

REGULATION OF THE MINISTER OF STATE-OWNED ENTERPRISES
OF THE REPUBLIC OF INDONESIA
NUMBER PER-08/MBU/12/2019

ON

GENERAL GUIDELINES ON IMPLEMENTATION OF PROCUREMENT OF
GOODS AND SERVICES OF STATE-OWNED ENTERPRISES

BY THE BLESSINGS OF ALMIGHTY GOD

MINISTER OF STATE-OWNED ENTERPRISES
OF THE REPUBLIC OF INDONESIA,

- Considering :
- a. that procurement of goods and services has an important role in the business activity of State-Owned Enterprises to achieve the purpose of establishment of State-Owned Enterprises;
 - b. that in order the implementation process of procurement of goods and services in State-Owned Enterprises to become more competitive, transparent and accountable for all provider of goods and services, also to grow healthy business climate in State-Owned Enterprises, therefore Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2008 on General Guidelines on Procurement of Goods and Services as amended by Regulation of the Minister of State-Owned Enterprises Number PER-15/MBU/2012 is necessary to be adjusted;
 - c. that pursuant to the considerations as referred in point a and point b, it is necessary to issue Regulation of the Minister of State-Owned Enterprises on General

Guidelines on the Implementation of Procurement of Goods and Services of State-Owned Enterprises;

- Observing : 1. Law Number 19 of 2003 on State-Owned Enterprises (State Gazette of the Republic of Indonesia of 2003 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 4297);
2. Law Number 40 of 2007 on Limited Liability Companies (State Gazette of the Republic of Indonesia of 2007 Number 106, Supplement to the State Gazette of the Republic of Indonesia Number 4756);
3. Government Regulation Number 41 of 2003 on Delegation of Position, Duty and Authority of the Minister of Finance to State-Owned Limited Liability Company (Persero), State-Owned Public Company (Perum) and State-Owned Service Company (Perjan) to the Minister of State-Owned Enterprises (State Gazette of the Republic of Indonesia of 2003 Number 82, Supplement to the State Gazette of the Republic of Indonesia Number 4305);
4. Government Regulation Number 45 of 2015 on Establishment, Management, Supervision and Dissolution of State-Owned Enterprises (State Gazette of the Republic of Indonesia of 2005 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4556);
5. Presidential Regulation Number 41 of 2015 on the Ministry of State-Owned Enterprises (State Gazette of the Republic of Indonesia of 2015 Number 76) as amended by the Presidential Regulation Number 41 of 2017 on the Ministry of State-Owned Enterprises (State Gazette of the Republic of Indonesia of 2017 Number 74);

HAS DECIDED:

To issue : REGULATION OF THE MINISTER OF STATE-OWNED ENTERPRISES ON GENERAL GUIDELINES ON IMPLEMENTATION OF PROCUREMENT OF GOODS AND SERVICES OF STATE-OWNED ENTERPRISES.

CHAPTER I
GENERAL PROVISIONS

Part One
Definition

Article 1

In this Ministerial Regulation:

1. Procurement of Goods and services means the activities of obtaining goods and services conducted by State-Owned Enterprises which financing derives from the budget of State-Owned Enterprises which process commences from the planning of necessity up to the hand-over of work result.
2. State-Owned Enterprises, hereinafter referred to as SOEs, means an enterprise which equity owned by the state either majority or entirely through direct equity participation deriving from the restricted state assets.
3. User of Goods and Services means the SOEs owning the work.
4. Provider of Goods and Services means an enterprise including SOE, local-owned enterprises and private-owned enterprises, entities, individual persons/legal subjects or Government Institution/Public Service Agencies which business activity is providing goods and services.
5. Goods and Services means all form of products and/or services required by the User of Goods and Services.
6. Subsidiary of SOE hereinafter referred to as Subsidiary means a company which shares are more than 50% owned by the respective SOE or a company which shares are more than 50% owned by other SOE or joint venture company with aggregate ownership of SOE shares are more than 50%.
7. SOE Affiliated Company means a company which shares are more than 50% owned by Subsidiary, merged Subsidiary, or merged Subsidiary with SOE.

Part Two
Scope

Article 2

This Ministerial Regulation is applicable to all Procurement of Goods and Services conducted by SOEs which financing derives from the budget of SOE, including which funds derives from the participation of state capital, funds of SOE for the implementation of subvention/public service obligation/assignment of the Government which reimbursed from the State Budget/Regional Budget, and loans of SOE from the Government.

Part Three
Purpose

Article 3

The purposes of regulating this Procurement of Goods and Services are:

- a. to generate Goods and Services which are proper in quality, quantity, time, cost, location, and provider;
- b. to support the creation of added value in SOE;
- c. to upgrade efficiency;
- d. to simplify and accelerate the process of decision making;
- e. to upgrade autonomy, responsibility, and professionalism;
- f. to manifest a procurement which generate value for money by flexible and innovative ways however remain competitive, transparent, accountable by virtue of good procurement ethics;
- g. to upgrade the usage of domestic productions;
- h. to upgrade the role of national business actors;
- i. to upgrade the synergy between SOE, Subsidiary, and/or SOE Affiliated Company.

Part Four
Principles

Article 4

- (1) Procurement of Goods and Services is required to apply the following principles:
 - a. efficient, means the Procurement of Goods and Services must be endeavored to obtain optimal and best results in short time by reasonably using the funds and potentials as optimal as possible and not only based on lowest price. For the strategic Procurement of Goods and Services, having significant value total cost of ownership (TCO) approach may be conducted;
 - b. effective, means the Procurement of Goods and Services must be in accordance with the determined necessity and give the greatest benefits in accordance with the determined targets;
 - c. competitive, means the Procurement of Goods and Services must be open to eligible Provider of Goods and Services and conducted through fair competition among the Providers of Goods and Services which are equivalent and meet certain requirement/criteria pursuant to the clear and transparent provisions and procedures;
 - d. transparent, means all provisions and information concerning Procurement of Goods and Services, including technical requirements of procurement administration, evaluation procedures, evaluation result, determination of candidates of Provider of Goods and Services, open to all interested Providers of Goods and Services;
 - e. fair and reasonable, means giving the same treatment to all eligible candidates of Provider of Goods and Services;
 - f. open, means all eligible Providers may participate in the Procurement of Goods and Services; and

- g. accountable, means must achieve targets and can be accounted for so as to avoid and reduce the potential for abuse and misappropriation.
- (2) User of Goods and Services prioritize the usage of domestic production, national design and engineering, also expansion of opportunity for small enterprises to the extent that its quality, price, and purpose can be accounted for.
 - (3) User of Goods and Services may give preferences of usage of domestic production with due observance to the provisions of the prevailing legislation in order to encourage domestic industrial growth.
 - (4) User of Goods and Services may synergize among SOE/ Subsidiary/SOE Affiliated Company.
 - (5) User of Goods and Services constitutes the owner of product or service in accordance with the business fields of the respective Provider of Goods and Services.

Part Five
Policy

Article 5

The Procurement of Goods and Services is required to apply the Policy among others:

- a. to upgrade the quality of consolidative planning and strategy of Procurement of Goods and Services to optimize the value for money;
- b. to align the purpose of procurement with the achievement of company purpose;
- c. to perform more transparent, competitive and accountable Procurement of Goods and Services;
- d. to prioritize domestic products in accordance with the provisions of domestic production utilization;
- e. to give opportunities to national business actors and small enterprises;
- f. to strengthen the institutional capacity and Human Resources of Procurement of Goods and Services;
- g. to take advantage of information technology;

- h. to give opportunities to subsidiaries and/or synergy among SOE/Subsidiary/ SOE Affiliated Company;
- i. to perform strategic, modern, innovative procurement; and/or
- j. to strengthen assessment of procurement and risk management performance.

Part Six

Procurement Ethics

Article 6

Procurement of Goods and Services is required to apply procurement ethics among others:

- a. to perform duties orderly, with a sense of responsibility to achieve target, continuity and pertinence to the purpose of Procurement of Goods and Services;
- b. to work professionally, independently and maintain confidentiality of information which must be kept confidential to avoid misappropriation of Procurement of Goods and Services;
- c. to not affect each other either directly or indirectly which causes unfair business competition;
- d. to accept and be responsible for all decisions determined in accordance with the written agreement of the related parties;
- e. to avoid and prevent the occurrence of conflict of interest of the related parties, either directly or indirectly, which causes unfair business competition in the Procurement of Goods and Services;
- f. to avoid and prevent improvidence and leakage of state/company finance.
- g. to avoid and prevent abuse of authority and/or collusion; and/or
- h. to not accept, not offer, or not promise to give or accept presents, reward, commission, rebate, and anything from or to anyone whom known or suspected to be related to the Procurement of Goods and Services.

Part Seven
Usage of Domestic Production

Article 7

- (1) User of Goods and Services prioritizes the usage of domestic production, national design and engineering, also expansion of opportunities to small enterprises.
- (2) In order to encourage domestic industrial growth, User of Goods and Services may give preferences of usage of domestic production with due observance to the provisions of the prevailing legislation.

Part Eight
Monitoring the Usage of Domestic Product

Article 8

The Board of Directors forms the National Contribution Value Team (*Tim Tingkat Komponen Dalam Negeri (TKDN)*) to monitor and ensure the usage of domestic component in the Procurement of Goods and Services.

Part Nine
Price Preference

Article 9

- (1) User of Goods and Services gives price preference on domestic products having higher domestic component level value or equivalent with 25% (twenty-five percent).
- (2) The highest price preference of domestic products for goods is given at 25% (twenty-five percent).
- (3) The highest price preference of domestic products for construction service is given at 7.5% (seven point five percent)

CHAPTER II
IMPLEMENTATION OF PROCUREMENT OF GOODS
AND SERVICES

Part One

Method of Procurement of Goods and Services

Article 10

- (1) Method of Procurement of Goods and Services is adjusted with the necessity of the User of Goods and Services also performed with due regard to the principles as regulated in Article 4 and best practice.
- (2) Method of Procurement of Goods and Services may be conducted by among others but not limited to:
 - a. Public Tender/Selection, means announced broadly through mass media to give opportunities to qualified Provider of Goods and Services to participate in the auction;
 - b. Limited Tender/Limited Selection, means Procurement of Goods and Services offered to the limited parties is at least (2) offers;
 - c. Direct appointment, means Procurement of Goods and Services conducted directly by appointing one Provider of Goods and Services or appointment through beauty contest; or
 - d. Direct procurement, that is purchase of goods in the market, therefore the value is based on market price, including E-purchasing.
- (3) Procedures of Procurement of Goods and Services as referred to in section (2) is further regulated by the Board of Directors of SOE.
- (4) The Board of Directors may regulate the requirement of bid bond in the process of public tender/selection or limited tender/limited selection, except in terms of provider of goods and services is SOE or ex-SOE.
- (5) Method of Procurement as referred to in section (2) may be performed by using e-procurement facility, except for

procurement of consultation services requiring certain technical competence.

Article 11

- (1) Implementation of Procurement of Goods and Services is conducted by eligible procurement committee or procurement official, or professional institution.
- (2) Procurement committee or procurement officials, or professional institution as referred to in section (1), is obligated to sign a letter of undertaking for each Procurement of Goods and Services.
- (3) The Board of Directors reports to the Board of Commissioners/Board of Supervisors regarding the process and result of certain Procurement of Goods and Services which is substantial (not routine) as the application of principles of good corporate governance.
- (4) Procurement of certain Goods and Services which is substantial (not routine) as referred to in section (3) is determined by the Board of Directors with the approval of the Board of Commissioners/Board of Supervisors.

Part Two

Long-Term Procurement of Goods and Services

Article 12

- (1) Long-Term Procurement of Goods and Services may be conducted among others for:
 - a. works which completion takes more than 12 (twelve) months or more than 1 (one) Financial Year;
 - b. works which give more advantage when contracted for period of more than 1 (one) Financial Year and at the longest for 3 (three) Financial Year;
 - c. works which require long-term investment; or
 - d. routine works which must be made available in the beginning of the year.
- (2) For the procurement as referred to in section (1), if necessary, the Board of Directors may create certain price

adjustment formula either for increase or decrease which adjusted with market condition and prevailing best practices.

Part Three
Direct Appointment

Article 13

- (1) Procurement of Goods and Services through direct appointment is conducted by directly appoint 1 (one) Provider of Goods and Services or appointment through beauty contest.
- (2) Direct appointment as referred to in section (1) may be conducted if already meet at least one of the following requirements:
 - a. Required Goods and Services for main performance of the company and its existence may not be postponed (business critical asset);
 - b. Only one Provider of Goods and Services which able to conduct the works in accordance with user requirement or in accordance with the prevailing legislation;
 - c. Goods and Services which are knowledge intensive where to use and maintain the product requires continuity of knowledge from the Provider of Goods and Services;
 - d. If the implementation of Procurement of Goods and Services by using the method of public tender/selection or limited tender/limited selection have been conducted 2 (two) times and did not get the required Provider of Goods and Services or there are no qualified parties or there are no parties participating in tender/selection;
 - e. The Goods and Services owned by the holder of intellectual property (IP) or having the warranty from the Original Equipment Manufacture;
 - f. Emergency handling for security, safety of people, and company strategic asset;

- g. Goods and services which constitutes repeat order to the extent that the offered price is profitable by not sacrificing the quality of goods and services;
 - h. Emergency handling due to natural disaster, either locally or nationally (force majeure);
 - i. Advanced Goods and Services which technically constitutes a unity which inseparable from the works which previously have been performed;
 - j. Provider of Goods and Services are SOEs, Subsidiary or SOE Affiliated Company to the extent that the quality, price and purpose can be accounted for and the required Goods and Services constitutes product or services in accordance with the business fields of the respective Provider of Goods and Services;
 - k. Procurement of Goods and Services in certain quantity and value as determined by the Board of Directors by obtaining prior approval from the Board of Commissioners; and/or
 - l. Consultant which previously is not planned to encounter certain issues which implementation of work must be immediate and unable to be postponed.
- (3) Requirements as referred to in section (2) is outlined in the internal provisions with due regard to the purpose and principles of Procurement of Goods and Services.
- (4) Direct appointment as referred to in section (2) is conducted provided that the required Goods and Services constitutes product or service in accordance with the business fields of the respective provider of Goods and Services and possible under sectoral regulations.

Part Four
Disclaimer

Article 14

- (1) To guarantee the transparency and equal treatment in the Procurement of Goods and Services, therefore the Board

of Directors regulates a disclaimer in relation to the properness of methods and procedures in the internal provisions.

- (2) Disclaimer may be conducted in the process of public tender/selection, limited tender/limited selection.
- (3) Disclaimer is conducted by Provider of Goods and Services within 2 (two) calendar days subsequent to the announcement of winner or prior to the contract signing, whichever comes first.
- (4) SOE conveys the decisions the said disclaimer not later than 7 (seven) calendar days from the date of acceptance of disclaimer submission.

Part Five
Contract

Article 15

- (1) Implementation of Procurement of Goods and Services is outlined in the contract/agreement between the User of Goods and Services and Provider of Goods and Services which clearly set out the rights and obligation of the parties.
- (2) The contract or agreement as referred to in section (1) must be in compliance with the provisions of the prevailing legislation and good corporate governance also the precautionary principles in business judgment rule.

CHAPTER III
PROCUREMENT FOR PUBLIC SOEs, SUBSIDIARY
AND SOE AFFILIATED COMPANY

Article 16

The enforcement of this Regulation of the Minister of State-Owned Enterprises for SOEs in the form of Public Persero, is confirmed in the General Meeting of Shareholders (GMS) of each of the Public Company or by directly adopting to the Regulation of the Board of Directors.

Article 17

- (1) For Subsidiary and SOE Affiliated Company, may enforce this Ministerial Regulation which confirmed in the GMS of the respective Subsidiary or affiliated company.
- (2) By the enforcement of this Regulation of the Minister of State-Owned Enterprises as referred to in section (1), therefore Subsidiary and /or SOE Affiliated Company as referred to in section (1), may directly appoint an SOE or directly appoint each other, with due regard to the provisions of the sectoral legislation.

CHAPTER IV
MISCELLANEOUS PROVISIONS

Article 18

- (1) SOE documents the implementation of the procurement of goods and services.
- (2) SOE makes lists and track records of Provider of Goods and Services, so as:
 - a. the procurement of Goods and Services, particularly those that are strategic and/or material may use the list to prioritize the Provider of Goods and Services which already have proven track records.
 - b. SOE User of Goods and Services may utilize the existing list from other SOEs, Government Institutions, and/or other published lists or to utilize track record date of providers and/or to avoid selecting Provider of Goods and Services which are included in the blacklist.
- (3) Inclusion of the Provider of Goods and Services into the blacklist as referred to in section (2) point b, must be followed by necessary reasons and may be accessible by other SOEs in the website of the Ministry of SOEs.

Article 19

In the process of public tender/selection and limited tender/limited selection which requires Term of Reference (TOR) or document of procurement/auction of Procurement of Goods and Services, the Board of Directors is obligated to

make fair and reasonable criteria and/or requirements in accordance with the necessity of the SOE and not lead to winning a particular party.

CHAPTER V TRANSITIONAL PROVISION

Article 20

By the enforcement of this Ministerial Regulation, therefore:

- a. the procedures of Procurement of Goods and Services as regulated by the Board of Directors is compulsory to be adjusted with the provisions of this Ministerial Regulations at the latest within 3 (three) months since the promulgation of this Ministerial Regulation; and/or
- b. the procedures of Procurement of Goods and Services which already exist prior to the enforcement of this Ministerial Regulation, is declared to remain in effect to the extent that it is not in contradiction with or has not been adjusted pursuant to this Ministerial Regulation.

CHAPTER VI CLOSING PROVISIONS

Article 21

At the time this Ministerial Regulation comes into force, Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2008 on General Guidelines on Implementation of Procurement of Goods and Services of the State-Owned Enterprises as amended by the Regulation of the Minister of State-Owned Enterprises Number PER-15/MBU/2012 on Amendment to Regulation of the Minister of State-Owned Enterprises Number PER-05/MBU/2008 on General Guidelines on Implementation of Procurement of Goods and Services of the State-Owned Enterprises, is repealed and declared ineffective.

Article 22

This Ministerial Regulation comes into effect on the date of its promulgation.

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

Issued in Jakarta
on 12 December 2019

MINISTER OF STATE-OWNED ENTERPRISES
OF THE REPUBLIC OF INDONESIA

signed

ERICK THOHIR

Promulgated in Jakarta
on 16 December 2019

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

signed

WIDODO EKATJAHJANA

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Jakarta, 10 August 2021

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,



BENNY RIYANTO