

Enforcement Date

22 March 2018

General Corporate

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- New Regulation on the Implementation of Trading Activity Supervision
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New Regulation on Government Procurement of Goods and Services

The HPS obligation now exempts Procurements which have maximum values of IDR 10,000,000, e-purchasing and integrated works tenders.

Under the previous framework, the HPS obligation only exempted contents and direct procurement with receipts.

Presidential [Regulation No. 16 of 2018](#) on the Public Procurement of Goods and Services (“**Regulation 16/2018**”) has just been issued with the overall aim of simplifying procurements of goods and/or services (“**Procurement**”) which is funded by using State/Regional Budget or overseas grant, by central/regional government institution.

Regulation 16/2018 determines that Procurement can now be undertaken through processes of self-management involving the government or through supplier or service providers (“**Contractors**”). For this purpose the following procedure is to be observed:

1. Procurement planning;
2. Procurement preparation; and
3. Procurement implementation.

However, due to the wide scope of Regulation 16/2018, this edition of ILB will only cover the various procedures which are involved in procurement preparation and implementation, as undertaken through Contractors.

Previously, this area was regulated under Presidential Regulation No. 54 of 2010 on the Government Procurement of Goods and Services, which was most recently amended through the issuance of Presidential Regulation No. 4 of 2015 ("Regulation 54/2010").

Procurement Planning

Regulation 16/2018 authorizes Commitment Making Officials (*Pejabat Pembuat Komitmen* – "PPK") at each governmental institution to establish Procurement plans which specifically address the following matters:¹

Matters	Details
Self-estimated price (<i>Harga Perkiraan Sendiri</i> – "HPS") of goods and/or service ²	<ul style="list-style-type: none"> The total HPS is the value of goods and/or services which include the profit and overhead cost, and has been added to the relevant value added tax. HPS are used as the basis for: <ul style="list-style-type: none"> Evaluating the fairness of bid prices; Determining the maximum limits of valid bids; and Determining performance bond value for bids which are lower than 80% of the HPS value. Determinations of HPS must be completed by 28 days before the relevant deadline at the latest. The HPS obligation now exempts Procurements which have maximum values of IDR 10,000,000, e-purchasing and integrated works tenders. Under the previous framework, the HPS obligation only exempted contents and direct procurement with receipts.
Contract Drafting Preparation ³	<p>Regulation 16/2018 determines the types and forms of contracts which are to be used for Procurement.</p> <ol style="list-style-type: none"> The types of contract which are to be used for goods Procurement are: <ul style="list-style-type: none"> Lump sum (with fixed price and scope of work); Unit price (with fixed price and scope of work); Combination of lump sum and unit price Turnkey (i.e., handover the project after it has completely finished); and Framework (i.e., indefinite delivery contract). The types of contract which are to be used for service Procurement are: <ul style="list-style-type: none"> Lump sum (with fixed price and scope of work); Time-based; and

¹ Art. 25, Regulation 16/2018.

² Art. 26, Regulation 16/2018.

³ Arts. 27-28, Regulation 16/2018.

	<p>c. Framework.</p> <p>3. Contracts may take form in several kinds based on the conditions of Procurements, as detailed below:</p> <ol style="list-style-type: none"> Payment proof; Receipt; Work orders (<i>Surat Perintah Kerja</i>/SPK); Agreements; Purchasing order; <p>Previously, Regulation 54/2010 determined the contract form based on the relevant payment method, budget year, sources of funding and type of work.</p>
Technical specifications ⁴	<p>PPK will determine the methods which are to be employed for the following matters:</p> <ol style="list-style-type: none"> Utilization of domestic goods; Utilization of products which secured the Indonesia National Standard (SNI) certification; and Utilization of products from green industry.
Down payments and various types of collateral ⁵	<ul style="list-style-type: none"> Down payments are to be made under the following conditions: <ol style="list-style-type: none"> Maximum of 30% of the contract value for small Contractors; Maximum of 20% of the contract value for businesses other than small Contractors; and Maximum of 15% of the contract value for multi-year contracts. Procurement collateral consists of the following: <ol style="list-style-type: none"> Bid bond; Objection appeal bond; Performance bond; Advance-payment bond; and Maintenance bond. <p>Previously, Regulation 54/2010 did not recognize either the bid bond or the objection appeal bond.</p>

⁴ Arts. 38-40, Regulation 16/2018

⁵ Arts. 29-30, Regulation 16/2018

Implementation

In essence, the implementation of Procurement under Regulation 16/2018 covers the following matters:

Matters	Details
Determination of Procurement Contractors⁶	<ul style="list-style-type: none"> The determination of Procurement providers should utilize the following methods: <ol style="list-style-type: none"> 1. E-purchasing: Undertaken through the use of the electronic catalogue and is mandatory for Procurements to fulfill national/strategic; 2. Direct procurement: is used for goods/services with maximum values of IDR 200,000,000 and is undertaken directly with the Contractors; 3. Direct appointment: is used for goods/service Procurement if certain conditions are met and is to be undertaken by inviting a single Contractor to negotiate the relevant price and various other technical matters.⁷ 4. The quick tender: is used under the following conditions: a) The bidders in question are already qualified as regards the Contractors performance information system; b) Bidders submit an offer price only; c) The offer price evaluation process is only to be undertaken via application; and d) Winners are determined by lowest price. 5. Tenders are used if other methods are not available. The tender procedure is as follows: <ol style="list-style-type: none"> a. Qualification implementation; b. Announcement/invitation; c. Registration and election document pickup; d. Explanation; e. Offer document submission; f. Offer document evaluation; and g. Winner determination and announcement.
Contract execution⁸	<p>The execution of contracts includes the following:</p> <ol style="list-style-type: none"> 1. Determination of goods/service Contractors appointment letters; 2. Contract signing; 3. Down payment; 4. Performance payment; 5. Contract amendment; 6. Price adjustment; 7. Termination of contract; 8. Handover of work results; and 9. Handling of incidents of force majeure.

⁶ Art. 50, Regulation 16/2018.

⁷ For the full list of conditions, see Art. 38(5), Regulation 16/2018.

⁸ Art. 52, Regulation 16/2018.

Performance payments⁹	<ul style="list-style-type: none"> Performance payments will be paid in one of the following forms: <ol style="list-style-type: none"> Monthly payments; Payment in stages in accordance with work installments; or Full payment after the relevant work has been completed. Payments are made to Contractors after the relevant repayment installments, retentions and fines have first been deducted.
Handover of work results¹⁰	<ul style="list-style-type: none"> After the work has been 100% completed, the Contractor will make a written request to the PPK asking for a handover of the relevant work results. The PPK and Contractor will then sign an official handover report after the PPK has first inspected the delivered goods/services.

Aside from the abovementioned provisions, the table below sets out the various new and changed provisions/matters which can be found in Regulation 16/2018:

Changes	New Provisions
<ol style="list-style-type: none"> Budgeting limits as regards the direct procurement of consultation services and e-purchasing; Contractors requirements; Emergency procurement (in the event of natural disaster, humanitarian purposes, etc); International tendering; Changes of contract (due to the difference between the field conditions at the time of implementation with the technical specifications/KAK specified in the contract); Price adjustments; and; Obligation to use domestic products 	<ol style="list-style-type: none"> Establishes the aims of any given procurement; Appointment procurement agent (ministries/institutions/local governments which have not yet obtained the ability to conduct Procurements may now appoint procurement at other governmental institutions, businesses or Individuals); Establishes the principle of procurement consolidation; Establishes a research commission; Sets exceptions to the provisions; Provides a dispute-resolution service; Establishes the principle of self-management; Provides a government e-marketplace; Establish e-reverse auctions; and Establishes integrated procurement Procurements (i.e., Procurements of goods, construction services, consultation/non-consultation service providers may be done in an integrated manner).

Regulation 16/2018 has been in force since 22 March 2018 and repeals and replaces Regulation 54/2010. ^{ss}

⁹ Art. 53, Regulation 16/2018.

¹⁰ Art. 57, Regulation 16/2018.

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Jl TB. Simatupang No.5 Ragunan,
Pasar Minggu, Jakarta Selatan 12550

to subscribe, call +62-21-2270 8910 or
fax to +62-21 2270 8909 or email
marketing@hukumonline.com

for feedback email english@hukumonline.com

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