

Choosing the Right Approach: A Guide to Selecting Contractors and Consultants for Construction Projects in Indonesia

Prepared by:

Abraham Sylvester Harryandi (Partner) and Aletheia Christy Hutabarat (Associate)

In rapidly developing countries like Indonesia, construction plays a pivotal role in driving transformative infrastructure growth that significantly impacts the nation's economy and quality of life. The demand for development of infrastructure is soaring, with an increasing number of ambitious projects underway. From the construction of toll roads that enhance connectivity and reduce travel time to innovative housing developments that address urbanization challenges, and from robust water supply systems that ensure access to clean drinking water to efficient power plants that meet the energy needs of a growing population, the landscape of construction in Indonesia is evolving at an unprecedented pace.

As the construction projects multiply, ensuring their success and the delivery of lasting value becomes a foremost concern for all stakeholders involved. It is essential for construction service users ("**Service Users**") to navigate the complexities of the construction landscape effectively. One critical aspect of this process is the selection of the right contractor or consultant ("**Construction Service Provider**"), as they play a central role in driving impactful and successful construction activities across Indonesia. Partnering with the right Construction Service Provider not only influences project success but also establishes a foundation for sustainable growth and industry excellence. The process of procuring a Construction Service Provider depends on the specific needs of the Service User, as well as the unique conditions of each project, ensuring a successful outcomes and long-term value.

Under Indonesia's prevailing laws and regulations, it is important to note that strict procedures govern the procurement process for appointing Construction Service Providers, specifically for public-interest projects. Given the intricacies and potential risks associated with construction projects, it is vital for Service Users to be well-versed in the various methods available for appointing these providers, as prescribed in Indonesian regulations. This article is intended to provide a comprehensive overview of the methods for selecting Construction Service Providers for public-interest development.

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In accordance with Government Regulation No. 22 of 2020 on the Implementation of Law No. 2 of 2017 on Construction Services as amended by Government Regulation No. 14 of 2021 ("**GR 22/2020**"), the selection of a Construction Service Provider for a public-interest development through the following is mandatory pursuant to GR 22/2020:

1. Tender or Selection

a. Tender

According to GR 2/2020, a Service User has three types of tenders available for selecting Construction Service Provider:

i. Prequalification Tender

Prequalification tenders apply to integrated Construction Service Providers in cases where the project is either (i) complex in scope, or (ii) urgently required for immediate use, where a lack of integration would prevent the project from achieving optimal value.

ii. Post-Qualification Tender

Post-qualification is suitable for selecting providers where the project scope is relatively straightforward and non-complex.

iii. Quick Tender

Quick tender may be used, if:

- job specifications and volume are clearly defined,
- the Construction Service Provider is already pre-qualified in the performance information system, and
- the Construction Service Provider is selected based on the lowest price.

b. Selection

The selection method is specifically used for procuring construction consultancy service providers. Selection through prequalification is suitable for appointing consulting service providers organized as business entities, while selection through post-qualification is applicable for appointing a consulting service provider operating as sole trader businesses.

- government assignments to state-owned enterprises (“**SOE**”) or regionally-owned enterprises (“**ROE**”), subsidiaries of SOE or ROE, and/or their affiliated companies;
- emergency work for public safety that must be done immediately;
- construction work can only be provided by a single qualified business entity; and/or
- specific work that can only be performed by a patent holder or those authorized by the patent holder, or by a government-assigned tender winner.

Additionally, the specific conditions under point e above can also apply to the direct appointment of construction consultants in cases involving:

- repeat orders for the same Construction Consultancy Service Provider;
- consultancy services where selection failure occurs after re-selection;
- government assignments to SOEs or ROEs, their subsidiaries, and/or affiliated companies;
- consultancy services that can only be delivered by one capable business entity;
- consultancy services exclusively available through a registered copyright holder or an authorized party;
- confidential consultancy services for national interests as per laws; and/or
- follow-up consultancy services as an integral system and indivisible responsibility for building failure risk from prior work.

2. Direct Appointment

Direct appointment allows the Service User to appoint a Construction Service Provider without a bidding process, typically involving a prequalification step. GR 22/2020 permits direct appointment under specific circumstances, such as:

- a. emergency situations requiring immediate action for public safety and security;
- b. complex work that can only be undertaken by a limited number of qualified Construction Service Providers or specific rights holders;
- c. confidential work related to national security;
- d. small-scale projects; and/or
- e. specific conditions.

The specific conditions mentioned in point e above for construction work include situations such as:

- urgent or sudden work required to meet international commitments attended by the president or vice-president;
- confidential construction work for national interests in accordance with laws;
- construction work forming an integrated system with indivisible responsibility for building failure risks;
- public infrastructure, facilities, and utilities in housing for low-income communities, Civil Servants, Indonesian Armed Forces, or the Indonesian Police, managed by the relevant developer;
- construction work that faces tender failure after re-tendering;

3. Direct Procurement

Direct procurement can only be conducted for packages with a certain value and small-scale projects under the following conditions:

- a. simple technology;
- b. low risk; and/or
- c. performed by individual service providers or small businesses, except for project packages requiring technical competencies that small businesses cannot meet.

For reference, the value of the work that can be carried out by direct procurement depends on the following factors:

- a. the economic conditions of the local area; and
- b. for procurement of construction work or construction consultancy services financed by public funds, the relevant laws and regulations governing public procurement of goods and services.

4. Procurement Through Electronic Catalogs

The selection of Construction Service Providers through the electronic catalog can only be done for work that is already listed in the electronic catalog.

Given the above explanation and extensive public-interest development in Indonesia, if a Service User intends to obtain construction services from a Construction Service Provider, the appointment must proceed through a tender, selection process, or electronic catalog. A public interest development is defined as a development that impacts either: (a) the interests of the nation and state; or (b) the interests of the community. Further, Elucidation of GR 22/2020 explains that the term "public interest development" includes the following:

- a. national defense and security;
- b. public roads, toll roads, tunnels, railways, train stations, and railway operation facilities;
- c. reservoirs, dams, weirs, irrigation systems, drinking water channels, drainage systems, sanitation, and other irrigation infrastructure;
- d. ports, airports, and terminals;
- e. oil, gas, and geothermal infrastructure;
- f. power generation, transmission, substations, networks, and distribution systems;
- g. government telecommunications and information networks;
- h. waste disposal and processing facilities;
- i. government/local government hospitals;
- j. public safety facilities;
- k. public burial sites managed by the government/local government;
- l. social facilities, public facilities, and public green spaces;
- m. nature reserves and cultural heritage sites;
- n. government/local government/village offices;
- o. urban slum settlement upgrading and/or land consolidation, as well as housing for low-income communities with rental status;
- p. educational infrastructure or government/local government schools;

- p. sports infrastructure of the government/local government; and
- q. public markets and public parking areas.

In addition, it is important to note that if the implementation of construction services for a Service User utilizing a Construction Service Provider affiliated with public interest developments is carried out without going through a tender, selection process, or electronic catalog, the Minister of Public Works and Housing, the governor, or the regent/mayor will impose written warning sanction(-s) and temporary suspension sanction(-s) on the construction activities for Service User.

In summary, navigating the complexities of selecting a Construction Service Provider for construction projects in Indonesia is essential for achieving successful outcomes and ensuring that public interest developments are executed with integrity and efficiency. By adhering to the guidelines set forth in GR 22/2020, the Service User can make informed decisions that align with both regulatory requirements and community needs. Understanding the various selection methods, whether through tender or selection, direct appointment, direct procurement, procurement through electronic catalogs equips stakeholders to engage the right Construction Service Provider who can deliver a construction project that not only meets technical specifications but also contributes to the broader goals of national development and social welfare.

As Indonesia continues to advance its infrastructure agenda, it is critical that all parties involved prioritize transparency, accountability, and compliance with established procurement practices. Failure to follow these procedures can result in sanctions imposed by authorities. Therefore, it is imperative for Service Users to approach contractor and/or consultant selection with diligence and foresight, ensuring that their projects are not only successful but also serve the greater good of society. By embracing these best practices, Indonesia can foster a construction environment that not only meets the demands of today but also paves the way for sustainable growth in the future.

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The article above was prepared by Dentons HPRP's lawyers

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