking;
 - g) other notes deemed necessary on the implementation of the Tender; and
 - h) date of the minutes.

k. Determination of the Winner

- 1) The Procurement Committee prepares and delivers a report to the GCA which is accompanied by the Minutes of the Tender Result.
- 2) The Report as referred to in point 1), is accompanied by the Procurement Committee's recommendation of the prospective Winner, first and second runner-ups (if any).
- 3) If the GCA agrees with the Procurement Committee's recommendation, the GCA prepares a determination letter not later than 10 work days after the recommendation from Procurement Committee is received, which contains:
 - (a) the winner; and
 - (b) the first and second runner-ups (if any).
- 4) In the event that the GCA does not agree with the Procurement Committee's recommendation, the GCA discusses this matter with the Procurement Committee in order to make a decision.
- 5) The decision as a result of the discussion between the GCA and the Procurement Committee as referred to in point 4) is recorded in a Minutes of Meeting signed by the GCA and the Procurement Committee.
- 6) The decision as referred to in point 5) is either in the form of an approval of the Procurement Committee's recommendation or to repeat the evaluation process.
- 7) In the case that the decision as a result of discussion between the GCA and the Procurement Committee is an approval of the Procurement Committee's recommendation, then the GCA prepares a determination letter which contains:
 - (a) the Winner; and
 - (b) the first and second runner-ups (if any).
- 8) In the case that the decision as a result of discussion between the GCA and the Procurement Committee is to repeat the evaluation process, then the GCA instructs the Procurement Committee to conduct re-evaluation.

- 9) In the event that to repeat the evaluation process as referred to in point 8) an extension of time to the schedule determined in the RfP is needed, the Procurement Committee announces the change of schedule to all Participants and ask for an extension to the bid bond validity period (if necessary).
 - 10) The Procurement Committee prepares and delivers a report on the repeated evaluation process result to the GCA which contains a recommendations on the winner, the first and the second runner-ups (if any).
 - 11) In the event that the GCA approves the Procurement Committee's recommendation based on the re-evaluation result as referred to in point 10), then the GCA prepares a determination letter which contains:
 - (a) the winner; and
 - (b) the first and second runner-ups (if any).
 - 12) In the event that the GCA does not approve the Procurement Committee's recommendation as referred to in point 10), then the GCA declares the tender to be failed and and asses the action plan on the failed Tender.
 - 13) Based on the assessment as referred to point 12), the GCA decides the follow up action in accordance with Article 21 section (3) of this National Public Procurement Agency Regulation.
1. Announcement of the Tender result
 - 1) Based on the determination of the Winner by the GCA, the Procurement Committee:
 - a) Notifies the Tender result to each Participant through mail; and
 - b) Announces the Tender result by posting it on the GCA's official website and/or print media according to the specified schedule.
 - 2) The content of the Tender result announcement as referred to in point 1) at least covers:
 - a) Name of the PPP Project;
 - b) Name of the GCA;

- c) Ranking and evaluation result of each Proposal;
 - d) Name and address of the Winner, the first and second runner-ups (if any);
 - e) Duration of the PPP; and
 - f) Value of the capital expenditure and operational expenditure committed by the Winner.
- m. Objection to Result of Tender (if any)
- 1) Participants who are not determined as the Winner may address their objections in writing to the result of the Tender to the GCA accompanied by sufficient supporting documents of any breach/violation.
 - 2) Objections can only be submitted within the period determined in the RfP.
 - 3) Objections as referred to in point 1) may be addressed individually or collectively.
 - 4) Participants as referred to in point 1) may only submit objections in relation to the following:
 - a) Violation(s) of the terms and procedures regulated in this National Public Procurement Agency Regulation;
 - b) Violation(s) of the terms and procedures determined in the RfP;
 - c) Dishonest practices that prevent fair business competition; and/or
 - d) An abuse of authority by the Procurement Committee and/or other authorized officials in the Tender process.
 - 5) The GCA must respond in writing to all objections within the time period determined in the RfP.
 - 6) If the objection is declared valid by the GCA, the GCA declares the Tender failed and assesses the action plan on the failed Tender.
 - 7) Based on the assessment as referred to in point 6), the GCA decides the follow up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.

n. Issuance of the Letter of Award:

- 1) The GCA issues the Letter of Award in the following conditions:
 - a) no objection has been received from Tender Participants;
 - b) any objection received has been found to be invalid or unproven; and
 - c) the objection period has ended.
- 2) The GCA issues the Letter of Award not later than 7 (seven) work days after the objection process ends.
- 3) When the Letter of Award is issued, the consortium members and consortium structures of the winner must be the same as the consortium members and consortium structures at the time of Determination the of Winner stage.
- 4) If the consortium members and/or consortium structures at the issuance of Letter of Award are different from the consortium members and/or consortium structures at the Determination of Winner stage, the winner is disqualified.
- 5) If the Winner is disqualified as referred to in point 4) or withdraws after the issuance of the Letter of Award with reasons that cannot be accepted by the GCA, the bid Bond is liquidated and deposited into the State/Regional Treasury and such Winner shall be imposed with penalty by a prohibition to participate in any IBE Procurement for a PPP for 2 (two) years.
- 6) If the Winner withdraws from the Tender after the issuance of the Letter of Award with reasons accepted by the GCA, the bid bond is liquidated and deposited into the State/Regional Treasury.
- 7) If the Winner withdraws or is disqualified, the GCA issues the Letter of Award to the first runner-up provided that the cover letter indicates the Proposal of such runner-up is still valid or the validity has been extended until the signing of the PPP Contract.

- 8) If the first runner-up withdraws, the GCA may issue the Letter of Award to the second runner-up provided that the the cover letter indicates the Proposal of such runner-up is still valid or the validity has been extended until the signing of the PPP Contract.
 - 9) If all Winners withdraw, the GCA declares the Tender failed and asses the action plan on the failed Tender.
 - 10) Based on the assessment as referred to in point 9), the GCA decides the follow up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.
- o. Preparation of the PPP Contract signing
- 1) Based on the Letter of Award issued, the GCA conducts a preparation for the signing of the PPP Contract by:
 - a) The GCA and the Winner finalize the draft PPP Contract.
 - b) The finalization process as referred to in point a) is not allowed to change anything that has been competed during the Tender.
 - 2) Based on the Letter of Award issued, the Winner conducts preparation of PPP Contract signing as follows:
 - a) The Winner must establish an IBE, which will sign the PPP contract.
 - b) The IBE must be legally established not later than 6 (six) months after the issuance of the Letter of Award by the GCA.
 - c) The Winner must extend the bid bond validity until the performance bond has been received by the GCA.
 - d) In the event that the winner does not extend the bid bond validity as referred to point c) with reasons that can be accepted by the GCA, the winner is deemed to have withdrawn and the bid bond of such Winner is liquidated and deposited into the State/Regional Treasury.
 - e) In the event that the winner does not extend the bid bond validity as referred to point c) with

reasons that cannot be accepted by the GCA, the winner is deemed to have withdrawn and the bid bond of such Winner is liquidated and deposited into the State/Regional Treasury and such Winner shall be imposed with penalty by a prohibition to participate in any IBE Procurement for a PPP for 2 (two) years.

- 3) The PPP Contract is signed by the GCA and the IBE not later than 40 (forty) work days after the establishment of the IBE.
 - 4) The PPP Contract will be effective after all of the conditions precedent as determined in the PPP Contract have been fulfilled by each party.
 - 5) In the case of a condition which is out of the Winner's control which results in the need for a change to the consortium members, and/or change to the IBE shareholding composition, the winner must seek the GCA's approval for such changes.
 - 6) If the GCA approves the changes as referred to in point 5), the winner must make the necessary adjustment to the bid bond to reflect the changes in consortium members and/or consortium structures.
 - 7) Changes as referred to point 5) must not result in changes of consortium leader.
 - 8) In the PPP Contract signing preparation process, the GCA may be assisted by the PPP team and/or the Procurement Committee.
- p. Preparation of financial close:
- 1) Financial close is not a condition precedent for the PPP Contract to become effective.
 - 2) The IBE conducts the signing of financing agreements and coordinate with the GCA in the preparation of the financing agreements signing.
 - 3) Based on the signed PPP Contract, the GCA, IBE and lenders conduct the signing of the consent letter which gives or confirms certain rights to the lenders to the PPP project.

2. The Two-Stage Tender as referred to in Article 19 of this National Public Procurement Agency Regulation consists the following activities:
 - a. Sending invitations to Participants passing the Pre-qualification by attaching the Confidentiality Letter.
 - b. Submission of Confidentiality Letter by Participants and delivery of RfP to Participants by the Procurement Committee.
 - 1) Participants submit the signed Confidentiality Letter to obtain the RfP and access to the Data Room.
 - 2) The Confidentiality Letter must be signed by the personnel authorized to represent the Participant.
 - 3) The Procurement Committee sends the RfP to all Participants who have submitted the signed Confidentiality Letter.
 - 4) Delivery of RfP may be conducted by electronic means.
 - 5) If the Procurement schedule needs to be changed, the Procurement Committee may send the revised schedule to all Participants through mail, electronic mail, or the Data Room.
 - 6) The revised Procurement schedule as referred to in point 5) is an integral part of the RfP.
 - 7) The Procurement Committee is not allowed to change, add and/or reduce the criteria, weighting, and/or the procedure of the evaluation after the RfP is issued.
 - 8) In the event that the Procurement Committee finds a mistake in the criteria, weighting, and/or the procedure of evaluation as referred to in point 7), the Procurement Committee reports this finding to the GCA.
 - 9) Based on the report from the Procurement Committee as referred to in point 8), the GCA declares the Tender failed and assesses the action plan on the unsuccessful Tender.
 - 10) Based on the assessment as referred to point 9), the GCA decides the follow up action in accordance with Article 21 section (3) of this National Public

Procurement Agency Regulation.

- c. Explanation of RfP (and site visit, if necessary):
 - 1) Explanation is conducted openly, transparently and non-discriminatively to all Participants.
 - 2) The explanation process is conducted to allow Participants to give their suggestions.
 - 3) The Explanation of RfP is conducted by:
 - a) the direct explanation of the contents of the RfP at an explanation meeting attended by the Participants;
 - b) the Procurement Committee provides the chance for all Participants to submit written clarification questions; and
 - c) if deemed necessary, a site visit to the proposed project location may be conducted as part of the explanation meeting.
 - 4) Explanation of RfP as referred to in point 3) point a) and point c) is conducted at a set place and time.
 - 5) The explanation meeting as referred to in point 3) point a) is carried out under the following terms:
 - a) The Procurement Committee delivers the explanation directly to all Participants together;
 - b) The Participants may ask questions and/or give their comments about the RfP and/or the PPP Project;
 - c) in the event that the Participant is a consortium, it is represented by the consortium leader or other party authorized to represent the Participant through power of attorney given by the consortium leader;
 - d) the absence of any Participant(s) at the explanation meeting cannot be used as the basis for eliminating/refusing the Participant(s)' Proposals;

- e) The Procurement Committee delivers a general explanation to the Participants at least on the following matters:
 - (1) the Tender phases;
 - (2) content of the RfP; and
 - (3) other documents related to the PPP Project.
 - f) Explanation meeting is recorded in the Minutes of Explanation Meeting which are signed by the members of the Procurement Committee and the attending Participants or the representative of Participants;
 - g) If no Participant or its representative attends or is willing to sign the Minutes of Explanation Meeting, the Minutes of Explanation Meeting are signed by the attending members of the Procurement Committee; and
 - h) Minutes of Explanation Meeting are sent to all Participants.
- 6) Clarification questions as referred to in point 3) point b) are conducted under the following terms:
- a) Participants may submit written clarification questions from the date of the collection of the RfP until the deadline for clarification questions submission as determined in the RfP;
 - b) The Procurement Committee responds to the clarification questions and sends the responses to all Participants; and
 - c) All submitted clarification questions and responses as referred to in point a) and point b) are recorded in the list of clarification questions and responses which will then become the attachment of the Minutes of Explanation Meeting.

- 7) In the event of a site visit as referred to in point 3) point c), the site visit is conducted under the following terms:
 - a) The site visit is conducted together with all Participants at a place and time determined by the Procurement Committee;
 - b) In the event that the Participant is a consortium, it is represented by the consortium leader or other party authorized to represent the Participant through power of attorney given by the consortium leader;
 - c) the absence of any Participant(s) at the explanation meeting cannot be used as the basis for eliminating/refusing the Participant(s)' Proposals;
 - d) The site visit result is recorded in the Minutes of Site Visit which is signed by the members of the Procurement Committee and the attending Participants or the representative of Participants;
 - e) If no Participant/its representative attends, or is willing to sign the Minutes of Site Visit, the Minutes of Site Visit are signed by the attending members of the Procurement Committee; and
 - f) Minutes of Site Visit are sent to all Participants.
- 8) If based on the Minutes of Explanation Meeting and/or Minutes of Site Visit, new terms and/or important changes need to be included in the RfP, the Procurement Committee issues a revision to the RfP which includes these new terms or important changes to the RfP before the deadline for Proposal submission.
- 9) The revisions of RfP as referred to in point 8) are approved by the GCA. The GCA gives its approval not later than 5 (five) work days after the revisions are proposed by the Procurement Committee.
- 10) If the GCA does not give a response within the time period as referred to in point 9), the GCA is considered to not approve the proposed revisions of the RfP.

- 11) Revisions to the RfP as referred to in point 8) are not allowed to change, add and/or reduce criteria, weighting, and/or the procedure for the evaluation.
 - 12) In the event that there are revisions to the RfP, the Procurement Committee informs Participants in writing by sending the revisions to the RfP to all Participants.
 - 13) If any of the new terms and/or other important changes as referred to in point 8) is not included in the revisions to the RfP and has not been notified in written to all Participants, then those new terms and/or other important changes are deemed non-existent and the prevailing provisions in the unrevised RfP or previous revision will apply.
 - 14) Each revision to the RfP is an integral part of the RfP, and must be sent to all Participants.
 - 15) Delivery of revisions to the RfP may be conducted through electronic mails.
 - 16) If there are revisions to the RfP, the Procurement Committee may provide an extension of the deadline for the submission of the Proposals.
- d. Submission of the Proposals
- 1) Participants submit their Proposals to the Procurement Committee according to the schedule determined in the RfP.
 - 2) The Proposal consists of the administrative, technical, financial Proposal and response to the draft PPP contract.
 - 3) The Proposal as referred to in point (2) are submitted together in a closed cover.
 - 4) Procurement Committee rejects the Proposals that are submitted after the time of the deadline for the Proposal submission.
 - 5) Participants submit their Proposal in accordance with the requirements in the RfP which consist of:
 - a) Administrative Proposal
Participants submit the administrative Proposal as required which at least covers:

- (1) Cover letter which states the validity of the Proposal and confirms that the Proposal is formal and valid as an official document signed by the personnel authorized to represent the Participant;
- (2) Consortium agreement;
- (3) Confirmation of acceptance of the Minimum Requirements;
- (4) Bid bond with the following requirements:
 - (a) Nominal value of the bid bond is in accordance with the nominal value determined in the RfP;
 - (b) The name written on the bid bond is the same as the name of the Participant. In the event the Participant is a consortium, the bid bond includes the name of the consortium according to the name written in the consortium agreement;
 - (c) The PPP Project covered is the same as the PPP Project being tendered;
 - (d) The bid bond is valid since the Proposal submitted until the PPP Contract has been signed in accordance with the RfP;
 - (e) In the event there is a change in the Procurement schedule which causes determination of the winner to be delayed, Participant(s) must extend the validity of the cover letter and the bid bond to cover the extension period;
 - (f) In the event the validity of the bid bond is not extended to cover the change in the Procurement schedule as referred to in point (e), the Participant(s) is deemed to have withdrawn from the Procurement and the bid bond is returned to the Participant;
 - (g) The bid bond must be able to be

liquidated unconditionally not later than 14 (fourteen) work days after a statement of non-performance from the Procurement Committee is received by the issuer of the bond;

- (h) The statement of non-performance is issued to the issuer of the respective bond if:
 - i. the prospective winner/winner withdraws from the Procurement process;
 - ii. a Participant withdraws their Proposal during the validity of the Proposal;
 - iii. a Proposal is found to contain false statements/information; or
 - iv. The IBE does not sign the PPP Contract within 40 (forty) work days from the establishment of the IBE.
- (i) The proceeds from the liquidated bid bond must be deposited to the State/Regional Treasury.

(5) other statement letters required by the RfP.

b) Technical Proposal

Participants submit the technical Proposal which at least consists of:

- (1) Technical data which consists of:
 - (a) approach and methodology to fulfil the GCA's Minimum Requirements and Additional Requirements;
 - (b) technical drawings or basic design;
 - (c) proposed performance data including the performance testing procedures which covers data and analysis related to the project and the environment, including assumptions used;
 - (d) Operational and maintenance data,

including but not limited to outline
operational plan and outline
maintenance plan; and

(e) Asset transfer plans.

- (2) Supporting data;
- (3) Reference sites/locations which use similar technical solutions and/or operational procedures (if required);
- (4) PPP Project implementation schedule and plan;
- (5) PPP Project organizational plan and implementation management plan; and
- (6) Proposed Sub-Contract Arrangements that consist of heads of terms for the EPC Sub-Contract and the Operating and Maintenance Sub-Contract(s).

c) Financial Proposal

Participants submit the financial Proposal which at least consists of:

- (1) Role and share of each member of the consortium in the case the Participant is a consortium;
- (2) Latest audited financial statements of the Participant (or each member of a Consortium);
- (3) Financing plan (explanation of the method to finance the proposed capital expenditure and operational expenditure, letters of support and term sheets);
- (4) Financial model in hard copy and soft copy, including:
 - (a) Initial equity capitalization plan;
 - (b) Capital expenditure investment plan;
 - (c) Operation and maintenance expenses;
 - (d) Forecast cash flows;
 - (e) Forecast balance sheets;
 - (f) Forecast income statements;

- (g) Return on investment and discounted cash flow analysis which shows the Participant's expected investment rate of return;
 - (h) Financial ratios including debt service coverage ratio (DSCR) and profitability ratio;
 - (i) Calculation of tariffs and/or third party revenue (if any);
 - (j) Financial model data book including the assumptions used in the preparation of the financial model (which is consistent with the technical Proposal) and the explanation for use of the financial model; and
 - (k) Proposed Government Support which is consistent with the financing plan as referred to in (3) above, if required.
- (5) Financial model review letter in the format specified in the RfP;
- (6) Financial pro-forma in the form provided by the GCA with the RfP which must be consistent with the financial model:
- (a) pro-forma 1 – projected investment return (for example Availability Payments, user charges, tariffs or other form of revenue);
 - (b) pro-forma 2 – projected capital expenditure (nominal);
 - (c) pro-forma 3 – projected maintenance expenditure (nominal);
 - (d) pro-forma 4 – projected operating expenditure (nominal);
 - (e) pro-forma 5 – projected Viability Gap Fund (if any);
 - (f) pro-forma 6 – financing Plan;
 - (g) pro-forma 7 – analysis of staffing; and

- (h) other pro-forma as required.
 - (7) Confirmation of accounting treatment;
 - (8) Confirmation of tax treatment; and
 - (9) Clawback given to the Government (if any).
- d) Response to the draft PPP Contract at least consists of clarification and/or markup of the draft PPP Contract accompanied by explanation of the markup.
- 6) The Procurement Committee may allow Participants who are in the form of a consortium to change their consortium structure and/or their consortium members before the deadline for Proposal submission, as long as this change to the consortium structure and/or consortium members does not negatively impact the competition.
- 7) Change to the consortium structure and/or consortium members as referred to in point 6) is not allowed to include change of consortium leader if the consortium leader only consist of 1 (one) Business Entity. In the case of a consortium with more than 1 (one) Business Entity as the consortium leader, at least 1 (one) Business Entity must stay as the consortium leader.
- 8) Terms regarding the change in consortium structure and/or consortium members as referred to in point 6) are included in the RfP.
- 9) In the event there is a change in the Procurement schedule which causes determination of the winner to be delayed, Participant(s) must extend the validity of the cover letter to cover the extension period.
- 10) In the event the validity of the cover letter is not extended to cover the change in the Procurement schedule as referred to in point 9), the Participant(s) is deemed to have withdrawn from the Procurement.
- 11) If there is no Proposal submitted by any Participant, the Procurement Committee sends a report to GCA.
- 12) Based on the report as referred to in point 11), the GCA declares the Tender failed and asses the action

plan on the failed Tender.

- 13) Based on the assessment as referred to in point 12), the GCA decides the follow up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.

e. Opening of the Proposal

- 1) The Opening of the Proposal is conducted by the Procurement Committee before the Participants at a set time and place.
- 2) The Procurement Committee requests the representatives of the Participants to attend as witnesses. If no witness or only 1 (one) witness from the Participants attends, the opening of the Proposal is postponed by the Procurement Committee for 1 (one) hour.
- 3) If after the postponement for 1 (one) hour, no representative of any Participant attends or there is only 1 (one) participant as witness, the opening of the Proposals is carried out being witnessed by 2 (two) witnesses besides the Procurement Committee, as appointed in writing by the Procurement Committee.
- 4) The Opening of the Proposals is recorded in the Minutes of the Opening of the Proposal and signed by all members of the Procurement Committee and the witnesses who attended.
- 5) Copies of the Minutes of the Opening of Envelope I are distributed to all Participants.

f. Evaluation of the Proposals

- 1) Procurement Committee conducts an evaluation of the Proposals based on the terms and procedures determined in the RfP.
- 2) If deemed necessary, the Procurement Committee may request any Participant to clarify their Proposal. Participants respond to clarification questions in written to the Procurement Committee.
- 3) If deemed necessary, the Procurement Committee may give an opportunity to each Participant to present their

technical Proposal. Each Participant has to be offered an equal opportunity to present.

- 4) Terms of the clarification questions and technical Proposal presentation as referred to in point 2) and 3) are included in the RfP.
- 5) Evaluation of Proposals consists of:
 - a) Administrative Proposal evaluation
 - (1) Administrative Proposal evaluation is conducted using pass/fail system relating to the fulfillment of the administrative requirements; and
 - (2) The Procurement Committee only eliminates Participants on the basis of substantial matters.
 - b) Technical and financial Proposal evaluation
 - (1) The technical and financial Proposal evaluation is conducted in respect of Participants who fulfill the administrative requirements.
 - (2) The technical and financial Proposal evaluation is conducted by considering the compliance of the technical Proposal by referring to the requirements determined in the RfP.
 - (3) During the evaluation process, the Procurement Committee, at its discretion may request Participants to undertake corrections of arithmetical errors or numerical inconsistencies found in their Proposal.
 - (4) Participants may only make changes in respect of arithmetical errors or numerical inconsistencies identified by the Procurement Committee as stated in the Minutes of Arithmetical Corrections. The correction result becomes a part of the Proposals.

- (5) Results of the correction of arithmetical errors or numerical inconsistencies is delivered by the Participants who confirm that the corrections made become an integral part of the Proposal that is evaluated.
- (6) Evaluation of the fulfillment of Minimum Requirements is conducted by the Procurement Committee using the pass/fail method.
- (7) For the Proposals which pass the evaluation as referred to in point (6) above, the Procurement Committee evaluates the responses to Additional Requirements based on the criteria, weightings, and procedures of evaluation as determined in the RfP.
- (8) If the price/tariff/Availability Payment/other form of monetary measures in the Proposals varies over time, the evaluation is based on the net present value of the cost to the GCA and/or users over the period of the PPP Contract, discounted using a rate as determined in the RfP.
- (9) The response to the draft PPP Contract will be evaluated and the impact will be considered as part of technical and financial evaluation.
- (10) The Procurement Committee prepares a ranking based on the total score evaluated for the responses to Additional Requirements and the weight of each evaluation criterion.
- (11) Based on the ranking as referred to in point (10) and considering the maximum number of Dialogue Participants as determined in the RfP, the Procurement Committee determines the Dialogue Participants to be invited to engage in the Optimization Dialogue.

- (12) Participants who are not invited to engage in the Optimization Dialogue as referred to in point (11) above are deemed do not pass the Proposal evaluation.
- 6) The Procurement Committee prepares the Minutes of the Proposal Evaluation Result which are signed by all members of the Procurement Committee.
 - 7) If there is corrections of arithmetical errors or numerical inconsistencies, Minutes of Arithmetical Corrections are attached to the Minutes of the Proposal Evaluation Result.
 - 8) If there is only one Proposal which fulfills the Minimum Requirements, the Tender proceeds to the Dialogue Optimization stage between the Procurement Committee and the Participant who qualifies in accordance to the provisions in this National Public Procurement Agency Regulation.
 - 9) If no Proposal fulfills the Minimum Requirements, the Procurement Committee delivers a report to the GCA by attaching the Minutes of Proposal Evaluation Result.
 - 10) After receiving the report, GCA declares the Tender failed and asses the action plan on the failed Tender.
 - 11) Based on the assessment as referred to in point 10), the GCA decides the follow-up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.
- g. Notification of the evaluation result to each Participant.
- 1) Procurement Committee notifies the evaluation result to each Participant.
 - 2) Notification as referred to in point 1) is not allowed to include score on the Proposal evaluation result.
 - 3) Notification to Participant who does not pass the Proposal evaluation must be accompanied by reasons.
 - 4) Notification of the evaluation result as referred to in point 1) above may be delivered through electronic mail.

- h. Objection to the Proposal Evaluation result.
 - 1) Participants that do not pass the Proposal evaluation may address their objection in writing on the result of the Proposal evaluation to the Procurement Committee accompanied by sufficient supporting documents of any abuse/violation.
 - 2) Objection can only be submitted within the period as determined in the RfP.
 - 3) Objections as referred to in point 1) may be addressed individually or collectively.
 - 4) Participants as referred to in point 1) may only submit objections in relation to the following:
 - a) violation(s) of terms and procedures regulated by this National Public Procurement Agency Regulation;
 - b) violation(s) of terms and procedures determined in the RfP;
 - c) dishonest practices that prevent fair business competition; and/or
 - d) an abuse of authority by the Procurement Committee and/or other authorized officials in the Tender process.
 - 5) Procurement Committee must respond in writing to all objections in the time period determined in the RfP;
 - 6) If an objection is declared valid by the Procurement Committee, the Procurement Committee reports the objection to the GCA.
 - 7) Based on the report from Procurement Committee, the GCA declares the Tender failed and assesses the action plan on the failed Tender.
 - 8) Based on the assessment as referred to in point 7), the GCA follow up the action as referred to in Article 21 section (3) of this National Public Procurement Agency Regulation.
- i. Invitation to the Dialogue Participants.
 - 1) The Procurement Committee sends an invitation to each Dialogue Participant to engage in Optimization Dialogue.
 - 2) Procurement Committee sends the invitation to each

Dialogue Participant by attaching an Optimization Dialogue Process Information Letter (hereinafter referred to as Process Information Letter) which explains matters as follows:

- a) terms and conditions of the Optimization Dialogue;
 - b) objectives and topics of discussion;
 - c) time and place along with the detailed implementation schedule; and
 - d) request for any additional documents to be submitted by the Dialogue Participants in order to facilitate Optimization Dialogue.
- 3) Invitation as referred to in point 1) may be delivered through electronic mail.
 - 4) The delivery of invitation as referred to in point 1) does not include any information on the evaluation result of each Participant.
 - 5) The Procurement Committee may ask the Dialogue Participants to give their response to the dialogue topics listed in the Process Information Letter.
 - 6) Responses as referred to in point 5) are utilized in the Optimization Dialogue which is non-binding and not to be seen as part of a Proposal.
- j. Optimization Dialogue based on the result of Proposal evaluation.
- 1) Optimization Dialogue is conducted through a series of one-on-one meetings between Procurement Committee and Dialogue Participants to discuss the optimization of their Proposal.
 - 2) Optimization Dialogue is conducted in accordance with the place, time, detail of implementation schedule, and topics as determined in the Process Information Letter.
 - 3) The result of Optimization Dialogue with each Dialogue Participant is recorded in the Minutes of Optimization Dialogue and delivered to respective Dialogue Participant.
 - 4) Minutes of Optimization Dialogue and any information

from the Optimization Dialogue with one Dialogue Participant is confidential and cannot be shared to any other Dialogue Participant or any other party who could impact the competition.

- 5) Based on the Minutes of Optimization Dialogue:
 - a) If deemed necessary, the Procurement Committee may schedule additional time and discussion topics through revision of Process Information Letter. Revision of Process Information Letter is delivered to each Dialogue Participant; or
 - b) Each Dialogue Participant is asked to conduct optimization and adjustment for their Proposal and to submit an Optimized Proposal which fulfils the Additional Requirements. The aim of fulfillment of the Additional Requirements is to remain to give the most beneficial Proposal with the best Value for Money.
- 6) Based on the Dialogue Optimization, if deemed necessary, the Procurement Committee with approval from the GCA may make adjustments to the RfP without modifying the Minimum Requirements. The Procurement Committee will undertake any such adjustments to the RfP as follows:
 - a) If new terms and/or important revisions need to be included in the RfP including the Draft PPP Contract, the Procurement Committee issues a revision to the RfP which includes these new terms and/or important changes to the RfP.
 - b) After the Optimization Dialogue is completed, the Procurement Committee proposes the revisions of the RfP to the GCA to be approved.
 - c) Revisions to the RfP as referred to in point b) are not allowed to change, add and/or reduce the criteria, weighting, and/or procedure of evaluation.
 - d) The proposal for revisions of the RfP including the draft PPP Contract is accompanied by the Minutes of the Optimization Dialogue.

- e) The GCA responds to the proposal for revisions of the RfP as referred to in point b) not later than 5 (five) work days after receiving the proposal from the Procurement Committee.
 - f) If the GCA does not give a response as referred to in point d), the GCA is considered to not approve the proposed revisions to the RfP.
 - g) The Procurement Committee issues the revisions to the RfP which includes the draft PPP Contract to all Dialogue Participants after the letter of approval from the GCA is received. Delivery of revisions to the RfP may be conducted through electronic mails.
 - h) Every revision of the RfP is deemed an integral part of the RfP and delivered to all Dialogue Participants.
 - i) If the revisions to the RfP are not delivered to all Dialogue Participants, the prevailing provisions in the unrevised RfP or previous revision will apply.
 - j) In the event that there is a revision of the RfP, the Procurement Committee may extend the deadline for the submission of the Optimized Proposal.
 - k) The revisions of the RfP become the basis for each Dialogue Participant to submit the Optimized Proposal.
- k. Submission of the Optimized Proposal:
- 1) Based on the Optimization Dialogue result, the Dialogue Participants submit Optimized Proposals to the Procurement Committee according to the schedule determined in the RfP and its revisions (if any).
 - 2) In the event that Dialogue Participant does not submit an Optimized Proposal and does not withdraw their Proposal, such Dialogue Participant submits a confirmation letter stating that their Proposal remains valid.
 - 3) Dialogue Participants who did not submit an Optimized Proposal and did not deliver a letter which

states that their Proposal remains valid before the deadline of Optimized Proposal submission are deemed withdrawn from Tender.

- 4) Letter of statement as referred to in point 2) must be delivered before the deadline of Optimized Proposal submission.
- 5) The Procurement Committee rejects any Optimized Proposal or letter of statement that is submitted after the deadline for Optimized Proposal submission.
- 6) Dialogue Participants submit Optimized Proposals in accordance with the requirements in the RfP and its revisions (if any), which consist of:
 - a) the administrative Proposal which at least consists of:
 - (1) Optimized Proposal Cover Letter signed by the Dialogue Participant or personnel authorized to represent the Dialogue Participant, which contains a statement that the Optimized Proposal is valid;
 - (2) Statement letter that the Optimized Proposal does not change the fulfillment of Minimum Requirements as stated in the previous Proposal; and
 - (3) Other information as required.
 - b) Optimized technical Proposal which at least consists of:
 - (1) Technical data which covers the update to the documents as referred to in Chapter II C. 2. d. 5) b) of this Annex;
 - (2) Supporting data;
 - (3) Schedule and plan for implementing project;
 - (4) management and organizational plan for implementing PPP project; and
 - (5) Proposed Sub-Contract Arrangements that consist of heads of terms for the Construction Sub-Contract and the Operating and Maintenance Sub-Contract(s).

- c) Optimized Financial Proposal which at least consists of:
 - (1) role and share of each party in the consortium;
 - (2) detailed financing plan (including letters of support and term sheets);
 - (3) updated financial model, which consists of documents as referred to in Chapter II C. 2. d. 5) c) (4) of this Annex;
 - (4) financial model review letter in the format specified in the RfP;
 - (5) updated financial pro-forma as referred to in Chapter II C. 2. d. 5) c) (6) of this Annex;
 - (6) confirmation of accounting treatment;
 - (7) confirmation of tax treatment; and
 - (8) clawback given to the Government (if any).
 - d) Optimized Response to the PPP Contract which at least consists of mark-up of the draft PPP Contract which reflects the Dialogue Participant's technical and financial Proposals.
- 7) In the RfP, the Procurement Committee may state that the Dialogue Participants need only to submit parts of their Proposal which have changed following Optimization Dialogue. In this case, the Dialogue Participants have to submit a confirm letter stating that changes have only been made to parts related to the topics discussed in Optimization Dialogue and other parts has not been changed and remain valid.
 - 8) If there are any discrepancies or inconsistencies between information in the Proposal and Optimized Proposal, the information in the Optimized Proposal prevails.
- 1. Opening of the Optimized Proposal.
 - 1) The Procurement Committee invites the Dialogue Participants who have submitted the Optimized Proposal to attend the opening of the Optimized Proposal at a set time and place.

- 2) Opening of the Optimized Proposal is conducted by the Procurement Committee before the Dialogue Participants who submitted Optimized Proposal at a set time and place.
 - 3) Procurement Committee requests the presence of the representatives of the Dialogue Participants as witnesses. If there is no witness or there is only 1 (one) witness from the Dialogue Participants present, the opening of the Optimized Proposal is postponed by the Procurement Committee for 1 (one) hour.
 - 4) If after the postponement for 1 (one) hour, no representative of any Dialogue Participant attends, the opening of the Optimized Proposal is carried out being witnessed by 2 (two) witnesses beside the Procurement Committee, appointed in writing by the Procurement Committee.
 - 5) Opening of the Optimized Proposals is recorded in the Minutes of the Opening of the Optimized Proposal and signed by all members of the Procurement Committee and the witnesses who attend.
 - 6) Copies of the Minutes of the Optimized Proposal Opening are distributed to all Dialogue Participants who submit the Optimized Proposal.
- m. Evaluation of the Optimized Proposal.
- 1) The Procurement Committee conducts an evaluation of the Optimized Proposal based on the terms and procedures determined in the RfP;
 - 2) If deemed necessary, the Procurement Committee may request the Dialogue Participants to clarify their Proposal via written clarifications to Dialogue Participants. Dialogue Participants respond to the clarification in writing to the Procurement Committee.
 - 3) If deemed necessary, the Procurement Committee may give an opportunity to each Dialogue Participant to present the technical aspects of their Optimized Proposal. Each Dialogue Participant has to be offered an equal opportunity to present.

- 4) Terms of the clarification questions and technical Proposal presentation as referred to in point 2) and 3) are included in the RfP.
- 5) Dialogue Participants are deemed to withdraw from the Tender in the case of:
 - a) The Dialogue Participant do not submit any Optimized Proposal or a confirmation letter stating that the previous Proposal remains valid; or
 - b) The Optimized Proposal or the confirmation letter stating that the previous Proposal remains valid submitted after the Optimized Proposal submission deadline.
- 6) In the event of a Dialogue Participant withdraws from the Tender with reasons that cannot be accepted by the GCA, the bid bond is liquidated and deposited into the State/Regional Treasury and such Dialogue Participant shall be imposed with penalty by a prohibition to participate in an Procurement in PPP for 2 (two) years.
- 7) In the event of a Dialogue Participant withdraws from the tender with reasons that can be accepted by the GCA, the bid bond is liquidated and deposited into the State/Regional Treasury.
- 8) Evaluation of the Optimized Proposal consists of:
 - a) Evaluation on the updated administrative Proposal
 - (1) Evaluation on the updated administrative Proposal is conducted by using pass/fail system with regard to the fulfillment of the administrative requirements determined in the RfP; and
 - (2) The Procurement Committee only eliminates on the basis of substantial matters.
 - b) Technical and financial Evaluation
 - (1) Technical and financial evaluation is conducted on the Optimized Proposals of Participants who fulfill the administrative

requirements;

- (2) The Procurement Committee ensures each Dialogue Participants' Optimized Proposal continues to fulfill the requirements determined in the RfP;
- (3) The Procurement Committee ensures that the Optimized Proposal does not change fulfillment of the Minimum Requirements;
- (4) The Procurement Committee evaluates the responses to Additional Requirements based on the criteria, weightings, and procedures of evaluation as determined in the RfP;
- (5) If the price/tariff/availability payment/other form of monetary measures in the Optimized Proposals varies over time, the evaluation is based on the net present value of the cost to the GCA or the user over the period of the PPP Contract, discounted using a rate as determined in the RfP;
- (6) Mark-up to the draft PPP Contract will be considered as part of technical and financial evaluation.
- (7) In evaluating, the Procurement Committee, at its discretion may request Dialogue Participants to undertake corrections of arithmetical error or numerical inconsistencies found in their Optimized Proposal as determined in the RfP.
- (8) Dialogue Participants may only make changes in respect of arithmetical errors or numerical inconsistencies identified by the Procurement Committee as stated in the Minutes of Arithmetical Corrections.
- (9) Results of the correction of arithmetical errors or numerical inconsistencies are delivered by the Dialogue Participants who confirm that the corrections made become an

integral part of the Proposal that is evaluated.

- (10) Based on the total scores as a result of a combination of the technical and financial evaluation, the Procurement Committee ranks the result of the evaluation. The Dialogue Participant with the highest total score ranks first.
 - (11) Procurement Committee prepares the Minutes of the Optimized Proposal Evaluation Result.
 - (12) Minutes of the Optimized Proposal Evaluation Result are signed by all members of the Procurement Committee.
 - (13) In the event that the Optimized Proposal evaluation has not resulted in the most beneficial Proposal with the best Value for Money which could be achieved or meets the objectives of the Tender as stated in the RfP, the Procurement Committee delivers a report to the GCA.
 - (14) Based on the report of Optimized Proposal Evaluation Result as referred to in point (13), the GCA may instruct the Procurement Committee to repeat the Optimization Dialogue process starting from inviting the Dialogue Participant until the evaluation of Optimized Proposal as referred to in Chapter II C. 2. i. to Chapter II C. 2. m. of this Annex in order to obtain the most beneficial Proposal with the best Value for Money.
- n. Issuance of the Minutes of the Tender Result
- 1) Procurement Committee prepares the Minutes of the Tender Result.
 - 2) Minutes of the Tender Result is a summary of the Tender result made by the Procurement Committee and signed by all members of the Procurement Committee.
 - 3) Minutes of the Tender Result is confidential and only delivered to the GCA.

- 4) Minutes of the Tender Result has to include the following:
 - a) name of all Participants;
 - b) evaluation method used;
 - c) evaluation criteria;
 - d) evaluation result of each Participant in each stage;
 - e) the estimated capital expenditure and operational expenditure proposed by each Participant;
 - f) Participants' ranking;
 - g) other notes deemed necessary on the implementation of the Tender; and
 - h) date of the minutes.
- o. Determination of Winner;
 - 1) Procurement Committee prepares and delivers a report to the GCA by attaching the Minutes of the Tender Result.
 - 2) Report as referred to in point 1), is accompanied by Procurement Committee's recommendation for the prospective Winner, first and second runner-ups (if any).
 - 3) In the event that the GCA agree with Procurement Committee's recommendation, the GCA may prepare a determination letter not later than 10 work days after the recommendation from Procurement Committee is received, which contains:
 - (f) the winner; and
 - (g) the first and second runner-ups (if any).
 - 4) In the event that the GCA does not agree with the Procurement Committee's recommendation, the GCA discusses this matter with the Procurement Committee to make a decision.
 - 5) The result of discussion between the GCA and the Procurement Committee as referred to in point 4) is recorded in the Minutes of Meeting signed by the GCA and the Procurement Committee.
 - 6) The result of discussion between the GCA and the Procurement Committee as referred to in point 5) is in

the form of approval to the Procurement Committee recommendation or an instruction to the Procurement Committee to conduct a re-evaluation.

- 7) In the event that the result of discussion between the GCA and the Procurement Committee is an approval to the Procurement Committee's recommendation, then the GCA prepares a determination letter which contains:
 - (a) the winner;
 - (b) the first and second runner-ups (if any).
 - 8) In the event that that re-evaluation as referred to in point 6) requires an extension to the schedule determined in the RfP, the Procurement Committee announces the change of schedule to all Participants and ask for extension to the bid bond validity period (if necessary).
 - 9) Procurement Committee prepares and delivers a report on the re-evaluation result to the GCA which contains recommendations of the winner, the first winner and the second runner-ups candidates (if any).
 - 10) In the event that the GCA approves the Procurement Committee's recommendation based on the re-evaluation result as referred to in point 9), then the GCA prepares a determination letter which contains:
 - (a) the winner;
 - (b) The first and second runner-ups (if any).
 - 11) In the case that the GCA does not approve the Procurement Committee's recommendation as referred to in point 10), then the GCA declares the tender to be failed and asses the action plan on the failed Tender.
 - 12) Based on the assessment as referred to in point 11), the GCA decides the follow-up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.
- p. Announcement of the Tender result.
- 1) Based on the determination of the Winner by the GCA, the Procurement Committee:

- (a) notifies the Tender result to each Dialogue Participant in writing; and
 - (b) announces the Tender result by posting it on the GCA's official website and/or print media according to the specified schedule.
- 2) Content of the Tender result announcement as referred to in 1) at least covers:
 - a) name of the PPP project;
 - b) name of the GCA;
 - c) ranking and evaluation score of the Proposal and Optimized Proposal;
 - d) name and address of the winner, the first and second runner-ups (if any);
 - e) period of time for the PPP; and
 - f) value of the Project capital expenditure and operational expenditure committed by the Winner.
- q. Objection to result of Tender
 - 1) Dialogue Participants who are not determined as the Winner may address their objections in writing on the result of the Tender to the GCA accompanied by the sufficient preliminary evidence of any violation.
 - 2) Objection can only be submitted within the period determined in the RfP.
 - 3) Objection submission as referred to in point 1) may be addressed individually or collectively.
 - 4) Dialogue Participants as referred to in point 1) may only address their objections as follows:
 - a) violation(s) on terms and procedures regulated by this National Public Procurement Agency Regulation;
 - b) violation(s) on terms and procedures determined in the RfP;
 - c) dishonest practices that prevent fair business competition; and/or
 - d) an abuse of authority by the Procurement Committee and/or other authorized officials in the Tender process.
 - 5) GCA must respond in writing to all objections within

the time period determined in the RfP;

- 6) If the objection is declared valid by the GCA, the GCA declares the Tender failed and assesses the action plan on the failed Tender.
- 7) Based on the assessment as referred to in point 6), the GCA decides the follow up action in accordance to Article 21 section (3) of this National Public Procurement Agency Regulation.

r. Issuance of the Letter of Award

- 1) GCA issues the Letter of Award with the following terms:
 - a) no objection from Participants;
 - b) any objection proven untrue; and
 - c) objection period ended.
- 2) GCA issues the Letter of Award not later than 7 (seven) work days after the objection process ends.
- 3) When the Letter of Award is issued, the consortium members and consortium equity composition of the winner must be the same as the consortium members and consortium structures at the Determination of Winner stage.
- 4) In the event that the consortium members and/or consortium equity composition of the winner at the issuance of Letter of Award is different from the consortium members and/or consortium structures at the Determination of Winner stage, the winner is disqualified and the Determination of Winner is annulled.
- 5) A winner is disqualified as referred to in point 4) or withdraws after the issuance of the Letter of Award with reasons that cannot be accepted by the GCA, their bid bond is liquidated and deposited into the State/Regional Treasury and such Winner shall be imposed with penalty by a prohibition to participate in any IBE Procurement for a PPP for 2 (two) years.
- 6) If a winner withdraws from the Tender after the issuance of the Letter of Award with reasons accepted by the GCA, their bid bond is liquidated and deposited

into the State/Regional Treasury.

- 7) If a winner withdraws or is disqualified, the GCA may instruct the Procurement Committee to review Optimized Proposal evaluation results of the first and second runners-up.
- 8) The GCA may issue the Letter of Award to the first runner-up provided that:
 - a) the review conducted by Procurement Committee as referred to in 7) conclude that the first runner-up's Optimized Proposal is the most beneficial Proposal with the best Value for Money; and
 - b) The cover letter indicates that the Proposal of such runner-up is still valid or the validity has been extended until the signing of the PPP Contract.
- 9) In the event that the review conducted by Procurement Committee conclude that neither the first, nor the second runner-ups Optimized Proposal are not the most beneficial proposal with the best Value for Money, Procurement Committee the Procurement Committee delivers a report to the GCA.
- 10) Based on the report as referred to in point 9), The GCA may declare that a repeat to the Invitation to the Dialogue Participant stage until the Evaluation of Optimized Proposal stage as referred to in Chapter II C. 2. i. to Chapter II C. 2. m. of this Annex is needed in order to obtain the most beneficial Proposal with the best Value for Money.
- 11) Repetition of stages as referred to in point (10) is only conducted with the first and second runner-ups.
- 12) In the event that the winner, first runner-up and second runner-up withdraw from the Tender, the GCA declares the Tender failed and asses the action plan on the failed Tender.
- 13) Based on the assessment as referred to point 12), the GCA decides the follow up action in accordance with Article 21 section (3) of this National Public Procurement Agency Regulation.

- s. Preparation of the PPP Contract signing.
 - 1) Based on the Letter of Award issued, the GCA conducts a preparation for the signing of the PPP Contract under the following terms:
 - a) GCA and the winner finalizes the draft PPP Contract.
 - b) The finalization process as referred to in point a) is not allowed to change anything that has been competed during the Tender.
 - 2) Based on the Letter of Award, the Winner conducts preparation to PPP Contract signing as follows:
 - a) The winner must establish an IBE, which will sign the PPP Contract.
 - b) The IBE must be legally established not later than 6 (six) months after the issuance of the Letter of Award by the GCA.
 - c) The winner must extend the bid bond validity until the performance bond has been received by the GCA.
 - d) In the event that the winner does not extend the bid bond validity as referred to point c) with reasons that cannot be accepted by the GCA, the winner is deemed to have withdrawn and the bid bond of such winner is liquidated and deposited to the State/Regional Treasury and such winner shall be imposed with penalty by a prohibition to participate in any Procurement for a PPP for 2 (two) years.
 - e) In the event that the winner does not extend the bid bond validity as referred to point c) with reasons that can be accepted by the GCA, the winner is deemed to have withdrawn and the bid bond of such winner is liquidated and deposited into the State/Regional Treasury.
 - 3) The PPP Contract is signed by the GCA and the IBE not later than 40 (forty) work days after the establishment of the IBE.

- 4) The PPP Contract will be effective after all of the conditions precedent as determined in the PPP Contract has been fulfilled by each party.
 - 5) In the event that a condition is beyond the winner's control which results in the need of a change to the consortium members and/or a change to the IBE equity composition during the preparation of the PPP Contract signing, the winner must seek for GCA's approval for such changes.
 - 6) In the event that the GCA approves changes as referred to in point 5), the winner must make the necessary adjustment to the bid bond to reflect the changes in consortium members and/or structures.
 - 7) The changes of the winning consortium members and/or the IBE equity composition as referred to point 5) are prohibited in changes of the consortium leader.
 - 8) In the PPP Contract signing preparation process, the GCA may be assisted by the PPP Team and/or the Procurement Committee.
- t. Preparation of financial close:
- 1) Financial close is not a condition precedent for the PPP Contract to become effective.
 - 2) The IBE conducts the signing of financing agreements and coordinate with the GCA in the preparation of financing agreement signing.
 - 3) Based on the signed PPP Contract, the GCA, IBE and financiers conduct the signing of the consent letter which gives or confirms certain rights to the lenders to the PPP project.

D. Direct Appointment

1. Direct Appointment with certain conditions as referred to in Article 20 section (1) point a of this National Public Procurement Agency Regulation covers the following activities:
 - a. Invitation to the prospective Participants fulfilling certain conditional terms, accompanied by the RfQ, the RfP and the Confidentiality Letter.
 - b. Submission of the Qualification Document which consists of the

administrative document, the technical and financial capabilities.

- c. Qualification evaluation which is conducted in relation to the fulfillment of the Qualification Document requirements.
 - d. Announcement of the qualification evaluation result.
 - e. Explanation of the PPP Project.
 - f. Submission of Proposal which is submitted in 1 (one) envelope which consists of the administrative Proposal, technical Proposal and financial Proposal.
 - g. Evaluation of the Proposal and clarification. The evaluation is conducted according to the terms determined in the RfP. In evaluating, the Procurement Committee may conduct technical Proposal, financial Proposal and Draft PPP Contract clarification and this clarification is recorded in minutes of meeting.
 - h. Negotiation on the technical Proposal, financial Proposal, and draft PPP Contract. The negotiation results are recorded in minutes of meeting.
 - i. Delivery of the direct appointment result to obtain a determination from the GCA by attaching the Minutes of the Direct Appointment Result as the conclusion of the Proposal evaluation result, clarification and negotiation.
 - j. Determination of the Direct Appointment result is conducted by the GCA and the announcement of the result is carried out by the Procurement Committee.
 - k. Preparation of the PPP Contract signing. The preparation of the PPP Contract signing is conducted in accordance with Chapter II C. 1. o. of this Annex.
 - l. Preparation of financial close. Preparation of financial close is conducted in accordance with Chapter II C. 1. p. of this Annex.
2. Direct Appointment in the event of Pre-qualification results in only one Participant as referred to in Article 20 section (1) point b of this National Public Procurement Agency Regulation covers the following activities:
- a. Procurement Committee submits a report on the Pre-qualification results to the GCA.
 - b. Based on the report as referred to in point a, the GCA

determines the qualified Participant as a single Participant.

- c. The Procurement Committee sends an invitation to the single Participant, with the RfP and the Confidentiality Letter.
- d. Explanation of the PPP Project. If in the explanation process there are new terms and/or important changes that need to be included in the RfP, the Procurement Committee includes these new terms or important changes to the revision to the RfP.
- e. Revisions to the RfP as referred to in point d are not allowed to change, add and/or reduce criteria, weighting, or procedure of evaluation.
- f. Submission of Proposal which is submitted in 1 (one) envelope which consists of the administrative Proposal, technical Proposal and financial Proposal.
- g. The evaluations of Proposal and clarification. The evaluations are conducted according to the terms determined in the RfP. In evaluating, the Procurement Committee may clarify technical Proposal, financial Proposal and Draft PPP Contract.
- h. Negotiation on the technical Proposal, financial Proposal, and draft PPP Contract. The negotiation may result in an agreement or disagreement between the Procurement Committee and the Participant. The negotiation result is recorded in the Minutes of Negotiation Result.
- i. Procurement Committee delivers a report on the negotiation result to the GCA by attaching the Minutes of the Direct Appointment Result as the conclusion of the Proposal evaluation result, clarification and negotiation;
- j. In the event that the report from the Procurement Committee states that the negotiation has resulted in a disagreement, the GCA declares the Direct Appointment failed and the Procurement Committee announces that the Direct Appointment fails.
- k. In the event that the report from the Procurement Committee states that the negotiation has resulted in an agreement, the GCA issues a Letter of Direct Appointment.
- l. The Procurement Committee announces the Direct Appointment result.

- m. Preparation of the PPP Contract signing. The preparation of the PPP Contract signing is conducted in accordance with Chapter II C. 1. o. of this Annex.
- n. Preparation of financial close. Preparation of financial close is conducted in accordance with Chapter II C. 1. p. of this Annex.

HEAD OF THE NATIONAL PUBLIC
PROCUREMENT AGENCY,

signed

AGUS PRABOWO