

## Overview of the Procurement Guidelines for Indonesia's New Capital City



As part of the relocation of Indonesia's capital city from DKI Jakarta to Nusantara, President Joko Widodo has issued Presidential Regulation No. 62 of 2022 on the Authorities of the Capital City of Nusantara. This Regulation mandates, among others, the procurement of infrastructure and other goods/services relating to the preparation, construction, and relocation of the capital city.

On 18 May 2022, the government, specifically the National Public Procurement Agency (*Lembaga Kebijakan Pengadaan Pemerintah* or "**LKPP**"), followed up this Presidential Regulation by issuing LKPP Regulation No. 5 of 2022 on the Guidelines for the Specific Provision of Infrastructure and Other Procurement of Goods/Services for the Preparation, Construction, and Relocation of the State's Capital as well as the Administration of Special Regional Government of the Nusantara Capital City ("**LKPP Regulation 5/2022**").

Below are some highlights of LKPP Regulation 5/2022.

### Requirement to Collaborate with Small Local Businesses

One of the foundations for the specific procurement for Indonesia's new capital city is empowering small local businesses. This is reflected in LKPP Regulation 5/2022, by requiring any party wishing to participate in the procurement activities for Indonesia's new capital city to collaborate with small local businesses, which extends to the use of local manpower and materials.

LKPP Regulation 5/2022 defines "small local businesses" as any individual domiciled in Kalimantan or corporation domiciled and owned by any individual or community in Kalimantan that conducts a specific business and/or activity. Moreover, to be classified as a "small local business", a corporation must satisfy the following requirements:

- (1). All or at least 50% of its shares must be owned by an individual or community domiciled in Kalimantan;
- (2). Its CEO must be domiciled in Kalimantan; and
- (3). The majority of its high-level management (if the members are an odd number) or half of its high-level management (if the members are an even number) are persons domiciled in Kalimantan.

LKPP Regulation 5/2022 allows the collaboration to be in the form of a partnership, subcontract, or any other form. However, the collaboration requirement can be exempted if:

- (1). There is no small local business that meets the applicable technical requirements;
- (2). The small local businesses are not adequate; or
- (3). The procurement is carried out through e-purchasing in the national or sectoral e-catalogue.

While the collaboration requirement extends to the use of local manpower and material, an exemption can be sought if:

- (1). There is no local manpower or material available in Kalimantan;
- (2). The local manpower or material is inadequate or inefficient; or
- (3). The local manpower or material does not meet the required standards.

## Additional Methods of Provider Selection

Besides methods of provider selection regulated under the general government procurement rules, LKPP Regulation 5/2022 also sets out guidelines for additional methods of provider selection for the new capital city, as follows:

(1). ***E-purchasing of consultation services***

Under the general government procurement rules, e-purchasing can only be used for the procurement of goods/construction work/other services. For the new capital city, e-purchasing can be used to procure consultation services.

(2). ***Repeat order for the procurement of goods/construction work/other services***

The general government procurement rules allow the same provider to be chosen if the procurement is a repeat order for consultation services. For the new capital city, LKPP Regulation 5/2022 extends this allowance to the procurement of goods, construction work, or other services.

(3). **Panel of consultants**

The general government procurement rules recognise that a provider can be chosen out of a pre-determined panel of consultants. However, this panel of consultants method can only be used to procure a procurement agent.

With respect to the new capital city, the Nusantara Capital Authority or other ministries/institutions can enter into an umbrella contract with a panel of consultants comprising between five to seven corporate or consortium members. The only service that can be procured from the panel of consultants is consultation service. Further details on the procedure to select the panel members are set out in LKPP Regulation 5/2022.

(4). **Beauty contest**

Lastly, a beauty contest can be held to obtain the best idea, concept, or design for a specific work. In the case of the new capital city, the winner of the beauty contest may be rewarded, among other things, with an exclusive right to be directly appointed to procure certain services or goods.

## Other Points of Interest

LKPP Regulation 5/2022 sets out a detailed guideline on the types of procurement that are integrated with construction work, namely design and build, and engineering, procurement and construction. This means that one provider may be appointed if such provider can perform several streams of work as a set.

Moreover, LKPP Regulation 5/2022 allows a procurement package to include a “supplied by owner” method for construction work. Therefore, in this type of procurement package, the provider of the procurement can supply their own raw material, product, and/or equipment, which may allow them to save costs for materials or equipment.

LKPP Regulation 5/2022 also expands the types of contract permitted under the general government procurement rules by including performance-based contracts whereby a provider may be rewarded or penalised based on their achievement or non-achievement, respectively, of a specific level of work or services.

## Key Takeaways

The enactment of LKPP Regulation 5/2022 officially kicked off the procurement process relating to the preparation, construction, and relocation of Indonesia’s capital city. While businesses could find many opportunities, there is no precedent for some of the procurement methods detailed above. Therefore, businesses should first conduct a risk assessment and proceed with caution in assessing the opportunities to participate in the development of the new capital city.

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