

REGULATION OF THE PRESIDENT OF THE REPUBLIC OF INDONESIA
NUMBER 67 OF 2005
CONCERNING
COOPERATION BETWEEN GOVERNMENT AND BUSINESS ENTITIES
IN THE PROVISION OF INFRASTRUCTURE

BY THE GRACE OF GOD ALMIGHTY
PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that the availability of adequate and sustainable infrastructure is an urgent need to support the implementation of national development in order to improve the economy and public welfare, and to improve Indonesia's competitiveness in a global society;
- b. that in order to speed up infrastructure development, it is necessary to take comprehensive steps to create an investment climate to encourage the participation of business entities in the provision of infrastructure based on healthy business principles;
- c. that in order to encourage and improve cooperation between government and business entities in the provision of infrastructure and related services, necessary to protect and safeguard the interests of consumers, communities and business entities in a fair;
- d. that based on the considerations referred to in letter a, b, and c, it is necessary to stipulate Presidential Regulation on Cooperation Between Government and Business Entities in the Provision of Infrastructure;

Given:

1. Article 4 Section (1) of the Constitution of the Republic of Indonesia Year 1945;
2. Presidential Decree Number 80 Year 2003 on Guidelines for Government Procurement of Goods / Services (State Gazette of the Republic of Indonesia Year 2003 Number 120, Additional State Gazette of the Republic of Indonesia Number 4430) as already amended by Presidential Decree Number 32 Year 2005 (State Gazette of the Republic of Indonesia Year 2005 Number 36);

DECIDED:

to Stipulate :

REGULATION OF THE PRESIDENT ON COOPERATION BETWEEN THE GOVERNMENT AND
THE BUSINESS ENTITY IN THE PROVISION OF INFRASTRUCTURE.

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Presidential Regulation what is meant by:

1. Minister / Head of the Institute is the lead ministry / institution whose scope, duties and responsibilities in the infrastructure sector which is regulated in this Presidential Regulation.
2. Head of the Region is the governor for the province, or regent for the district, or the mayor for the city area.
3. Provision of Infrastructure is an activity which includes construction work to build or improve infrastructure capability and / or infrastructure management and / or maintenance of infrastructure in order to improve the usefulness of infrastructure.
4. Business Entity is a business entity in the form of private limited liability company, the State Owned Enterprises (BUMN), the Regional Owned Enterprises (BUMD), and cooperatives.
5. Cooperation Project is the Provision of Infrastructure Projects undertaken through the Partnership Agreement or the provision of Concession Permit between the Minister / Head of Institution / Regional Head of the Business Entity.
6. Cooperation Agreement is a written agreement for the Provision of Infrastructure between the Minister / Head of Institution / Regional Head of the Business Entity established through public tender.
7. Concession Permit is a permit for the Provision of Infrastructure provided by the Minister / Head of Institution / Regional Head of the Business Entity is set through the auction.
8. Government support is support given by the Minister / Head of Institution / Regional Head to the Business Entity in the implementation of the Project Cooperation Agreement on Cooperation.

CHAPTER II

OBJECTIVE, TYPES, FORM AND PRINCIPLES OF COOPERATION

Article 2

- (1) The Minister / Head of Institution / Regional Head can work with in the Provision of Infrastructure.
- (2) In the implementation of the cooperation referred to in paragraph (1), the Minister / Head of Institution / Regional Head acting as a responsible Cooperation Project.

Article 3

Cooperation Project of Infrastructure between the Minister / Head of Institution / Regional Head of the Business Entity made with the aim to:

- a. sufficient funding needs in a sustainable manner in the Provision of Infrastructure through the mobilization of private funds;
- b. improve the quantity, quality and efficiency of service through healthy competition;

- c. improve the quality of management and maintenance in the Provision of Infrastructure;
- d. encourage the use of the principle of user pays services received, or in certain cases to consider users' ability to pay.

Article 4

(1) This type of infrastructure that can be cooperated with the Business Entity include:

- a. transportation infrastructure, including seaports, rivers or lakes, airports, rail networks and railway station;
- b. road infrastructure, including toll roads and toll bridges;
- c. irrigation infrastructure, including the channel to transport raw water;
- d. drinking water infrastructure which includes building the raw water collection, transmission lines, distribution networks, drinking water treatment plant;
- e. wastewater infrastructure that includes the installation of waste water processing, gathering network and main network, and the waste facility that includes transporters and disposal sites;
- f. telecommunications infrastructure, including telecommunications networks;
- g. electricity infrastructure, comprising generation, transmission or distribution of electricity; and
- h. oil and gas infrastructure include the processing, storage, transportation, transmission, or distribution of oil and gas.

(2) Infrastructure as referred to in paragraph (1), be cooperated in accordance with laws and regulations in force in the sector concerned.

Article 5

(1) Cooperation between Minister / Head of Institution / Regional Head and the business entity in the Provision of Infrastructure as referred to in Article 2 Section (1), can be implemented through:

- a. Cooperation Agreement; or
- b. Concession Permit.

(2) The form of cooperation between the Minister / Head of Institution / Regional Head with the business entity in the Provision of Infrastructure, established by agreement between the Minister / Head of Institution / Regional Head of the Business Entity to the extent not contrary to the legislation in force.

Article 6

Infrastructure provision cooperation between the Minister / Head of Institution / Regional Head and the Business Entity is based on the principle:

- a. fair, meaning all Business Entities that participate in the procurement process should get the same treatment;
- b. open, which means the entire procurement process shall be open for business entities that meet the required qualifications;
- c. transparent, which means all terms and information relating to the Provision of Infrastructure including the technical administration of the selection, evaluation procedure, and determination of business entities be open for all business entities and the public generally;
- d. compete, it means that the selection of business entities through the auction process;
- e. accountable, which means the Business Entity election results must be accountable;
- f. mutually beneficial, meaningful partnership with the Business Entity in the Provision of Infrastructure is based on the terms and conditions which are balanced so as to give benefit to both parties and the community taking into account the basic needs of society;
- g. need each other, means that the partnership with the Business Entity in the provision of infrastructure is based on the terms and conditions that take into account the needs of both parties;
- h. support each other, means that the partnership with the Business Entity in the Provision of Infrastructure conducted in a spirit of mutual support from both sides.

CHAPTER III
IDENTIFICATION AND DETERMINATION OF THE PROJECT EXECUTED
BASED ON COOPERATION AGREEMENT
Article 7

- (1) The Minister / Head of Institution / Regional Head identifying the Provision of Infrastructure projects that will be cooperated with the Business Entity, with at least consider:
 - a. conformity with the national/regional medium term development plan and the strategic plan of the infrastructure sectors;
 - b. suitability of the location of the project with the Regional Spatial Planning;
 - c. intersectoral and interregional linkages of infrastructure;
 - d. analysis of costs and social benefits.
- (2) Any proposed project that will be cooperated must be accompanied by:
 - a. pre-feasibility study;
 - b. plan form of cooperation;
 - c. project financing plan and sources of funds; and
 - d. joint bidding plan that includes schedules, processes and methods of valuation.

Article 8

In identifying projects that will be cooperated as set forth in Article 7, the Minister / Head of Institution / Regional Head prepared a public consultation.

Article 9

- (1) Based on the results of the project identification as referred to in Article 7 and the results of public consultation as referred to in Article 8, the Minister / Head of Institution / Regional Head determine prioritize projects that will be cooperated in the list of priority projects.
- (2) list of priority projects referred to in section (1), declared open to the public and disseminated to the public.

CHAPTER IV PROJECT COOPERATION INITIATED BY BUSINESS ENTITY

Article 10

Business entities may submit Cooperation initiative of Infrastructure Projects that are not included in the list of priority projects referred to in Article 9, to the Minister / Head of Institution / Regional Head.

Article 11

- (1) Project as the initiative of the Business Entity shall be equipped with:
 - a. feasibility studies;
 - b. form of cooperation plan;
 - c. project financing plan and sources of funds; and
 - d. joint bidding plan that includes schedules, processes and methods of valuation.
- (2) Project as the initiative of the Business Entity referred to in paragraph (1), taking also into account the provisions referred to in Article 7 section (1).

Article 12

- (1) The Minister / Head of Institution / Regional Head evaluate the project on the initiative of the Business Entity referred to in Article 11.
- (2) In the event based on the results of the evaluation as referred to in paragraph (1) project on the initiative of the Business Entity to meet eligibility requirements, the project on the initiative of the Business Entity is processed through a public tender in accordance with the provisions of this Presidential Regulation.

Article 13

- (1) Business Entity whose Project Initiative cooperation accepted by the Minister / Head of Institution / Regional Head, will receive compensation.

- (2) Compensation as referred to in section (1), may take the form:
- a. provision of additional value, or
 - b. purchase of a joint project initiatives including Intellectual Property Rights that accompany it by the Minister / Head of Institution / Regional Head or by the winning bidder.

Article 14

- (1) Provision of additional value referred to in Article 13 section (2) letter a, at most 10% (ten percent) of the tender value of the initiator and publicly announced prior to the procurement process.
- (2) Purchase of a joint project initiatives as referred to in Article 13 section (2) letter b, is a compensation by the Minister / Head of Institution / Regional Head or by the winning bidder for costs already incurred by the Business Entity initiators.
- (3) The amount of additional value as referred to in section (1) and compensation costs as referred to in section(2), determined by the Minister / Head of Institution / Regional Head based on the consideration of an independent appraiser, prior to the procurement process.

CHAPTER V

INITIAL TARIFF AND ADJUSTMENT OF TARIFF

Article 15

- (1) the initial tariff and adjustments are set periodically to ensure the level of investment return that covers the cost of capital, operating costs and reasonable profit within a certain time.
- (2) In the event that the initial tariff setting and adjustment can not be done in accordance with the provisions referred to in paragraph (1), tariffs are determined based on the user's ability level.
- (3) In terms of tariff determined based on the user's skill level as referred to in section (2), the Minister / Head of Institution / Regional Head of providing compensation to obtain the return on investment and reasonable profit.
- (4) The amount of compensation referred to in section (3), based on revenues resulted from competition among bidders and the amount of compensation chosen based on the lowest bid.
- (5) Compensation is only awarded to the Partnership Project that have an interest in providing infrastructure and social benefits, after the Minister / Head of Institution / Regional Head conduct a complete and thorough review of social expediency.

CHAPTER VI

RISK MANAGEMENT AND GOVERNMENT SUPPORT

Article 16

- (1) The risk is managed on the principle of risk allocation between the Minister / Head of the Institution / Head of Regional and Business Entity adequately by allocating risk to the party best able to control risk in order to ensure the efficiency and effectiveness in the Provision of Infrastructure.

(2) The management of risk as referred to in section (1), set forth in the Cooperation Agreement.

Article 17

- (1) The Government Support to the Business Entity is done by observing the principles of financial risk management and control in the State Budget (APBN) or the Regional Income and Expenditure Budget (APBD).
- (2) Control and management of risk as referred to in section (1), implemented by the Minister of Finance or the Head of Regional Finance Management Task Unit in terms of government support provided by the Regional Government.
- (3) In carrying out the duties and functions referred to in section (2), the Minister of Finance or the Head of Regional Finance Management Task Unit, is authorized to:
 - a. obtain data and information required from the parties relating to the Provision of Infrastructure cooperation projects that require Government Support;
 - b. approve or reject the proposal of Government Support to Business Entity in the Provision of Infrastructure framework, based on criteria established by the Minister of Finance in terms of government support provided by the Central Government, or the Head of Regional Finance Management Task Unit in terms of government support provided by the Regional Government;
 - c. establish procedures for the payment obligations of the Minister / Head of Institution / Regional Head of Infrastructure Provision arising from the project in terms of reimbursement for property rights intelektual, subsidy payments, and the failure of the fulfillment of the Cooperation Agreement.

CHAPTER VII BUSINESS ENTITY PROCUREMENT PROCEDURES IN THE FRAMEWORK OF COOPERATION AGREEMENT

Article 18

Procurement of Business Entity in the framework of the Cooperation Agreement is done through public bidding.

Article 19

Minister / Head of Institution / Regional Head form a procurement committee.

Article 20

The procedure for procurement as referred to in Article 18, include:

- a. preparation of procurement;
- b. implementation of the procurement;

- c. determining the winner; and
- d. preparation of cooperation agreements.

Article 21

Minister / Head of Institution / Regional Head determine a winning bidder based on proposals from the procurement committee.

Article 22

The provisions referred to in Article 18, Article 19, Article 20 and Article 21 shall be further regulated in the Appendix hereto, which is an integral part of this Presidential Regulation.

CHAPTER VIII COOPERATION AGREEMENT

Article 23

(1) Cooperation Agreement at least contain provisions on:

- a. scope of work;
- b. period of time;
- c. the implementation guarantee;
- d. tariff and adjustment mechanisms;
- e. rights and obligations, including the allocation of risks;
- f. standards of service performance;
- g. prohibition of transfer of the Cooperation Agreement or the investment in Business Entity which is the holders of Infrastructure Cooperation Agreement before commercial operations;
- h. sanctions in the event the parties do not meet the terms of the agreement;
- i. disconnection or termination of the agreement;
- j. Business Entity financial statements for the implementation of the agreement, which examined annually by an independent auditor, and the announcement in nationwide print media;
- k. dispute resolution mechanism set out in stages, namely consensus agreement, mediation, and arbitration / courts;
- l. Business Entity Performance monitoring mechanism in the implementation of the agreement;
- m. return on infrastructure and / or management to the Minister / Head of Institution / Regional Head;
- n. force majeure;
- o. applicable law, the law of Indonesia.

- (2) In the case of Infrastructure procurement is implemented by the land acquisition by the Business Entity, the magnitude of the Implementation guarantee as referred to in section (1) letter c, can be determined by calculating the cost of business entities for the said land acquisition.
- (3) Cooperation Agreement clearly states the status of ownership of assets held during the term of the agreement.

Article 24

- (1) At the most within 12 (twelve) months after Business Entity signed the Agreement of Cooperation, the Business Entity must have obtained financing for the Project Cooperation.
- (2) In the event that the provisions referred to in section (1) can not be met by the Business Entity, Cooperation Agreement ends and the collateral auction can be melted.

Article 25

- (1) In the event of a transfer of control of the assets owned or controlled by the Minister / Head of Institution / Regional Head to the Business Entity for the implementation of Cooperation Projects, the Cooperation Agreement shall be:
 - a. the intended use of assets and prohibition to use the assets for purposes other than agreed upon;
 - b. operation and maintenance responsibilities including payment of taxes and other obligations arising from the use of assets;
 - c. rights and obligations of parties who control assets to monitor and maintain asset performance during use;
 - d. prohibition for the Business Entity to collateralize assets as collateral to a third party;
 - e. ordinances of handover and / or return on assets.
- (2) In the case of the Cooperation Agreement set the handover control of assets held by the Business Entity during the term of the agreement, the Cooperation Agreement must be set:
 - a. condition of assets to be transferred;
 - b. procedures for the transfer of assets;
 - c. status of the asset that is free from any security rights or encumbrance of any kind at the time of the assets transferred to the Minister / Head of Institution / Regional Head;
 - d. status of the asset that is free from claims of third parties;
 - e. release the Minister / Head of Institution / Regional Head from all claims arising after submission of assets;
 - f. compensate the Company for release of assets.

Article 26

In connection with the use of Intellectual Property Rights, Cooperation Agreement shall contain assurances from the Business Entity that:

- a. Intellectual Property Rights that are used entirely free from all forms of violation of law;
- b. Minister / Head of Institution / Regional Head will be released from all claims or demands of any third party relating to the use of Intellectual Property Rights in the Provision of Infrastructure;
- c. While the settlement is running because of a lawsuit or claim referred to in letter b then:
 - 1) Provision of Infrastructure continuity can still be implemented;
 - 2) seek a license to use intellectual property rights can still take place.

CHAPTER IX
UNDER THE PROVISION OF INFRASTRUCTURE
OPERATION PERMIT
Article 27

Procurement of Business Entities in the Provision of Infrastructure under Concession Permit to be done through auction.

Article 28

Auction procedures for the permit referred to Article 27, shall be further regulated by the Minister / Head of Institution / Regional Head, by applying the principles referred to in Article 6.

CHAPTER X
TRANSITIONAL PROVISIONS
Article 29

With the enactment of this Presidential Regulation:

1. Cooperation Agreement that was signed before the enactment of this Presidential Regulation remain in force;
2. The procurement process which has been done and determined the winner based on Presidential Decree No. 7 of 1998 on Cooperation between the Government and Private Business Entity In Development and / or Infrastructure Management, but the Cooperation Agreement not yet signed, the Cooperation Agreement made in accordance with this Presidential Regulation;
3. Cooperation Agreement that was signed by the Presidential Decree No. 7 of 1998 on Cooperation between the Government and Private Business Entity In Development and / or Infrastructure Management, but has not fulfilled the financing, the terms of fulfilling the obligation of financing carried out in accordance with the provisions of Article 24 hereto.

CHAPTER XI
CLOSING

Article 30

At the time of this Presidential Regulation shall come into force, Presidential Decree No. 7 of 1998 on Cooperation between the Government and Private Business Entity In Development and / or Infrastructure Management, revoked and declared invalid.

Article 31

This Presidential Regulation shall come into force on the date of enactment.

Stipulated in Jakarta

on 9 November 2005

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Signed.

DR. H. SUSILO BAMBANG YUDHOYONO

APPENDIX:

REGULATION OF THE PRESIDENT OF THE REPUBLIC OF INDONESIA

NUMBER : 67 of 2005

DATE : 9 November 2005

BUSINESS ENTITIES PROCUREMENT PROCEDURES
WITHIN THE FRAMEWORK OF COOPERATION AGREEMENT

A. Procurement planning

1. Minister / Head of Institution / Regional Head formed the Procurement Committee;
2. Members of the Procurement Committee consisting of the elements who understand:
 - a. procurement procedures;
 - b. substance of the work / activity concerned;
 - c. law of treaties;
 - d. technical aspects;
 - e. financial aspects.
3. Implementation schedule of procurement: procurement implementation schedule preparation should provide sufficient time allocation for all stages of the procurement process.
4. Self Calculation Price (HPS) should be done carefully.
5. The public bidding document at least contain:
 - a. invitation to the bidding participants;
 - b. instructions to bidders who at least contain:
 - 1) General: scope of work, fund resources, requirements and qualifications of bidders, the bid documents submitted, and review the work site;
 - 2) the contents of the public tender document, a description of the contents of the public bidding document, and change the contents of public bidding document;
 - 3) the requirements of the language used in the bidding, writing bid price, the currency of the bidding price and method of payment, period of validity of offer, letters of bid guarantee, offer an alternative proposal by the bidders, bid forms, and signing a letter of offer;
 - 4) how the package and marking the offer package, the deadline of submission of the offer, the treatment of late bids, as well as the prohibition to change and withdrawal of offers that have been entered;
 - 5) bid opening procedures, confidentiality and restrictions, clarification of the bidding documents, the examination of the completeness of the tender document, arithmetic correction, conversion to the single currency conversion, the bid evaluation system includes criteria, formulation and evaluation procedure, as well as price preference assessment;

- c. draft cooperation agreement;
- d. quantity and price lists;
- e. technical specifications and drawings;
- f. the form of offer letter;
- g. forms of cooperation;
- h. form of bidding guarantee;
- i. the form of letters of implementation guarantee;
- j. in the public bidding document should explain the method of submitting the bidding document.

B. Implementation of Procurement:

1. Announcement and Registration of Participant

- a. The Procurement Committee shall make a general announcement about the public bidding;
- b. content of the announcement of at least contain: name and address of the Minister / Chairman of the Institution / Regional Head who will hold a public bidding, a brief description of the work to be executed, approximate value of work, the terms of the auction participant, place, date, day, and time to take public bidding document;
- c. in order that announcement as meant in letter a can reach a large target, efficiently, and precisely in accordance with the reach of the targeted communities and entrepreneur, then the announcement is set as follows: the announcement of the auction / prequalification using newspapers and radio broadcasts of local government / private that have a range of readers and listeners nationally / internationally.

2. Prequalification, include an assessment of:

- a. business license in the field of related business;
- b. authority to legally sign a contract;
- c. the legal status of the company, in a sense the company is not under the supervision of the court, not bankrupt, its business activities is not being suspended, and / or not serving a criminal sanction;
- d. experience in the similar Provision of Infrastructure Cooperation Project;
- e. ability to provide facilities and equipment and personnel;
- f. letter of financial support from banks; and
- g. availability of specialized equipment, skilled specialists needed, or a particular experience, for special / specific / high tech.

3. Prequalification Procedure:

- a. prequalification announcement for a public bidding;
- b. registration and prequalification document retrieval;
- c. submission of prequalification documents by the bidding participant;
- d. prakualifikasi document evaluation;
- e. Determination of the list of bidders who passed the prequalification by the Procurement Committee;
- f. validation of the results of prequalification by the Procurement Committee;
- g. announcement of the results of prequalification;
- h. filing of objections by the bidding participants who did not pass the pre-qualification to the Minister / Head of Institution / Regional Head, if any;
- i. research and follow-up of the refutation of the results of prequalification;
- j. re-evaluation by the Procurement Committee if refutation / objections of the supplier of goods / services is proven correct and the announcement of the results of re-evaluation.

4. Preparation of List of Participants, Submission of Invitation and collection of Document of Public Bidding

- a. list of bidders who will be invited to be ratified by the Minister / Head of Institution / Regional Head;
- b. if the bidders who have passed the prequalification are less than 3 (three) so then an announcement is made and pre-qualification process again with inviting a new auction participant;
- c. if after the announcement of the bidding / prequalification is repeated, there was no additional new prospective bidder or bidders in a whole are still less than 3 (three) participants, then the Procurement Committee to continue the public bidding process;
- d. All prospective bidders are listed in the list of bidders should be invited to take a public bidding document;
- e. invited bidders are eligible to take the public bidding document from the Procurement Committee.

5. Explanation of Auction (aanwijzing)

- a. explanation of the auction conducted on the spot and at the appointed time, attended by the bidders who registered in the list of bidders;
- b. absence of bidders at the auction explanation can not be used as a basis to deny / abort the bidding;
- c. in the event of a public bidding explanation, it must be explained to the participants regarding:
 - 1) method of the auction;
 - 2) the method of submitting bids;
 - 3) documents which must be attached with the bidding document;
 - 4) the opening of the bidding document;

- 5) methods of evaluation;
 - 6) the things that renders the bid;
 - 7) the form of a cooperation agreement;
 - 8) the terms and procedure of evaluation with respect to the use of price preference for domestic products;
 - 9) the extent, validity period and the party that can issue a guarantee of supply.
- d. if deemed necessary, the Procurement Committee may provide further explanation by carrying out a site visit;
 - e. providing explanations about the clauses of the public bidding document in the form of questions from participants and answers from the Procurement Committee as well as other information, including amendments and site visit, shall be set forth in the Minutes of Explanation (BAP) which was signed by Procurement Committee and at least 1 (one) representative of the participants who were present, and is an integral part of the public bidding document;
 - f. if in the BAP as referred to in letter e there are things / new provision or significant changes that need to be accommodated, then the Procurement Committee must put it into the addendum of the public bidding document.

6. Submission and Opening of Bid Documents

- a. submission methods and ways of opening the tender document must follow the provisions required in the public bidding document;
- b. method of submitting the tender document to be used must be explained during the briefing session;
- c. The Procurement Committee shall record the time, date and place of receipt of tender document received by post on the cover of the proposal and put it into the box / place of auction;
- d. at the end of the bidding document submission deadline, the Procurement Committee opened the meeting of the tender document opening, stating in front of the bidders that the bidding document submission had been closed on time, reject the late bid documents and / or additional bidding documents, then open the bidding documents received;
- e. for bids submitted by mail and is received late, the Procurement Committee opened the envelop of the tender document for bidders to know the address and inform the concerned bidders to take back all the bidding documents. Return of bid documents along with proof of handover;
- f. not allowed to change the closing time of submission of the offer for the things that are not important. In the case of submission of bid closing time changes, then such changes must be set forth in the addendum of the public bidding document and submitted to all bidders;
- g. opening of the bidding document:
 - 1) The Procurement Committee shall ask for the willingness of at least 2 (two) representatives of bidders who attend as witnesses. If there are no witnesses of bidders who attend, the Procurement Committee shall delay the opening of the box / bidding document submission place up to the certain time which has been determined by Procurement Committee. Having arrived

- at a predetermined time limit, there still no bidders representative are present, the opening of the box / the bidding document submission place be witnessed by 2 (two) witnesses beyond the Procurement Committee designated in writing by the Procurement Committee;
- 2) The Procurement Committee shall examine the contents of the box / the bidding document submission place and count the number of envelopes of the incoming (not calculated a letter of resignation) and if the incoming bids of less than 3 (three) participants, a public auction can not continue and must be repeated, and then announced back by inviting a new prospective bidders;
 - 3) The opening of the bidding document for each system is performed as follows:
 - a) The Procurement Committee shall open the box and envelope I before the bidders.
 - b) Envelope I containing technical and administration data is opened, and constitute the attachment to the opening of the bidding document envelope I.
 - c) Envelope II containing price data submitted later by the participants of this auction who has passed the technical and administrative requirements.
 - 4) The Procurement Committee shall examine, shows and read in the front of the bidders regarding the completeness of the bidding document, which consists of:
 - a) The letter of offer which specify validity period therein but not specify bid price;
 - b) the original bid guarantee;
 - c) Technical bid documents and other supporting documents required in the public bidding document.
 - 5) The Procurement Committee shall not abort the bidding at the time of bid opening except for late to enter / submit bids;
 - 6) The Procurement Committee shall promptly prepare minutes of opening the bidding document to all incoming bids;
 - 7) After read out clearly, minutes signed by the Procurement Committee members present and 2 (two) representatives of legitimate auction participants designated by the auction participants are present;
 - 8) In the event of a delay of bid opening time, then the cause of delay shall be posted clearly in the minutes of bid opening (BAPP);
 - 9) BAPP distributed to representatives of bidders who attend without attached bidding documents.

7. Evaluation of Offers made in accordance with the provisions set in the bidding document.

8. Making the Auction Minutes

- a. The Procurement Committee shall make a conclusion from the results of the evaluation set forth in the minutes of the auction (BAHP). BAHP contains the results of the implementation of the auction, including the method of evaluation, the formulas are used, up to the determination of the order of the winner bidders list. BAHP signed by the chairman and all members of the Procurement Committee or at least two-thirds of the members of the Committee;

- b. BAHP shall be kept confidential until the time of signing the contract;
- c. BAHP must contain the following:

- 1) The name of all bidders and bid prices and / or corrected bid price, of each bidding participant;
- 2) The method of evaluation used;
- 3) The formula used;
- 4) Other Remarks as may be necessary on matters of implementation of the bidding;
- 5) Date of the minutes made as well as the number of bidders who pass and not pass on any stage of the evaluation;
- 6) Determination of the order of 1 (one) potential winners and 2 (two) reserves. If no qualified bid, BAHP must include a statement that the public bidding has failed, and re-auction must be done immediately. If the eligible bidders is less than 3 (three), then bidders are still proposed as a potential winner of the auction.

9. Auction Winner Determination

- a. The Procurement Committee shall determine the prospective winner of the auction based on the evaluation results;
- b. The Procurement Committee shall create and submit a report to the Minister / Chairman of the Institution / Head of the Region to determine the winner of the auction. The report accompanied by proposals potential winners and explanations or other information deemed necessary for consideration to take the decision.
- c. Minister / Head of Institution / Regional Head determine a winning bidder based on proposals from the Auction Committee.
- d. Supporting data necessary to determine the winner of the auction are:

- 1) The public bidding document, and its addendum (if any);
- 2) The minutes of bid opening (BAPP);
- 3) The minutes of the auction (BAHP);
- 4) Summary of the bidding process and outcome of the bidding;
- 5) the offers document from prospective winner of the auction and the reserve potential winners who have initialed the Procurement Committee and 2 (two) representatives of bidders;
- 6) If any delay in determining the winning bidder and resulting bid / offer warranty expired, then need to make a confirmation to all bidders to extend letter of offer and bid guarantee. Candidates of winning bidder may withdraw without sanction.

10. Auction Winners Announcement

Winner of the auction was announced and notified by the Procurement Committee to the participants no later than 2 (two) working days after receipt of the letter determining the winner of the auction

from the Minister / Head of Institution / Regional Head.

11. Refutation of the Bidders

- a. To bidders who objected to the determination of the winning bidder is given the opportunity to file objections in writing, at the latest within a adequate time period.
- b. Refutation submitted to the Minister / Head of Institution / Regional Head, accompanied by evidence of irregularities.
- c. Refutations filed by bidders either individually or jointly with other bidders.

12. Issuance of Auction Winner Determination

- a. Minister / Head of Institution / Regional Head issued Auction Winner Determination as officials of Cooperation Project, provided that:
 - 1) There is no refutation of the auction participant; or
 - 2) Refutation received by an official who is authorized to determine within the refutation time was not right, or refutations received has over the time period of the refutation.
- b. Bidding Participant who is determined as the winner must accept the decision. If the concerned party withdraws and the bid is still valid then the withdrawal can only be done based on an acceptable reason objectively by Minister / Head of Institution / Regional Head, provided that the bid guarantee of the bidding participants become state property.
- c. Against the winner withdrew for reasons that are not acceptable and the offer is still valid, in addition to bid guarantee becomes the property of the state, the concerned winner will also be liable to sanctions in the form of prohibition to participate in public tender for the Project Cooperation for 2 (two) years.
- d. If the auction winner of the first sequence is defined as the winner withdraws, then the winner determination can be made to the prospective winner of the auction the second order (if any), provided that:
 - 1) Determination of the second auction winner must first get a determination of the Minister / Head of Institution / Regional Head;
 - 2) The candidate winning auction bid number two is still valid or has extended the validity period.
- e. If the potential winner of the auction in the second order also withdrawn, then the winner determination can be made to prospective third place winner (if any) with the following provisions:
 - 1) Determination of the auction winner must first get a determination of the Minister / Head of Institution / Regional Head;
 - 2) The period of bid validity third prospective tender winner is still valid or has been extended;
 - 3) Guarantee of the winning auction bid of the second order becomes property of the state;

4) If the potential second winner withdraws, for reasons that can not be accepted, subject to sanctions as stated in point 12 c above.

f. If the potential winner of the third withdraws, for reasons that are not acceptable, then the sanctions imposed as mentioned in point 12 c above. Then the Procurement Committee to re-auction, provided that the bid guarantee from the prospective winner of the auction of the third sequence became property of the state.

g. Determination Letter winners must be made no later than 5 (five) working days after the announcement of determining the winner of the auction and immediately delivered to the winning bidder.

h. One copy of the Auction Winner Determination Letter submitted (without attachments agreement / contract) at least to the internal control unit.

13. Re-auction

Re-auction conducted by the following considerations:

a. bid does not meet the existing requirements in the bidding documents;

b. there are only less than 3 (three) offerings that meet existing requirements in the tender documents.

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Signed.

DR. H. SUSILO BAMBANG YUDHOYONO