

RECOMMENDATIONS FOR THE PUBLIC PROCUREMENT SYSTEM OF THE REPUBLIC OF INDONESIA



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Introduction

The following brief and its recommendations were prepared by the [Institute for Development of Freedom of Information](#) (IDFI), together with [Indonesia Corruption Watch \(ICW\)](#), based on the assessment of the primary legislative documents regulating the area of public procurement of Indonesia, its sub-legal acts and other legal texts. The assessment itself is based on the Transparent Public Procurement Rating (TPPR) [Methodology](#), a tool created by a multinational alliance of CSOs, aiming at identifying strengths and weaknesses of PPLs around the globe.

The Methodology is largely based on best international standards from organizations, such as the EBRD, WTO, OECD, EU and OCDS, and covers all the major components of any public procurement system, from the nature of the legislation to the complaint review process, with focus on the transparency of public procurement systems. The assessment covers the following key characteristics (values) of a well-functioning public procurement system: **Efficiency, Transparency, Accountability and Competitiveness**.

The aim of this document is to offer insight into areas of potential improvement for Indonesia's public procurement system considering the experience and best practices [identified](#) by the TPPR Project in 18 countries in the Eurasian region. The final results of the quantitative evaluation of Indonesia's public procurement legislation will be made available on the TPPR [website](#) in January 2019.

Overview

Different from most countries, Indonesia's public procurement is regulated not by a specific law, but by the Presidential Regulation, which throughout its existence has changed several times. Currently the Regulation that applies is [no. 16 of 2018 concerning Public Procurement](#). This regulation is a simplification of the previous rules, because it only focuses on the general norms of PP, while for more detailed arrangement, technical regulations are created. Therefore, the Presidential Regulation no. 16 of 2018 serves as the primary legal text on public procurement. Additionally, supporting documents and rules spell out each and every procedure in the public procurement system, provide guidance and technical indications on how to properly engage in public procurement. Among them, most important are:

1. [NPPA Regulation No. 11 of 2018 concerning Electronic Catalogs](#)
2. [NPPA Regulation No. 9 of 2018 concerning Guidelines for Procurement of Goods/Services through Providers](#)
3. [NPPA Regulation No. 2 of 2018 concerning Amendments to NPPA Regulation No. 6 of 2016 concerning Electronic Catalogs and ePurchasing](#)

Public Procurement in Indonesia is carried out in a decentralized manner. Each government institution, both at the central and regional levels, has a special unit tasked with organizing procurement, both electronically and manually. For providers of goods and services who want to take part in the bidding, they need to register as provider in a special portal (Lembaga Pelelangan Secara Elektronik (LPSE)) provided by each government institution.

Additionally, the Indonesian government in 2008 has created [INAPROC](#), a national e-procurement system to gather the procurement possibilities around the country in one place for informational purposes. The process of electronic procurement starts with the demand of the users (procurers) in each ministry, organization, and local government to each Procurement Service Unit [Unit Layanan Pengadaan (ULP) to procure a certain good, service or work. The ULP then will input the data related with the good/service procurement to the Electronic Bidding System (Sistem Pengadaan Secara Elektronik (SPSE)), which is integrated with the Electronic Procurement Services Hosts (LPSE) in each ministry, organization, and local government (province/regency/city). Therefore, Indonesia uses a rather complex system of electronic procurement.

The services available in the Electronic Procurement System are tenders regulated by the provisions of the NPPA Regulation No. 9 of 2018 concerning Guidelines for Procurement of Goods/Services through Providers. In addition, NPPA also provides Electronic Catalog facilities (e-Catalog), which are electronic information systems that contain lists, types, technical specifications and prices of certain goods from various services providers.

According to Presidential Regulation no. 16 of 2018, in Indonesia there are various methods of public procurement that combine electronic methods and paper-based ones. Both of them apply simultaneously and have an equal weight in the legal framework, although the existing version of the Presidential Regulation no. 16 of 2018 and its sub-legal acts encourage e-procurement mechanisms for all types of procurement.

National Public Procurement Agency (NPPA) is the main body responsible for preparation and formulation of strategies in the area of public procurement, as well as determining policy and procedure standards. Among other duties of the NPPA are:

1. Monitoring and evaluating the implementation of public procurement rules;
2. Guiding and developing information systems and supervise the implementation of electronic procurement;
3. Providing technical guidance, advocacy and legal assistance;

NPPA is not an independent agency, since in carrying out its duties and functions it is subordinate to the State Minister of National Development Planning and is accountable directly to the President. For example, the head of NPPA is elected and dismissed by the President.

Indonesia's PPL ensures transparency of public procurement information. However, transparency clauses of the law span up until the tendering phase, with post-tendering phase information completely missing from the legislative framework. There is a single national e-portal INAPROC, which gathers information on procurement announcements from numerous electronic portals of the different central and local procuring entities. Additionally, there's a separate portal – [LPSE](#), which shows information on individual tenders up until the signing of the contract. Another important portal is the [SiRUP](#), which stores information on public procurement annual plans. In total, there are over 25 portals or applications dedicated to different phases of public procurement process. All of these portals or applications can be found on the website of [NPPA](#).

Therefore, information is not available at a single point, but rather on multiple platforms. It is due to such set-up that it is difficult to ensure machine-readability of the data. No single machine-readable

database of public procurement related information exists, which would be accessible to the public. In addition, if we consider the fact that e-procurement is not a default procedure and paper-based procurement is still common in Indonesia, full-scale analysis of the public procurement performance is difficult. Indonesia has potential to transform its public procurement system into a more sophisticated mechanism, based on principles of maximum transparency and efficiency, however firstly, the country should adopt a full-scale public procurement law and should ensure that all procurement related information is available to the public in one easily accessible space.

Considering the above-mentioned and based on the TPR Methodology, IDFI would like to offer the following recommendations for Indonesia:

Transparency

Machine-readability of Data – The Indonesian legal framework ensures access to public procurement annual plans, tender announcements with most of its details, tender results and information on winning economic operator. All the information is stored on different platforms as every phase of procurement process has its own separate electronic system.

However, the information is not available in machine-readable formats such as CSV or JSON. It is only available electronically on the platform, so users can view information, but not interact with it, download it or use it for other purposes. Machine-readable format of data allows more robust analysis and capacity to create additional applications or monitoring systems outside the official portal. A good case of such an approach is Ukraine, where civil society organizations created a monitoring tool, with its own red flag system for risky procurement possibilities, Dozzoro. With the portal, civil society organizations flag risky and potentially corrupt public procurement procedures and inform relevant authorities of their existence, making it easy for these institutions to detect corruption, fraud, collusion or other improper practices.

The current public procurement legal framework of Indonesia needs to add guarantees on access to information in machine-readable formats. Additionally, the process of transitioning to an e-procurement system based on the principles of open contracting will be much easier if all the procurement related information and procedures will be available in one single electronic portal.

The potential for Indonesia to transform its public procurement system is solid, as the country is shifting towards 100% electronic public procurement. Article 71 of the Presidential Regulation no. 16 of 2018 stipulates that the SPSE has interconnection with information systems for planning, budgeting, payment, asset management, and other information systems related to SPSE. Additionally, SPSE support systems include: a. National Procurement Portal; b. Management of Human Resources Procurement of Goods / Services; c. Management of advocacy and resolution of legal problems; d. Management of community participation; e. Management of learning resources; and f. Monitoring and Evaluation.

The most pressing issue that Indonesia faces now is the availability of detailed data and information for each stage of public procurement. Information about procurement is currently very limited, and relies on technical institutions to provide important information to NPPA as the institution that manages public procurement policies. Though accurate and complete information is needed by the community to carry out the monitoring function. The complete data is also needed by the private sector to be more

actively involved in providing goods and services needed by the government so as to reduce monopolistic practices.

Access to submitted complaints and dispute resolutions – Under the Presidential Regulation no. 16 of 2018, the dispute settlement has been changed improved by adding a middle layer of dispute settlement. The NPPA has established the Contract Dispute Resettlement Service. The mechanism to deal with contract dispute comprises of 3 stages namely - mediation, conciliation, and arbitration. The main objectives of new dispute settlement are that the government agency and provider do not need to go to court to settle the dispute, since the court can be tardy in dealing with the issue. Complaints are lodged electronically through a module, which ensures efficiency. Nevertheless, transparency of the process still lacks important elements. Texts of complaints as well as dispute resolutions are not available to the public.

Making the texts of complaints and the decisions on them is useful for standardizing the process of dispute settlement. Interested stakeholders may use previous examples of complaints as blueprints in cases when a similar subject or decision is disputed. Such levels of transparency increase trust towards the dispute settlement system. For example in Georgia, all complaints and decisions are public and since the launch of the new dispute settlement mechanism, verified complaints increased from 68 to in 2011 to 1 492 in 2017.

Access to tender documentation amendments – Indonesia’s public procurement legislative framework does not provide access to tender documentation amendments to the general public, only to the participants of tenders. Tender documentation changes are often used to favor a particular economic operator or for other corrupt practices. It is a matter of principle that the public is entitled to get access to all information related to public procurement and denial of such possibility may hinder CSOs to effectively take part in the process of monitoring of public procurement system.

Access to information on subcontractors – Subcontracting is one of the tools used to involve small and medium enterprises into the procurement process and is an essential element of the public procurement process. Nevertheless, subcontracting can be misused for corrupt practices, such as avoiding conflict of interest or debarment from public procurement when a company is listed on the so-called “black list”. Indonesia’s legal framework does not ensure access to subcontracting related information, which is essential for a full monitoring of the public procurement process. General information on subcontractors such as – name of the subcontractor, Identification Number, Portion of the contract to be performed by the subcontractor, timeframe for performing duties, payment conditions should be made public.

Access to contracts and contract related information – Indonesia’s legal framework allows limited access to information on post-tendering or the contract performance phase to the public. There is only one of the [portals](#) that shows information on the contractor with very limited data points – name, address, bid price and contract price. Access to signed contract, contract amendments, performance information, payments, reports of inspections or acts of delivery and acceptance are not available to the public.

Without the contract performance information, it is impossible to track how well economic operator(s) have fulfilled their duties, or whether improper corrupt practice has taken place. For example, IDFI and its partner organization were unable to gather information on what portion of public procurement contracts were fulfilled, or which procuring entities have most problems with this issue. Due to such set-

up of the law and the electronic systems of Indonesia, interested stakeholders including the CSO and private sector do not have a possibility to analyze the public procurement system efficiently.

Efficiency

Single point of access on public procurement data – Electronic procurement in Indonesia is highly decentralized and complex. As mentioned previously, there are over 25 different portals or applications gathering information on electronic public procurement in the country. The way the system works is that the data is centralized in one system and all data fields are generated by the electronic procurement system (SPSE) program. However, the data is inputted at the 689 different Electronic Procurement Services Hosts (LPSE). In practice, LPSEs have bidding rooms where people can use computers to publish tenders. Therefore, the e-procurement system relies on 689 e-service hosts across the country and their connectivity with the central procurement database SPSE. Organizing procurement through a single portal is more cost-effective, easy-to-use, efficient and time-consuming. Hence, Indonesia should consider connecting all procurement activities and phases of public procurement in one single accessible online portal.

A Classification System for Goods, Works and Services – The Indonesian public procurement system does not use a system of classification of goods, works and services. The CPV system (Common Procurement Vocabulary) is one such option that can be introduced in order to avoid confusion and to have a way of keeping track of what is being purchased. Introducing a standardized classification system is a necessary step to a successful e-procurement system considering the fact that the Indonesian procurement system is highly decentralized and data is inputted at the 689 different LPSEs - the Electronic Procurement Services where the e-tendering system is hosted.

Competitiveness

Domestic preferences – According the Presidential Regulation no. 16 of 2018 regulating public procurement, Regional Ministries / state Institutions / and local authorities must use domestic products, including national engineering services. In cases when tenders involve offers with goods originating from foreign countries and local companies, local goods get a net benefit weight of at least 40% (forty percent). This is a significant preference, which may negatively affect competition in Indonesia. Even though national policies may focus on supporting local production and local suppliers, excessive preferences may be counter-productive and used for limiting competition.

Exemption to state-owned companies – Although public procurement policies in Indonesia have led to optimizing use of technology and information through the implementation of electronic procurement, legally speaking the public procurement framework developed by NPPA only applies to parts of the state sector. Only the central/regional governments and technical institutions using budgetary funds utilize the e-procurement system. While other sectors such as state-owned enterprises are not included in the public procurement system.

The public procurement legal framework needs to be applied to all public institutions, in order to ensure the transparency and accountability of the government. No data was available on how much public

spending takes place outside the Presidential Regulation no. 16 of 2018, but we can estimate that since state-owned companies are often engaged in sectors such as transportation, energy, postal services, communication, healthcare etc. the share of spending outside of the public procurement system can be substantial.

Accountability

Consultation mechanism with the private sector and civil society – Indonesia’s public procurement legal framework should include a mechanism for wider consultations with the business sector, civil society and the general public on public procurement policy matters. Such mechanism can be mandatory and frequency for such consultations can be defined by law. This mechanism will prove increasingly useful when Indonesia transitions to 100% e-procurement. A consultation mechanism improves communication with stakeholders and allows policy-makers to take into account the needs and suggestions from the users of the public procurement system.

Justification for using a non-competitive procedure must be made public – Indonesia’s public procurement legal framework does not obligate procuring entities to disclose the basis for using a non-competitive procedure, they only have to indicate the type of procedure. Furthermore, in order for information related to a procurement to enter the electronic procurement system, it has to be an e-tender. To constitute an e-tender, procurement has to be valued above around US\$ 15,000. Any procurement less than this threshold does not have to go through a tendering process. In these cases, procurements will be done via direct contracting. Additionally, the legal framework provides possibilities for non-competitive procedures.

According to the data gathered by IDFI and its partner organization, from 2015 to 2018, around 30% of public procurement was conducted through non-competitive procedures. This is a substantial portion of the procurement budget of Indonesia and a disclosure of the grounds for using non-competitive procedures should be introduced in the law to ensure more transparency and fewer possibilities for corrupt practices.

In addition to introducing a legal obligation to disclose the basis for using a non-competitive procedure/direct procurement, one of the best practices in this regard is to have the Procurement Authority (in Indonesia’s case NPPA) authorize the use of non-competitive procedures. This practice exists in Georgia, where all procuring entities have to submit a request to the Procurement Authority and justify why a direct procedure is necessary, with all documents available online to the public. After its introduction in 2017, this practice greatly discouraged procuring entities from using the often unnecessary but easier option of direct procurement and reduced the number of above-threshold direct procurement contracts by as much as 61% in one year.