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## The New Regulation on Government Procurement of Goods and Services

Presidential Regulation No. 12 of 2021 on Government Procurement of Goods and Services (“**Regulation 12/2021**”) has just been issued as an amendment to Presidential Regulation No. 16 of 2018 (“**Previous Regulation**”). **Regulation 12/2021** is one of the implementing regulations of Law No. 11 of 2020 on Job Creation or the Omnibus Law that was enacted in October 2020.

Regulation 12/2021 was issued on 2 February 2021 and came into effect on the same date. It mainly aims to provide more opportunities for micro-level businesses and cooperatives to be involved in the public procurement of goods and services. However, it also makes amendments to provisions on other matters (eg procurement contracts, methods and dispute settlement) to ease doing business related to public procurement.

Below is a summary of the highlighted features of Regulation 12/2021.

### **Self-Estimated Price Formula**

Under the Previous Regulation, the Self-Estimated Price was calculated as the profit plus the overhead cost, and value-added tax was added to the total Self-Estimated Price. However, Regulation 12/2021 simply states that the details or formula of the self-estimated price are confidential.

## **The Types of Procurement Contracts**

In the past, there were only two categories for determining the types of procurement contracts, namely (i) types of procurement contracts for the **procurement of goods/construction works/other services** and (ii) types of procurement contracts for the **procurement of consultancy services**.

Now, they are divided into the following four categories:

1. The types of contract for the procurement of other goods and services:
  - a. a lump sum contract;
  - b. a unit price contract;
  - c. a combination of a lump sum and a unit price contract;
  - d. an umbrella agreement; and
  - e. a price plus payment contract
  
2. The types of contract for the procurement of construction works:
  - a. a lump sum contract;
  - b. a unit price contract;
  - c. a combination of a lump sum and a unit price contract;
  - d. a turnkey contract; and
  - e. a price plus payment contract
  
3. The types of contract for the procurement of non-construction consultancy services:
  - a. a lump sum contract;
  - b. an assignment time-based contract; and
  - c. an umbrella agreement
  
4. The types of contract for the procurement of construction consultancy services:
  - a. a lump sum contract; and
  - b. an assignment time-based contract.

Besides the above types of contract, the project owner may use another type of contract depending on the characteristics of the work.

In relation to the above, Regulation 12/2021 now defines the types of contract as follows:

<b>Turnkey Contract</b>	A contract to build a project, under which the project will be handed over after it has been completely finished and is ready to operate.
<b>Price Plus Payment Contract</b>	Previously, this type of contract was not recognized.  Under Regulation 12/2021, this contract is introduced as a new type of contract which is defined as a contract used for the procurement of goods/construction works/other services in an emergency. The contract value will be calculated as the actual cost plus a payment (with a fixed percentage or in a fixed amount).

### **The Method for Selecting the Goods/Services Provider**

Under Regulation 12/2021, the amendments explained below have been made to the provisions on certain provider selection methods:

#### **1. An Online Store (*Toko Dalam Jaringan* or '*Toko Daring*')**

Under Regulation 12/2021, a *Toko Daring* is now described as a source of e-purchasing for choosing a provider of goods/construction works/other services. It is defined as an information system that facilitates the procurement of good/services through an electronic system and online retail.

The types of goods/services that are bought and sold through a *Toko Daring* must (amongst others) be of a low-risk nature and be priced according to what has been established in the market. Procurement using a *Toko Daring* will be regulated further under a regulation of the head of the National Public Procurement Agency.

#### **2. Direct Appointment**

A direct appointment can now also be used for the procurement of goods/construction works/other services upon the termination of an existing contract.

## **New Criteria for Choosing Consultancy Services in Certain Situations**

As consultancy services are professional services which require consultants to be experts in certain scientific fields, in certain situations, the project owner can select a consultancy service provider through a direct appointment method. The Previous Regulation only provided four criteria for determining 'consultancy services in certain situations', now Regulation 12/2021 adds the following new criteria:

- a. consultancy services for which a re-selection process has failed;
- b. consultancy services needed to continue a contract which has been terminated;
- c. consultancy services which are confidential in nature under the prevailing laws; and
- d. consultancy services of the Board of Construction Disputes.

## **The Involvement of Micro-Level Businesses and Cooperatives**

Regulation 12/2021 now requires the Ministry/institution/local Government to use at least 40% of its budget to obtain domestic products from micro-level businesses and cooperatives. No certain percentage was required under the Previous Regulation.

The new regulation also increases the limit on the amount (or *nilai pagu anggaran*) for the procurement of goods/construction works/other services from micro-level businesses and cooperatives from Rp2,500,000,000 to Rp15,000,000,000. An exemption from the maximum amount of Rp15,000,000,000 can be applied for if the project has highly technical requirements and the project cannot be conducted by a micro-level business or cooperative.

## **Dispute Settlement**

Under Regulation 12/2021, in addition to a contract dispute, arbitration, or court settlement service, a contract dispute between the project owner and the provider over the execution of the contract can be settled through a Board of Construction Disputes. The Ministry of Public Works will issue a further regulation on this matter.

Given the above, it is still to be seen how the implementation of Regulation 12/2021 will achieve its main purposes, ie ease doing business and provide more opportunities to micro-level businesses and cooperatives in Indonesia. Further implementing regulations on certain new matters in Regulation 12/2021 (eg on dispute settlement and procurement using a *Toko Daring*) will need to be considered once issued.



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