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**THE PRESIDENT OF
THE REPUBLIC OF INDONESIA**

**REGULATION OF THE PRESIDENT OF
THE REPUBLIC OF INDONESIA
NUMBER 67 YEAR 2005
CONCERNING
GOVERNMENT COOPERATION WITH BUSINESS ENTITIES IN THE SUPPLY OF
INFRASTRUCTURE**

WITH THE BLESSINGS OF THE ONE AND ONLY ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

- Considering** :
- a. whereas the availability of adequate and sustainable infrastructure is an urgent requirement to support the implementation of national development in the context of improving the economy and public welfare as well as to improve the competitiveness of Indonesia in global association;
 - b. whereas to accelerate infrastructure development, it is deemed necessary to take comprehensive steps to create an investment climate which encourages the participation of business entities in the supply of infrastructure based on sound business principles;
 - c. whereas to encourage and improve cooperation between the government and business entities in the supply of infrastructure and the related services thereto, regulatory steps are required to justly protect and secure the interests of the consumers, the people and the legal entities;
 - d. whereas based on the considerations as outlined in point a, point b and point c, it is necessary to determine a Presidential Regulation concerning Government Cooperation with Business Entities in the Supply of Infrastructure;
- With reference to** :
- 1. Article 4 paragraph (1) of the Constitutional Laws of the Republic of Indonesia Year 1945;
 - 2. Presidential Decree Number 80 Year 2003 concerning Guidelines for Implementation of Procurement of Government Goods / Services (State Gazette Year 2003 Number 120, Addendum to the State Gazette of the Republic of Indonesia 4430) as amended several times the most recent by Presidential Regulation Number 32 Year 2005 (State Gazette of the Republic of Indonesia Year 2005 Number 36);

HAS DECIDED :

To determine : **PRESIDENTIAL REGULATION CONCERNING GOVERNMENT COOPERATION WITH BUSINESS ENTITIES IN THE SUPPLY OF INFRASTRUCTURE**

**CHAPTER I
GENERAL PROVISIONS**

Article 1

In this Presidential Regulation the following definitions apply:

1. Minister/Institution Head means the leader of the ministry/institution for whom the scope, duties and responsibilities cover the infrastructure sector as regulated in this Presidential Regulation.
2. Regional Head means the governor of a provincial region, or a district head of a district region, or a mayor of a town.
3. Supply of Infrastructure means activities covering construction work to develop or improve the capacity of infrastructure and/or activities in infrastructure management and/or maintenance of infrastructure in the context of improving the benefits of infrastructure.
4. Business Entities mean private business entities in the form of limited liability company, State Enterprise (BUMN), Regional Enterprise (BUMD) and cooperative.
5. Cooperation Project means the Supply of Infrastructure conducted through a Cooperation Agreement, or the granting of an Exertion Permit by the Minister/Institution Head/Regional Head, with a Business Entity.
6. Cooperation Agreement means a written covenant for the Supply of Infrastructure between the Minister/Institution Head/Regional Head with a Business Entity determined through public auction.
7. Business Operation Permit means a permit for the Supply of Infrastructure granted by the Minister/Institution Head/Regional Head to the Business Entity determined through auction.
8. Government Support means support provided by the Minister/Institution Head/Regional Head to Business Entities in the context of implementation of a Cooperation Project based on a Cooperation Agreement.

CHAPTER II PURPOSES, TYPES, FORMS AND PRINCIPLES OF COOPERATION

Article 2

- (1) The Minister/Institution Head/Regional Head can cooperate with Business Entities in the Supply of Infrastructure.
- (2) In the implementation of cooperation as outlined in paragraph (1), the Minister/Institution Head/Regional Head acts as the responsible party in the Cooperation Project.

Article 3

The Cooperation Project for the Supply of Infrastructure between the Minister/Institution Head/Regional Head and Business Entities is conducted for the following purposes:

- a. to fulfill sustainable funding requirements in the Supply of Infrastructure through mobilization of private sector funds;
- b. to improve the quantity, quality and efficiency of services through healthy competition;
- c. to improve the quality of management and maintenance in the Supply of Infrastructure;
- d. to encourage the use of the principle where users pay for services received, or in certain cases the paying ability of the users shall be taken into consideration.

Article 4

- (1) The types of Infrastructure that can be conducted in cooperation with Business Entities cover:
 - a. transportation infrastructure, covering ports at sea, rivers or lakes, airports, railway networks and railway stations;
 - b. road infrastructure, covering toll highways and toll bridges;
 - c. water infrastructure, covering channels for the flow of fresh water;
 - d. drinking water infrastructure which covers the development of fresh water extraction, transmission network, drinking water processing installation;
 - e. waste water infrastructure which covers installation of waste water processing installation, gathering network and main network; and waste facilities which cover transportation and landfills for disposal;
 - f. telecommunications infrastructure, covering telecommunications networks; ;
 - g. electric power infrastructure, covering power plants, transmission or distribution of electric power; and
 - h. natural oil and gas infrastructure covering processing, stocking, transportation, transmission or distribution of natural oil and gas.
- (2) Infrastructure for which cooperation can be conducted as outlined in paragraph (1) shall be carried out subject to the prevailing regulatory laws in the related sectors. .

Article 5

- (1) Cooperation of the Minister/Institution Head/Regional Head with Business Entities in the Supply of Infrastructure can be conducted through:
 - a. Cooperation Agreement; or
 - b. Business Operation Permit
 - a. The form of Cooperation Agreement of the Minister/Institution Head/Regional Head with Business Entities in the Supply of Infrastructure, shall be based on the mutual agreement between the Minister/Institution Head/Regional Head with Business Entities to the extent that such shall not be contrary to the prevailing regulatory laws.

Article 6

Cooperation in the Supply of Infrastructure between the Minister/Institution Head/Regional Head and the Business Entity is conducted based on the following principles:

- a. fair, meaning that all Business Entities participating in the procurement process must receive equal treatment;
- b. open, meaning that the overall procurement process is of an open nature for Business Entities fulfilling the required qualifications;
- c. transparent, meaning all stipulations and information related to the Supply of Infrastructure including the technical requirements of administration of selection, evaluation procedures and determination of Business Entities are of an open nature for all Business Entities and for the community in general;
- d. competitive, meaning the selection of the Business Entity shall go through an auction process;
- e. responsible to claim, meaning the results of selection of Business Entity must be accountable;
- f. mutually beneficial, meaning that the partnership with the Business Entity in the Supply of Infrastructure is conducted based on equal terms and conditions hence providing profit for both parties and the community by considering the basic needs of the community;

- g. mutually in need of each other, meaning that the partnership with the Business Entity in the Supply of Infrastructure is conducted based on terms and conditions that take into consideration the needs of both parties;
- h. supportive of each other, meaning that the partnership with the Business Entity in the Supply of Infrastructure is conducted with the spirit of mutually fulfilling each other from both parties;

**CHAPTER III
IDENTIFICATION AND DETERMINATION OF PROJECTS TO BE CONDUCTED BASED
ON COOPERATION AGREEMENT**

Article 7

- (1) The Minister/Institution Head/Regional Head conducts identification of projects for the Supply of Infrastructure to be conducted in cooperation with Business Entities, shall at least consider the following:
 - a. suitability with the national/regional medium term development plan and the infrastructure sector strategic plan;
 - b. suitability of project location with the Regional Spatial Plan;
 - c. relationship among infrastructure sectors and among regions;
 - d. cost analysis and social benefits.
- (2) Each project proposal for cooperation must be accompanied with:
 - a. pre-feasibility study;
 - b. cooperation formation plan;
 - c. plan for project financing and funding resources thereof; and
 - d. plan for cooperation offer which includes schedule, process and method of evaluation;

Article 8

In conducting project identification for cooperation as outlined in Article 7, the Minister/Institution Head/Regional Head shall implement public consultation.

Article 9

- (1) Based on the results of project identification as outlined in Article 7 and the results of public consultation as outlined in Article 8, the Minister/Institution Head/Regional Head shall determine priorities on projects for cooperation in the list of project priorities.
- (2) The list of project priorities as outlined in paragraph (1) is announced openly for public and disseminated to the community.

**CHAPTER IV
COOPERATION PROJECT AT THE INITIATIVE
OF BUSINESS ENTITIES**

Article 10

Business Entities can propose at their initiative Cooperation Projects for Supply of Infrastructure which are not included in the list of priority projects as outlined in Article 9, to the Minister/Institution Head/Regional Head.

Article 11

- (1) Projects at the initiative of Business Entities must be completed with:
 - (a) feasibility study;
 - (b) cooperation formation plan;

- (c) plan for project financing and funding resources thereof; and
 - (d) plan for cooperation offer which includes schedule, process and method of evaluation.
- (2) Projects at the initiative of Business Entities as outlined in paragraph (1) shall also consider the stipulations outlined in Article 7 paragraph (1).

Article 12

- (1) The Minister/Institution Head/Regional Head evaluates projects which are the initiative of Business Entities as outlined in Paragraph 11.
- (2) In the event based on evaluation as out lined in paragraph (1) projects at the initiative of Business Entities fulfill feasibility requirements, such projects at the initiative of Business Entities shall be processed through public auction in accordance with the provisions in this Presidential Regulation.

Article 13

- (1) Business Entities whose initiative Cooperation Projects are accepted by the Minister/Institution Head/Regional Head, shall be awarded with compensation.
- (2) Compensation for Business Entities proponents can be in the form of:
- a. granting of added value; or
 - b. purchase of the initiative cooperative projects, including Intellectual Property Rights accompanying such, by the Minister/Institution Head/Regional Head or the winner of the tender.

Article 14

- (1) Added value as outlined in Article 13 paragraph (2) point a shall be at the most 10% (ten percent) of the proponent's tender worth and such shall be announced openly prior to the procurement process.
- (2) The purchase of initiative cooperation projects as outlined in Article 13 paragraph (2) point b is in the form of indemnification by the Minister/Institution Head or by the winner of the tender for costs paid out by the Business Entity proponent.
- (3) The amount of added value as outlined in paragraph (1) and indemnification of costs as outlined in paragraph (2) are determined by the Minister/Institution Head/Regional Head based on the consideration of an independent appraiser prior to the procurement process

CHAPTER V

INITIAL TARIFF AND TARIFF ADJUSTMENT

Article 15

- (1) The initial tariff and its periodical adjustments are determined to ensure a reasonable level of coverage of capital expenditure, operational costs and profit within a certain period of time.
- (2) In the event the determination of the initial tariff and the adjustments thereof cannot be applied based on principles as outlined in paragraph (1), the tariff shall then be determined based on the level of affordability of the users.

- (3) In the event the determination of tariff is based on the level of affordability of the users as outlined in paragraph (2), the Minister/Institution Head/Regional Head shall provide compensation thus being able to achieve a reasonable level of return of investment and profit.
- (4) The range of compensation as outlined in paragraph (3) is based on the proceeds of results of competition among auction participants, and the lowest compensation range shall be selected.
- (5) Compensation shall only be provided for Cooperation Projects for the Supply of Infrastructure with social interests and benefits, upon complete and overall review on the social benefits by the Minister/Institution Head/Regional Head.

CHAPTER VI

RISK MANAGEMENT AND GOVERNMENT SUPPORT

Article 16

- (1) Risks are managed based on the principle of allocation of risks between the Minister/Institution Head/Regional Head and Business Entities in an appropriate manner by allocating risks to the party with more ability to control risks in the context of ensuring efficiency and effectiveness in the Supply of Infrastructure.
- (2) Risk management as outlined in paragraph (1) is included in the Cooperation Agreement.

Article 17

- (1) Government support to Business Entities is conducted by paying attention to the principles of financial risk management and control in the State Budget (APBN) and the Regional Budget (APBD).
- (2) Risk control and management as outlined in paragraph (1) is conducted by the Minister of Finance or the Head of the Regional Finance Management Work Unit in the event Government Support is provided by the Regional Government.
- (3) In carrying out their duties and functions as outlined in paragraph (2) above, the Minister of Finance or the Head of the Regional Finance Management Work Unit has the following authority:
 - a. to acquire the necessary data and information from parties related to the cooperation project for the Supply of Infrastructure which requires Government Support;
 - b. to approve or reject the granting of Government Support to Business Entities in the context of Supply of Infrastructure based on the criteria determined by the Minister of Finance concerning Government Support provided by the Central government, or the Head of the Regional Finance Management Work Unit in the event Government Support is to be provided by the Regional Government;
 - c. to determine procedures for payment of obligations of the Minister/Institution Head/Regional Head which arise from projects for Supply of Infrastructure in the event of indemnification on Intellectual Property Rights, payment of subsidy, and in the event of failure of fulfillment of the Cooperation Agreement.

CHAPTER VII

PROCEDURES FOR PROCUREMENT OF BUSINESS ENTITIES IN THE CONTEXT OF A COOPERATION AGREEMENT

Article 18

The procurement of Business Entities in the context of a Cooperation Agreement is conducted through public auction.

Article 19

The Minister/Institution Head/Regional Head shall establish a procurement committee.

Article 20

Procurement procedures as outlined in Article 18, cover:

- a. preparation for procurement;
- b. implementation of procurement;
- c. determination of winner; and
- d. compilation of a cooperation agreement.

Article 21

The Minister/Institution Head/Regional Head determines the winner of the auction based on proposals from the procurement committee.

Article 22

Provisions as outlined in Articles 18, 19, 20 and 21 are further regulated in the Attachment of this Presidential Regulation, which shall constitute an inseparable part of this Presidential Regulation.

CHAPTER VIII COOPERATION AGREEMENT

Article 23

- (1) The Cooperation Agreement shall at least contain provisions concerning:
 - a. scope of work;
 - b. period of time;
 - c. performance bond;
 - d. the tariff and mechanism of its adjustments;
 - e. the rights and obligations, including allocation of risks;
 - f. service performance standards;
 - g. prohibition in the assignment of the Cooperation Agreement or equity of shares in the Business Entity holder of Cooperation Agreement before the Supply of Infrastructure operates commercially;
 - h. sanctions in the event the parties do not meet the provisions of the agreement;
 - i. termination or expiry of agreement;
 - j. financial statement of the Business Entity in the context of implementation of the agreement, which is annual audited by an independent auditor, and the announcement of such in national scale print media;
 - k. the mechanism for settlement of disputes which is regulated by level, namely deliberation towards a consensus, mediation, and arbitration/court;
 - l. the mechanism for supervision of performance of the Business Entity in the implementation of the agreement;
 - m. the return of the infrastructure and/or management thereof to the Minister/Institutional Head/Regional Head;
 - n. force majeure;

- o. the applicable laws being the laws of Indonesia.
- (2) In the event the Supply of Infrastructure is implemented through the clearance of land by the Business Entity, the amount of Performance Bond as outlined in paragraph (1) point c can be determined by calculating the costs paid out by the Business Entity for such land clearance.
- (3) The Cooperation Agreement shall clearly state the status of ownership of assets conducted during the term of the agreement.

Article 24

- (1) The latest within a period of 12 (twelve) months after the Business Entity signs the Cooperation Agreement, the Business Entity is obliged to already have acquired financing for the Cooperation Project.
- (2) In the event the provision as outlined in paragraph (1) cannot be fulfilled by the Business Entity, the Cooperation Agreement shall expire automatically and the bid bond can be cashed in.

Article 25

- (1) In the event of the assignment of control over assets owned or under the control of the Minister/Institution Head/Regional Head to the Business Entity for use in the project, the contents of the Cooperation Agreement must regulate the following:
 - a. the purpose of use of the assets and prohibition to use such assets for purposes other than what have been mutually agreed upon;
 - b. the responsibility of operating and maintaining including payment of taxes and other obligations that arise from the use of such assets;
 - c. the rights and obligations of the party controlling the assets to supervise and maintain the performance of the assets during the term of use;
 - d. prohibition for the Business Entity to pledge such assets as guarantee to third parties;
 - e. procedures for delivery and/or return of such assets.
- (2) In the event the Cooperation Agreement regulates the delivery of control of assets procured by the Business Entity during the term of the agreement, the Cooperation Agreement must regulate the following:
 - a. the condition of assets to be assigned;
 - b. procedures of assignment of assets;
 - c. the status of assets should be free of all property collateral or encumbrances of any kind at the time the assets are handed over to the Minister/Institution Head/Regional Head;
 - d. the status of assets shall be free of any claim from third parties;
 - e. the Minister/Institution Head/Regional Head shall be free of all claims that may arise after the assignment of assets;
 - f. compensation for the Business Entity releasing such assets.

Article 26

In its relationship to the use of Intellectual Property Rights, the Cooperation Agreement should contain guarantee from the Business Entity that:

- a. The Intellectual Property Rights used are completely free of all forms of legal violations;
- b. The Minister/Institution Head/Regional Head shall be released from all claims or demands from any third party related to the use of Intellectual Property Rights in the Supply of Infrastructure;

- c. While settlement of cases is in progress due to there being claims or demands as outlined in point b, hence:
- 1) The continuity of the Supply of Infrastructure can still be carried on;
 - 2) To endeavor licensing whereby the use of the Intellectual Property Rights can still continue.

**CHAPTER IX
SUPPLY OF INFRASTRUCTURE BASED ON
BUSINESS OPERATING PERMIT**

Article 27

The procurement of the Business Entity in the Supply of Infrastructure based on the Business Operating Permit is conducted through auction of such permit.

Article 28

Procedures for auction of permit as outlined in Article 27 are further regulated by the Minister/Institution Head or Regional Head, by application of principles as outlined in Article 6.

Article 29

With the enforcement of this Presidential Regulation, therefore:

- (1) Cooperation Agreements signed prior to the enforcement of this Presidential Regulation shall remain valid.
- (2) The process of procurement which has already been conducted and a winner has been determined based on Presidential Decree Number 7 Year 1998 concerning Government Cooperation with Private Business Entities In Development and/or Management of Infrastructure, however the Cooperative Agreement has not yet been signed, therefore the Cooperation Agreement shall be prepared in accordance with this Presidential Regulation;
- (3) For Cooperation Agreements signed based on Presidential Decree Number 7 Year 1998 concerning Government Cooperation with Private Business Entities In Development and/or Management of Infrastructure, however not yet achieving fulfillment of financing requirements, therefore provisions concerning obligations to fulfill financing must be adjusted in accordance with the provisions of this Presidential Regulation.

**CHAPTER XI
CLOSING**

Article 30

At the time of validity of this Presidential Regulation, henceforth Presidential Decree Number 7 Year 1998 concerning Government Cooperation and Private Business Entities In Development and/or Management of Infrastructure is revoked and declared as no longer valid.

Article 31

This Presidential Regulation shall be in force on the date of its promulgation.

Promulgated in Jakarta

On 9 November 2005

PRESIDENT OF THE REPUBLIC OF INDONESIA

(signed)

SUSILO BAMBANG YUDHOYONO

Excerpt in accordance with its original

Deputy Cabinet Secretary

Legislation and Laws Sector

Lambock V. Nahattands

**ATTACHMENT:
REGULATION OF THE PRESIDENT OF THE REPUBLIC
OF INDONESIA
NUMBER 67 YEAR 2005
DATED: 9 NOVEMBER 2005**

**PROCEDURES OF PROCUREMENT OF BUSINESS
ENTITIES IN THE CONTEXT OF A COOPERATION
AGREEMENT.**

A. Procurement Schedule

1. The Minister/Institution Head/Regional Head establish a Procurement Committee;
2. Members of the Procurement Committee shall consist of those who are knowledgeable;
3. Procurement implementation schedule: the preparation of a procurement schedule should provide sufficient time for all stages of the procurement process.
4. The Self-Calculated Cost [*Harga Perhitungan Sendiri (HPS)*] should be conducted in a prudent manner.
5. Public auction documents should contain at least:
 - a. Invitations to auction participants;
 - b. Instructions for auction participants containing at least:
 - 1) general: scope of work, financial resources, terms, conditions and qualifications of auction participants, the number of bid documents delivered, and a visit to the work site;
 - 2) contents of the public auction documents, explanations on the public auction documents, and changes to the contents of the public auction documents;
 - 3) language prerequisites used in the bid, the inscription of the bid price, the currency of the bid and method of payment, the validity of the bid, the bid bond, alternative bid proposal by auction participants, type of bid, and the signing of the bid letter;
 - 4) method of covering and marking on the coverings of bids, time limit on delivery of bids, treatment of late bids, and the prohibition of changing and withdrawing bids that have been received;
the procedure of opening the bids, confidentiality and prohibitions, clarification of bid documents, examination of completeness of bid documents, arithmetical corrections, conversion into a single currency, bid evaluation system on the criteria, formulation and evaluation methods, and cost preferential evaluation;
 - c. Draft of a cooperation agreement;
 - d. List of quantity and prices;
 - e. Technical specifications and illustrations;
 - f. Form of the bid letter;
 - g. Form of cooperation;
 - h. Form of a bid bond;
 - i. Form of the implementation letter of guarantee;
 - j. The public auction documents should clarify the method to be used in delivering the bid documents.

B. Implementation of Procurement

1. Announcements and registration of participants
 - a. the procurement committee should announce the public auction far and wide;

- b. the announcement should contain at least: the name and address of the Minister/Institution Head/Regional Head in charge of the public auction, a brief explanation on the work to be done, an estimate of the cost of work (HPS), terms and conditions of auction participants, place, date and time where the documents for the public auction may be obtained.
 - c. in order that the announcement as mentioned under point a. above reaches the intended target in a efficient manner in accordance with the community range and the entrepreneurs to which it is aimed at, the announcement will be arranged as follows: auction/prequalification announcement will make use of newspapers and regional government/private radio stations that reach national/international readers and listeners;
2. Prequalification, covers evaluation on:
- a. business permits for that particular business;
 - b. the legal authority to sign contracts;
 - c. legal status of the business, in the sense that the company is not under custody of the courts, nor bankrupt, its business activities have not been terminated, and/or is not serving any criminal sanctions;
 - d. experiences in similar Infrastructure Supply Cooperation Projects;
 - e. the ability to provide facilities, equipment, and personnel;
 - f. a letter of financial support from a bank; and
 - g. the availability of special equipment, the necessary experts, or particular experiences needed for particular /specific / high technology assignments.
3. Prequalification Methods:
- a. prequalification announcements for public auctions;
 - b. registration and pick up of prequalification documents;
 - c. delivery of prequalification documents by auction participants;
 - d. evaluation of prequalification documents;
 - e. decision on the list of auction participants that have passed the prequalification stage by the Procurement Committee;
 - f. ratification of the results of the prequalification process by the Procurement Committee;
 - g. announcement of the prequalification results;
 - h. submission of objections by auction participants that have failed the prequalification process to the Minister/Institution Head/Regional Head, should there be any;
 - i. review and follow-up on objections to the prequalification results;
 - j. re-evaluation by the Procurement Committee should objections made by the provider of goods/services be true and the announcement of re-evaluation results.
4. Preparation of the List of Participants, Delivery of Invitations and the Pick Up of Public Auction Documents.
- a. the list of auction participants to be invited should be validated by the Minister/Institution Head/Regional Head;
 - b. in case auction participants that have passed the prequalification process are less than three (3), an announcement will be made and the prequalification process will be repeated by inviting new auction participants;
 - c. if, after the second auction/ prequalification announcement no additional participants have been established, or the participants of the auction are still

less than three (3), the Procurement Committee will continue the public auction process;

- d. all prospective auction participants that are listed in the list of auction participants should be invited to pick up the public auction documents;
- e. auction participants that have been invited have the right to pick up the public auction documents from the Procurement Committee;

5. Auction Clarification (*Aanwijzing*)

- a. auction clarification will take place at a particular time and place, attended by auction participants listed on the list of auction participants;
- b. The absence of an auction participant at the auction clarification may not be used as an excuse to refuse/dismiss a bid;
- c. At the public auction clarification, participants shall be informed of:
 - 1) Auction method;
 - 2) Bidding method;
 - 3) Documents that have to be attached to the bid documents;
 - 4) The opening of the bid documents;
 - 5) Evaluation method;
 - 6) Matters that may cause the bid to be dismissed;
 - 7) Forms of the cooperation agreement;
 - 8) The stipulation and evaluation method in connection with the price preference on the use of local products;
 - 9) The range of, the validity date and the party that may issue a bid bond;
- d. when deemed necessary, the Procurement Committee may provide additional explanation by conducting on-site visits;
- e. explanation on public auction documents' articles in the form of questions from participants and answers from the Procurement Committee and other explanations including the changes and on-site visits, shall be recorded in an official Minutes of Report (*Berita Acara Penjelasan –BAP*) signed by the Procurement Committee and at least one (1) representative of the attending auction participants; this report will be an inseparable part of the public auction document;
- f. When the BAP as mentioned in point e. contains new matters/stipulations or important changes that need to be accommodated, the Procurement Committee shall issue an addendum to the public auction document;

6. Delivery and Opening of Bid Documents

- a. The method of delivery and the opening of bid documents should be in accordance with the stipulations mentioned in the public auction documents;
- b. The method used in delivering bid documents should be explained at the time explanations were given;
- c. The Procurement Committee will note the time, date and place the bid document was received by mail on the outer envelop of the bid and place it in the auction box;
- d. At the end of the time limit to deliver bid documents, the Procurement Committee will open the bid opening meeting, and state to the auction participants that the time limit to deliver the bid documents has been closed in accordance with the determined time limit, that it refuses to accept late bids and/or additional bid documents and then opens the bid documents that have been received;

- e. For bids that were entered by mail and were received late, the Procurement Committee will open the outer wrapping to know the address of the auction participant and inform the participant to take back all the bid documents. The return of the documents will be accompanied by a receipt;
- f. It is not allowed to change the closing date of bid delivery for matters that are of no importance; should there be any change of closing date for bid delivery, such change shall be mentioned in an addendum of the public auction document and conveyed to all the participants of the auction;
- g. The opening of the bid documents:
 - 1) The Procurement Committee will ask at least two (2) representatives of the attending auction participants to act as witnesses. If witnesses from the auction participants present are not available, the Procurement Committee will postpone the opening of the box containing the bid documents that have been received to a date to be determined by the Procurement Committee. Should, at the date that had been determined, there still be no auction participant representative available, the box containing auction documents will be opened in the presence of two (2) witnesses outside the Procurement Committee who have been appointed in writing by the Procurement Committee;
 - 2) The Procurement Committee thoroughly examines the box containing the bid documents and counts the number of bid envelopes that have been received (not counting withdrawal letters); if bid documents received are less than three (3), the public auction cannot be continued and must be repeated, announcements will then be reissued by inviting new prospective auction participants;
 - 3) The opening of the bid documents for each of the systems will be implemented as follows:
 - a) The Procurement Committee opens the box and Envelope I in the presence of auction participants.
 - b) Envelope I containing administration and technical data is opened, and becomes an attachment to the written report pertaining to the opening of the bid document envelope I.
 - c) Envelope II containing data on the price is then presented by the auction participant once the participant has been declared as having passed the administration and technical and terms and conditions.
 - 4) The Procurement Committee examines, shows and reads to the auction participants the completeness of the bid documents, consisting of:
 - (a) bid letter stating the expiry date of the letter but not mentioning the price of the bid;
 - (b) original bid bond;
 - (c) other technical bid documents and supporting documents that are required by the public auction documents.
 - 5) The Procurement Committee may not disqualify a bid at the time of bid opening except for late bids;
 - 6) The Procurement Committee immediately prepares a written report on the opening of bid documents on all bid documents that have been received;
 - 7) Having read the report clearly, the written report is signed by the attending members of the Procurement Committee and two (2) authorized representatives of the auction participants that have been appointed by the attending auction participants;

- 8) Should there be a postponement with respect to the opening of the bids, the cause of such postponement should be stated clearly in the written report on the bid opening (BAPP);
 - 9) The BAPP is distributed among representatives of auction participants without the bid document.
7. The Bid Evaluation is implemented in accordance with the stipulations mentioned in the auction documents.
8. Preparing the Minutes of Auction Results (*Berita Acara hasil Pelelangan – BAHP*)
- a. The Procurement Committee prepares a summary of the evaluation report that is stated in the Auction Result Report (BAHP). The BAHP contains information on the results of the auction, including the evaluation method, formulas used, up to the sequence of winners in the form of a list of auction participants. The BAHP is signed by the chairman and all members of the Procurement Committee or at least two-thirds of the total number of members of the Committee.
 - b. The BAHP is classified until the signing of the contract.
 - c. The BAHP should contain the following:
 - 1) Names of all auction participants and price of bids and/or corrected price of bids of each auction participant;
 - 2) Method of Evaluation used;
 - 3) Formulas used;
 - 4) Other information considered necessary with respect to the auction;
 - 5) Date of the report and the number of auction participants that passed and those that failed at each stage of the evaluation process;

Establishing the series of one (1) prospective winner and two (2) reserve winners. Should there be no bid that fulfills the terms and conditions, the BAHP should state that the public auction has failed, and should immediately arrange for a new auction. Should auction participants that fulfill the terms and conditions be less than three (3), those participants may be recommended as prospective auction winners
9. Determining the Auction Winner
- a. The Procurement Committee determines the prospective auction winner based on the results of an evaluation;
 - b. The Procurement Committee prepares and delivers a report to the Minister/Institution Head/Regional Head to establish the auction winner. The report shall recommend a prospective winner and an explanation or other information that might be necessary in making the decision.
 - c. The Minister/Institution Head/Regional Head establish the auction winner based on the recommendations of the Auction Committee.
 - d. Supporting data necessary to establish the auction winner are:
 - 1) Public auction documents, and its addendums (where applicable);
 - 2) Report on the bid opening (BAPP);
 - 3) Report on the auction result (BAHP);
 - 4) Summary on the auction process and results;
 - 5) Bid documents from prospective auction winners and reserve prospective winners that have been initialed by the Procurement Committee and two (2) auction participant representatives;
 - 6) Should there be a delay in establishing a winner causing the bid/bid bond to expire, a confirmation must be obtained from auction participants with respect to the extension of the bid letter and the

bid bond. The prospective auction winner may withdraw its bid without any sanctions.

10. Auction Winner Announcement

The auction winner is announced and notified by the Procurement Committee to the participants at the latest two (2) work days upon receipt of the auction winner appointment letter from the Minister/Institution Head/Regional Head.

11. Objections from Auction Participants

- a. Auction participants who object to the auction winner appointment are given an opportunity to present their objections in writing, at the latest within a reasonable time limit.
- b. Objections are addressed to the Minister/Institution Head/Regional Head, enclosing proof of deviations.
- c. Objections may be presented by each auction participant separately or severally.

12. The issuance of an Auction Winner Appointment Letter

- a. The Minister/Institution Head/Regional Head issue the Auction Winner Appointment Letter in their capacity as Cooperation Project executors, provided:
 - 1) there are no objections from auction participants; or
 - 2) objections that have been received by the authorized officials during the objection period are untrue, or objections have been received after the time limit set for presenting objections.
- b. The auction participant that has been established as the winner shall be obligated to accept the appointment. Should the respective winner withdraw from the auction, while the bid is still valid, said withdrawal is only possible when the reason for such withdrawal is accepted objectively by the Minister/Institution Head/Regional Head, with the stipulation that the bid bond becomes the state's property
- c. Winners who withdraw from the auction for unacceptable reasons and whose bid is still valid, besides the fact that the bid bond becomes the property of the State, said winner will also be banned from participating in public auctions for the Cooperation Project for two (2) years.
- d. Should the first auction winner established as the winner withdraw from the auction, the second in line auction winner (where applicable) can be established as the winner, provided:
 - 1) the appointment of the second in line winner as the winner should first be established by the Minister/Institution Head/Regional Head;
 - 2) The validity of the bid of the prospective auction winner which was second in line is still valid or has been extended.
- e. Should the second in line winner also withdraw from the auction, then the third in line winner (where applicable) may be established as the winner, provided:
 - 1) The appointment should first be established by the Minister/Institution Head/Regional Head;
 - 2) The validity of the bid of the prospective auction winner which was third in line is still valid or has been extended;
 - 3) The bid bond of the second in line winner becomes state property;
 - 4) Should the prospective second winner withdraw for unacceptable reasons, sanctions stated in point 12 c) above will apply.

- f. Should the third winner withdraw from the auction for acceptable reasons, sanctions stated in point 12 c) above will apply. The Procurement Committee will then arrange for a repeat auction, provided the bid bond of the prospective third in line winner becomes State property.
- g. The Winner Appointment Letter should be made at the latest five (5) days after the announcement of the appointment and be delivered to the winner immediately.
- h. A copy of the Auction Winner Appointment Letter shall be presented (without agreement/contract enclosures) at least to the internal supervising unit.

13. Repeat Auction

A Repeat Auction is implemented based on the following considerations:

- a. Bids that were presented did not fulfill the terms and conditions mentioned in the auction documents;
- b. Less than three (3) bids fulfilled the terms and conditions in the auction documents.

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

(signed)

DR.H. SUSILO BAMBANG YUDHOYONO

**Excerpt in accordance with the original
Deputy Cabinet Secretary
Laws and Legislations Section
(stamped and signed)
Lambock V. Nahattands**