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**United Nations Commission
on International Trade Law
Working Group I (Procurement)
Twentieth session
New York, 14-18 March 2011**

Annotated provisional agenda for the twentieth session of Working Group I (Procurement)

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of proposals for a Guide to Enactment of the UNCITRAL Model Law on Public Procurement.
5. Other business.
6. Adoption of the report of the Working Group.

II. Composition of the Working Group

1. The Working Group is composed of the following States: Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Belarus, Benin, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Egypt, El Salvador, Fiji, France, Gabon, Germany, Greece, Honduras, India, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Latvia, Malaysia, Malta, Mauritius, Mexico, Morocco, Namibia, Nigeria, Norway, Pakistan, Paraguay, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Singapore, South Africa, Spain, Sri Lanka, Thailand, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).



2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The twentieth session of Working Group I (Procurement) is scheduled to be held at the United Nations headquarters in New York, from 14 to 18 March 2011. Meeting hours will be from 10 a.m. to 1 p.m., and from 3 p.m. to 6 p.m., except on Monday, 14 March 2011, when the session will commence at 10.30 a.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Consideration of proposals for a Guide to Enactment of the UNCITRAL Model Law on Public Procurement

1. Documentation for the twentieth session

5. The Working Group will have before it notes by the Secretariat containing proposals for a Guide to Enactment of the UNCITRAL Model Law on Public Procurement (A/CN.9/WG.I/WP.77 and addenda).¹

6. In addition, States and interested organizations in planning the attendance of their representatives may wish to note the following relevant background documents, all of which have previously been distributed and remain available in electronic format on the UNCITRAL website, and will not be reprinted for distribution:

(a) The UNCITRAL Model Law on Procurement of Goods, Construction and Services and its accompanying Guide to Enactment (1994); the UNCITRAL Model Law on Electronic Commerce (1996); the UNCITRAL Model Law on Electronic Signatures (2001); the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000); and the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (2003);

(b) Reports of Working Group I (Procurement) on the work of its sixth to nineteenth sessions (A/CN.9/568, A/CN.9/575, A/CN.9/590, A/CN.9/595,

¹ Due to resource constraints, environmental considerations and the volume of the document, a limited number of copies of this document will be reprinted and made available in the meeting room. Delegates and observers are kindly requested to bring their own copies as well as other background documents mentioned in the provisional agenda to the meeting and limit requests for additional copies. The documents may be downloaded from the UNCITRAL website (www.uncitral.org).

A/CN.9/615, A/CN.9/623, A/CN.9/640, A/CN.9/648, A/CN.9/664, A/CN.9/668, A/CN.9/672, A/CN.9/687, A/CN.9/690 and A/CN.9/713);

(c) Notes by the Secretariat on: (i) issues arising from the increased use of electronic communications in public procurement (A/CN.9/WG.I/WP.31); (ii) issues arising from recent experience with the UNCITRAL Model Law on Procurement of Goods, Construction and Services (A/CN.9/WG.I/WP.32); (iii) issues arising from the use of electronic communications in public procurement (A/CN.9/WG.I/WP.34 and Add.1 and 2); (iv) remedies, conflicts of interest and services procurement in the Model Law (A/CN.9/WG.I/WP.64); and (v) drafting history of some provisions of the 1994 Model Law and the treatment of the issues raised by some of those provisions in international instruments regulating public procurement (A/CN.9/WG.I/WP.68 and Add.1);

(d) Comparative studies by the Secretariat addressing: (i) practical experience with the use of electronic (reverse) auctions in public procurement (A/CN.9/WG.I/WP.35 and Add.1); (ii) abnormally low tenders (A/CN.9/WG.I/WP.36 and Corr.1); (iii) national, regional and international practices with the publication of procurement-related information not covered by the Model Law (A/CN.9/WG.I/WP.39 and Add.1); and (iv) issues arising from the use of suppliers' lists (A/CN.9/WG.I/WP.45 and Add.1);

(e) Drafting materials prepared by the Secretariat on: (i) the use of electronic communications in public procurement and publication of procurement-related information (A/CN.9/WG.I/WP.38 and Add.1; A/CN.9/WG.I/WP.42 and Add.1; and A/CN.9/WG.I/WP.47); (ii) the use of electronic reverse auctions in public procurement (A/CN.9/WG.I/WP.40 and Add.1; A/CN.9/WG.I/WP.43 and Add.1; A/CN.9/WG.I/WP.48, 51, 55 and 59); (iii) the use of framework agreements and dynamic purchasing systems in public procurement (A/CN.9/WG.I/WP.44 and Add.1; A/CN.9/WG.I/WP.52 and Add.1; and A/CN.9/WG.I/WP.62) (and a related proposal by the United States regarding framework agreements, dynamic purchasing systems, and anti-corruption measures (A/CN.9/WG.I/WP.56)); (iv) the use of electronic communications in public procurement, publication of procurement-related information, and abnormally low tenders (A/CN.9/WG.I/WP.50, 54 and 58); (v) the use of electronic communications in public procurement, publication of procurement-related information, electronic reverse auctions and abnormally low tenders (A/CN.9/WG.I/WP.61); (vi) Guide to Enactment text addressing the use of framework agreements in public procurement (A/CN.9/WG.I/WP.63); and (vii) a revised text of the Model Law (A/CN.9/WG.I/WP.66 and Add.1-5, A/CN.9/WG.I/WP.69 and Add.1-5, A/CN.9/WG.I/WP.71 and Add.1-8, A/CN.9/WG.I/WP.73 and Add.1-8, and A/CN.9/WG.I/WP.75 and Add.1-8);

(f) Conference room papers: (i) on the evaluation and comparison of tenders and the use of procurement to promote industrial, social and environmental policies (A/CN.9/WG.I/XV/CRP.2); and (ii) containing proposals for revised chapter IV and an additional provision for chapter I (A/CN.9/XLII/CRP.2); and

(g) Draft revised text of the Model Law (A/CN.9/729 and Add.1-8).

7. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents referred to in paragraph 5 and paragraph 6 (g) above by accessing the Working Group's page in

the “Working Group Documents” section of the UNCITRAL website. The documents referred to in paragraph 6 (b) to (f) are available on the same web page. The documents referred to in paragraph 6 (a) are available on the “Procurement and Infrastructure Development” and “Electronic Commerce” pages in the “UNCITRAL Texts and Status” section of the UNCITRAL website.

2. Previous deliberations

8. At its thirty-seventh session, in 2004, the Commission decided that the UNCITRAL Model Law on Procurement of Goods, Construction and Services (the “Model Law”)² would benefit from being updated to reflect new practices, in particular those that resulted from the use of electronic communications in public procurement, and the experience gained in the use of the Model Law as a basis for law reform, without departing from the basic principles of the Model Law. The Commission entrusted the elaboration of proposals for the revision of the Model Law to its Working Group I (Procurement). The Working Group was given a flexible mandate to identify the issues to be addressed in its considerations (A/59/17, paras. 80-82).

9. The Working Group began its work on the revision of the Model Law at its sixth session (Vienna, 30 August-3 September 2004). The Working Group continued the work at thirteen subsequent sessions at which it added topics of abnormally low tenders and conflicts of interest to the list of topics to be considered in its work as agreed upon at its sixth session.

10. At its thirty-eighth to forty-third sessions, in 2005 to 2010, the Commission took note of the reports of the sixth to eighteenth sessions of the Working Group (A/CN.9/568, A/CN.9/575, A/CN.9/590, A/CN.9/595, A/CN.9/615, A/CN.9/623, A/CN.9/640, A/CN.9/648, A/CN.9/664, A/CN.9/668, A/CN.9/672, A/CN.9/687 and A/CN.9/690, respectively). At its thirty-eighth to forty-first sessions, the Commission commended the Working Group for the progress made in its work and reaffirmed its support for the review being undertaken and for the inclusion of novel procurement practices in the Model Law (A/60/17, paras. 170-172, A/61/17, paras. 190-192, A/62/17, Part one, paras. 166-170, and A/63/17, para. 307). At its thirty-ninth session, the Commission recommended that the Working Group, in updating the Model Law and its Guide to Enactment,³ should take into account issues of conflicts of interest and should consider whether any specific provisions addressing those issues would be warranted in the Model Law (A/61/17, para. 192). At its fortieth session, the Commission recommended that the Working Group should adopt a concrete agenda for its forthcoming sessions in order to expedite

² For the text of the Model Law, see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I (also published in the Yearbook of the United Nations Commission on International Trade Law, vol. XXV: 1994) (United Nations publication, Sales No. E.95.V.20), part three, annex I. The Model Law is available in electronic form at the UNCITRAL website: www.uncitral.org/pdf/english/texts/procurem/ml-procurement/ml-procure.pdf.

³ For the text of the Guide, see document A/CN.9/403, reproduced in the Yearbook of the United Nations Commission on International Trade Law, vol. XXV: 1994 (United Nations publication, Sales No. E.95.V.20), part three, annex II. The Guide is available in electronic form at the UNCITRAL website: www.uncitral.org/pdf/english/texts/procurem/ml-procurement/ml-procure.pdf.

progress in its work (A/62/17, Part one, para. 170). At its forty-first session, the Commission invited the Working Group to proceed expeditiously, with a view to permitting the finalization and adoption of the revised Model Law and Guide within a reasonable time (A/63/17, para. 307). At its forty-second session, the Commission established a Committee of the Whole to consider a draft revised model law, including the issues of defence sector procurement and the use of socio-economic factors in public procurement (A/64/17, paras. 11 and 48). At that session, the Commission took note of the report of the Committee of the Whole, which in particular concluded that the revised model law was not ready for adoption at that session of the Commission, and requested the Working Group to continue its work on the review of the Model Law (A/64/17, paras. 283 and 284). At its forty-third session, the Commission requested the Working Group to complete its work on the revision of the Model Law during the next two sessions of the Working Group and present a draft revised model law for finalization and adoption by the Commission at its forty-fourth session, in 2011. The Commission instructed the Working Group to exercise restraint in revisiting issues on which decisions had already been taken (A/65/17, para. 239).

11. At its nineteenth session (Vienna, 1-5 November 2010), the Working Group completed its work on the revision of the Model Law and reached the understanding that, according to the UNCITRAL practice, the draft Model Law on Public Procurement emanating from the nineteenth session of the Working Group (the “draft Model Law”) would be circulated to all Governments and relevant international organizations for comment. It was noted that the comments received would be before the Commission at its forty-fourth session next year together with the draft Model Law. It was emphasized that no amendments would be made to the draft Model Law after the text was circulated for comment and before the Commission considered it (A/CN.9/713, para. 137).

12. At the same session, the Working Group reached the understanding that, at its twentieth session, it would focus on proposals for a revised Guide to Enactment. Although it was understood that the Commission was not expected to adopt the revised Guide together with the Model Law on Public Procurement, the Working Group noted its intention of submitting a working draft of the revised Guide emanating from the work of its twentieth session to the Commission, so as to assist the latter with its consideration of the draft Model Law (A/CN.9/713, para. 138).

13. At the same session, the Working Group recalled that it had deferred a number of issues for discussion in the revised Guide and that decisions on them should be maintained, unless they were superseded by subsequent discussion in the Working Group or Commission. It was also recalled that additional sections addressing issues of procurement planning and contract administration, a glossary of terms and table of correlation with the Model Law were agreed to be included in the revised Guide. The understanding was that, for lack of time, it was unlikely to be feasible to prepare an expanded Guide for implementers or end-users, and thus the revised Guide would primarily be addressed to legislators (A/CN.9/713, para. 139).

14. At the same session, the Working Group requested the Secretariat to follow the following guidelines in preparing the revised Guide: (a) to produce an initial draft of the general introductory part of the revised Guide, which would ultimately be used by legislators in deciding whether the Model Law on Public Procurement should be enacted in their jurisdictions; (b) in preparing that general part, to highlight changes

that had been made to the Model Law and reasons therefor; (c) to issue a draft text for the revised Guide on a group of articles or a chapter at or about the same time, to facilitate the discussions on the form and structure of the revised Guide; (d) to ensure that the text of the revised Guide was user-friendly and easily understandable by parliamentarians who were not procurement experts; (e) to address sensitive policy issues, such as best value for money, with caution; and (f) to minimize to the extent possible repetitions between the general part of the revised Guide and article-by-article commentary; where they were unavoidable, consistency ought to be ensured. It was agreed that the relative emphasis between the general part of the revised Guide and article-by-article commentary of the revised Guide should be carefully considered (A/CN.9/713, para. 140).

Item 6. Adoption of the report

15. The Working Group may wish to adopt, at the close of its session, on Friday, 18 March 2011, a report for submission to the forty-fourth session of the Commission. The main conclusions reached by the Working Group at its ninth half-day meeting on the morning of Friday, 18 March 2011, will be summarily read out for the record by the Chairman at the tenth half-day meeting and subsequently incorporated into the Working Group's report.

IV. Scheduling of meetings

16. The Working Group's twentieth session will last for five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).
