

CHARACTERISTICS OF TENDERS AS A PRE-CONTRACT STAGE FOR THE PROCUREMENT OF GOODS AND SERVICES

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ABSTRACT

Keywords: Tender; Pre-Contract; Goods; Services. Tendering in procuring goods and services is a crucial early stage in forming a fair procurement contract. This study aims to analyse the characteristics of tenders as a pre-contract stage of public procurement of goods and services. This research uses a qualitative research method with a descriptive approach. A literature study was carried out using the data collection technique in this research. The data that has been collected is then analysed in three stages, namely data reduction, data presentation, and conclusion drawing. The results showed that the characteristics of tenders as a pre-contract stage of government procurement of goods and services include competitive, fair, transparent, efficient, and effective. These tender characteristics are essential in procuring government goods and services to produce quality goods and services providers who can carry out work correctly and on time.



Introduction

As a developing country, Indonesia has a population of around 278.69 million in mid-2023. Human resource management is critical in this country, which depends on the condition and quality of human resources themselves (Annur, 2023). This involves trying to balance the number and quality of human resources. The rapid population growth in Indonesia has given rise to various problems related to human resources. Some problems include high unemployment, limited employment, lack of access to health facilities, lack of land for housing, etc. In addition, cultural diversity and social background in Indonesia also play a role in the uneven distribution of human resources, especially in rural areas (Ismaryadi, Khairani, & Mannas, 2023).

The government strives intensively to improve the quality of human resources, one of which is through the procurement process of goods and services managed by various government agencies (Mulyono, 2017). Procurement of goods/services is carried out by Ministries, Institutions, Regional Apparatus Work Units, or other Institutions, starting from the needs planning stage to completing the entire series of activities to obtain these goods/services (MMC, 2022). The procurement process of government goods and services is regulated in Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services (Rawis, 2021). Tender is one of the methods of procurement of goods and services regulated in Presidential Regulation 16/2018. A tender is a series of procurement processes that aim to select and appoint companies most

suitable and qualified to carry out a particular project or work (Dwika Nur Arifin, Widyaningsih, & Permatasari, 2021).

In the procurement process of goods and services, there is a critical stage called the pre-contract stage. The pre-contract stage is a crucial first step in agreeing on a contract. In this stage, a series of negotiations between the parties involved establishes various clauses and conditions that will be regulated in the contract to be formed (Ardyo, 2019). The contract for the procurement of goods and services is a document that becomes a guideline for implementing the procurement of goods and services. The contract for procuring goods and services must be drawn up based on the tender results (Purwosusilo & SH, 2017). Tenders for the procurement of goods and services have a high urgency to support a fair contract. In addition, tenders also detail the main content of goods and services procurement contracts. So, It is essential to understand the characteristics of tenders in the pre-contract stage (Mariyati, 2018).

Previous research conducted by (Sampe & Timbonga, 2021) reviewed the juridical review of tender agreements for government procurement of goods and services in presidential regulation number 16 of 2018 concerning government procurement of goods and services; the results of the study showed that the procurement of goods and services must apply general principles, both principles that have long been known in state financial management, such as the annual principle, the principle of universality, The principle of unity, and the principle of speciality and new principles as a reflection of the application of good rules in state financial management.

Another study by (Betham, Hipan, and Fality, 2019) examines the juridical analysis of government goods/services procurement procedures and legal protection of goods/services procurement actors; the results of the study show that the stages of government procurement of goods/services are carried out through the stages of procurement planning, preparation for procurement of goods/services, implementation of goods/services procurement. Related to legal protection for actors procuring government goods/services is an effort to protect the government's or local government's interests to obtain the desired goods/services to benefit the community. On the other hand, law enforcement officials protect the state's interests so that the actors of government procurement of goods/services work by laws and regulations so that the procurement of government goods/services can benefit the government and society.

The novelty of this research is from the characteristics of tenders as a pre-contract stage for the procurement of goods and services to the novelty in this study. This study aims to analyse the urgency of tenders for the procurement of goods and services to support a healthy contract (fair contract) and examine the role of tenders as details of the main content of goods and services procurement contracts.

Research Methods

This research uses qualitative research methods with a descriptive approach. According to (Indrawan and Jalilah, 2021), qualitative research is a group of techniques used to investigate and interpret the meaning given by several individuals or groups to

social issues or humanitarian problems. This research uses data collection techniques in literature studies, where data relevant to the research topic are obtained from various literary sources such as Google Scholar. Once the data is collected, the analysis is carried out in three stages. The first stage is data reduction, where the collected data is organised and narrowed down to make it more focused. Furthermore, in the data presentation stage, the analysis results are presented clearly and structured, often through tables, graphs, or narratives. Finally, in the concluding stage, researchers formulate data analysis findings to answer research questions and relate them to research objectives.

Results and Discussion

The regulation governing the procurement of government goods/services, namely Presidential Regulation (Perpres) Number 54 of 2010 concerning Procurement of Government Goods/Services has undergone several changes, and there are still many shortcomings and have not accommodated the development of Government needs regarding good regulation of Procurement of Goods/Services, the government considers it necessary to establish a new Presidential Regulation on Procurement of Government Goods/Services in response to the existence of For reform in the procurement of government goods/services, the Government issued Presidential Regulation No. 16 of 2018 concerning Procurement of Government Goods/Services as a revision to Presidential Regulation No. 54 of 2010 concerning Procurement of Government Goods/Services and its amendments. Presidential Regulation No. 16 of 2018 has 15 chapters with 98 articles, simpler than Presidential Regulation No. 54 of 2010 and its amendments. Presidential Decree No. 16 of 2018, in addition to the smaller number of articles, also removed the explanation section and replaced it with an explanation of procurement norms. This revision of government goods/services procurement regulations is expected to improve the government goods/services procurement process to avoid malpractices or fraud in the implementation of government goods/services procurement (Zaenal Arifin, Sediati, Hendristianto, & Arifin, 2023).

Procurement of goods and services is one of the stages of the project cycle required by government agencies whose process starts from planning needs to completing all activities to obtain goods and services between two parties by an agreement or contract (Mulyono, 2017).

There are three stages in the procurement of goods/services, namely.

- a. Preparation Stages for Procurement of Goods/Services The preparation stage is carried out before selecting goods/services providers. This stage is the responsibility of PA/KPA, KDP, and ULP. This preparatory stage consists of several activities, among others.
 1. Prepare and announce the General Plan of Procurement (RUP).
 2. Review and fixation of RUP.
 3. Preparation, discussion, and determination of procurement implementation plans.
 4. Preparation of procurement documents.

- b. Stages of Selection of Goods/Services Providers The stage of selecting goods/services providers is the responsibility of the ULP Working Group/Procurement Officer. At this stage of selecting goods/services providers, the right provider selection method will be determined depending on the type of procurement needed, whether it is the procurement of goods, procurement of other services, procurement of construction work, procurement of business entity consulting services, or procurement of individual consulting services.
- c. Stages of Signing and Contract Execution This stage is the responsibility of KDP and its support team. In this stage, the form of the contract or written agreement and the selection of the type of contract will be defined. Furthermore, contract preparation, contract implementation preparation, contract execution, and submission of work results will be carried out (Albab, 2020).

Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services Article 38 paragraph (1), states that the method of selecting Providers of Goods/Construction Works/Other Services consists of:

1. E-purchasing;
2. Direct Procurement;
3. Direct appointment;
4. Fast tender;
5. Tender.

Generally, the procurement of construction services above 200 million is carried out by tender mechanism. A tender is a selection method to obtain providers of goods, construction works, and other services.

According to (Abimantara and Purwito, 2019), tender is an activity that aims to select, obtain, determine and appoint the most feasible company to work on a work package. The tender process has several stages, from the announcement, registration, explanation, submission, and opening to evaluation of bid documents. Goods/services procurement activities are carried out in two ways determined by the general procurement planning: self-management and providers (Lestyowati, 2018). Procurement activities through suppliers must consider, pay attention to, and be based on the following:

1. Procurement values,
2. Parties in the procurement of goods/services,
3. Use of domestically produced goods/services,
4. Small business participation,
5. Procurement of goods/services through international auctions/selection,
6. Procurement of goods/services financed with foreign loans/grants,
7. Participation of foreign companies in the procurement of goods/services,
8. Eco-friendly concept,
9. Electronic procurement.

The characteristics of tenders as a pre-contract stage in the procurement of government goods and services have several essential characteristics, namely:

1. The tender process should be competitive, where various providers of goods and services compete to win contracts. This competition will encourage providers to provide their best deals.
2. Tenders must be fair, meaning that every supplier has an equal and fair opportunity to participate in the tender process. Impartiality and equal treatment to all parties are essential.
3. Transparency is one of the essential characteristics of the tender process.
4. Efficiency and effectiveness in the use of resources must be upheld. The tender process should be carried out efficiently without wasting time or budget unnecessarily.

Every economic actor or business actor also wants to be the winner among them, always wanting to be the first to control market share. So tenders are carried out in the procurement of goods/services in government or private agency projects to avoid fraud that may occur. Supported by Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, it is an essential instrument in encouraging the creation of economic efficiency and creating a climate of equal business opportunities for all business actors (MTVM, 2019).

Business actors determine the winner of the tender and result in unfair business competition according to Article 22 of the Antitrust Law is prohibited. The form of conspiracy based on behaviour is in the form of mutual action showing the bid price to be submitted in the opening of tenders among fellow participants by adjusting bids to each other and arranging winners among competing participants. Business actors who violate arranging winners will be reported to the KPPU. KPPU carries out the business competition procedural law proving using KPPU Regulation Number 1 of 2019 (Prasetya & Muhammad, 2021).

The Project Procurement Management process involves an agreement that describes the relationship between two parties, buyer and seller. An agreement can be as simple as purchasing a certain number of person-hours at a certain level of labour or as complex as an international construction contract of several years. Thus comes Procurement. Procurement is a job related to the procurement of goods. Procurement activities are receiving, buying or providing goods or services to other parties. The function of procurement in a company is to provide goods or services needed by the company. Procurement or procurement of goods/services is a process to obtain goods and services with the best possible expenditure, in the right quality and quantity, at the right time, and in the right place to generate profits or uses directly for the government, companies or individuals carried out through a contract (Martono et al., 2021).

To create a healthy tender needs criteria in the procurement tender. The following criteria are included in the procurement tender based on

- a. Presidential Regulation Number 16 of 2018.
 1. Participants have qualified in the Provider's Performance Information System;
 2. Participants only enter a price quote;
 3. Evaluation of price quotes is done through the application, and
 4. Winner determination based on the lowest bid price.

b. LKPP

1. Technical specifications/KAK and volume of work have been determined in detail so that technical requirements are not competent;
2. In the preparation of technical specifications / KAK, it is possible to mention the Brand of goods/services;
3. Participants have qualified in SIKaP;
4. The quote delivery method uses recurring quote/e-Reverse Auction.

Tendering is an essential stage in the procurement of goods/services. The characteristics of tenders as a pre-contract stage in the procurement of government goods and services have several essential characteristics, namely: 1) the tender process must be competitive, 2) tenders must be fair, meaning that every supplier has an equal and fair opportunity to participate in the tender process. 3) transparency, 4) efficiency and effectiveness in the use of resources must be upheld. By following the principle of tender characteristics, the procurement of goods/services carried out can form a healthy and fair contract.

Conclusion

As a pre-contract stage in procuring government goods and services, tenders have several essential characteristics. First, the tender process must be competitive, where various providers of goods and services compete to win contracts. This competition will encourage providers to provide their best deals. Secondly, tenders must be fair, meaning that every supplier has an equal and fair opportunity to participate in the tender process. Impartiality and equal treatment to all parties are essential. Third, transparency is one of the crucial characteristics of the tender process. All stages of the tender process must be open and accessible to interested parties. This creates trust and accountability in the procurement process. Fourth, efficiency and effectiveness in the use of resources must be upheld. The tender process should be carried out efficiently without wasting time or budget unnecessarily. These characteristics together help ensure that the procurement process of government goods and services runs well, produces quality providers, and provides maximum benefits to society. Therefore, understanding and applying these characteristics is essential in government procurement of goods and services.

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