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Revised Guide to Enactment to accompany the UNCITRAL Model Law on Public Procurement*

Note by the Secretariat

Addendum

This addendum sets out a proposal for the Guide text to accompany related provisions of chapters II and IV of the UNCITRAL Model Law on Public Procurement on restricted tendering and request for quotations.

* This document was submitted less than ten weeks before the opening of the session because of the need to complete inter-session informal consultations on the relevant provisions of the draft revised Guide to Enactment.



GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT

Part II. Article-by-article commentary

[for ease of reference, this addendum consolidates the proposed article-by-article commentary to various provisions of the Model Law regulating restricted tendering and request for quotations]

...

A. Proposed text for the Guide to Enactment of the revised Model Law addressing issues of restricted tendering

1. Conditions for use

The relevant provision of the revised Model Law on conditions for use:

“Article 28. Conditions for use of methods of procurement under chapter IV of this Law (restricted tendering ...)

(1) The procuring entity may engage in procurement by means of restricted tendering in accordance with article 44 of this Law when:

(a) The subject matter of the procurement, by reason of its highly complex or specialized nature, is available only from a limited number of suppliers or contractors; or

(b) The time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement.”

Proposed text for the Guide:

1. Paragraph (1) of the article sets out the conditions for use of restricted tendering. It has been included in order to enable the procuring entity, in exceptional cases, to solicit participation only from a limited number of suppliers or contractors. Those exceptional cases are: the procurement of technically complex or specialized subject matter that is available from only a limited number of suppliers (for example, equipment for nuclear power plants); and where the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement (for example, standard cleaning services). A requirement for open solicitation in such cases would be inappropriate.

2. Although the use of restricted tendering is subject to transparency safeguards, in that an advance notice of the procurement is required under the provisions of [article 33 (5)], and certain procedures applicable to open tendering apply also to restricted tendering procedures under article 44, strict and narrow conditions for use have been included for restricted tendering. These conditions are based on the notion that inappropriate use of the method would fundamentally impair the objectives of the Model Law. They therefore seek to avoid encouraging its use.

Under the conditions of paragraph (1) (a) in particular, the use of open tendering with pre-qualification can achieve the same purposes as restricted tendering in a more transparent manner. The use of restricted tendering on the grounds specified in paragraph (1) (b) should diminish with the use of electronic procurement: many steps in the process can be automated to a large degree, saving both time and costs.

3. Both conditions for use of this method listed in paragraph (1) confer significant discretion on the procuring entity as regards solicitation: in the first instance as regards the existence of only a limited number of suppliers or contractors capable of delivering a subject matter of the procurement, though this judgement is subject to further suppliers seeking to participate following the publication of a notice as discussed further below. In the second case, the procuring entity has the discretion to assess the appropriate maximum number of tenders to be evaluated to achieve proportionality between the costs or time spent in evaluation and the value of the procurement. Thus the method necessarily involves subjectivity and may therefore be at risk of abuse.

4. In applying the grounds specified in paragraph (1) (a), the procuring entity should be aware of the implications of article 33 (5) that requires giving an advance notice of the procurement specifying inter alia the main terms and conditions of the procurement and the method of procurement selected. The justification for the use of restricted tendering should be set out in the record, as required under the Model Law (see paragraph [9] below), and the justification should be provided in such detail as would allow the decision to be overseen or challenged where appropriate. However, the justification need not be included in the notice (to avoid inaccurate summaries or excessively long notices). (See, also, the guidance to article 24 that explains how suppliers that may wish to challenge the choice of procurement method can have access to the justification in the record.)

5. If, under the conditions of paragraph (1) (a), the procuring entity receives requests from suppliers or contractors to allow them to tender in response to that notice, such suppliers will have to be allowed to tender unless they are disqualified (if pre-qualification took place) or do not comply with the terms of the notice of the procurement (for example, the declaration made pursuant to article 8 of the Law). This is in compliance with article 33 (1) (a) requiring solicitation of tenders from all suppliers and contractors, within the market concerned, from which the subject matter of the procurement is available.

6. The procuring entity has more discretion if recourse to restricted tendering has been justified on the ground referred to in paragraph (1) (b), that is the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement. As long as it has already selected a sufficient number of suppliers or contractors in an objective manner to ensure effective competition, the procuring entity in such cases may decline to consider requests to tender coming from additional suppliers or contractors responding to the notice published in accordance with article 33 (5). In practice, objectivity in selection may be achieved by various methods, such as a lottery or random selection, as discussed in the guidance to article [33 (1)], but oversight measures to ensure that the manner of selection is indeed undertaken objectively should be put in place, particularly where repeated procedures are envisaged.

7. The manner in which the suppliers will be selected to participate, the choice of the procurement method and terms of solicitation, among other things, may be challenged under chapter VIII of the Model Law. In applying the grounds specified in paragraph (1) (b), the procuring entity should therefore carefully consider whether the desired goal of saving time and cost would indeed be achieved in the procurement concerned. It is important to note that a challenge cannot be mounted unless the manner of selection is alleged to be discriminatory: suppliers cannot challenge their exclusion per se. Where repeated procedures are concerned, and a limited group is repeatedly selected, it may be easier to show a lack of objectivity in the selection. Where there are repeated purchases, the procuring entity should take particular care to be demonstrably objective in its selection of the suppliers to be invited to participate (or may wish to consider the use of a tool such as a framework agreement).

8. The provisions of paragraph (1) (b) should also be read together with article 12 of the Model Law containing rules on estimation of the value of the procurement. That article contains essential safeguards against the artificial division of the subject matter of the procurement for the purpose, for example, of justifying resort to restricted tendering on the ground set out in paragraph (1) (b), i.e. that the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement.

9. The procuring entity, under article 27 (3) read together with the provisions of article 24 (1) (e), is required to put on the record a statement of the reasons and circumstances relied upon by the procuring entity to justify the use of restricted tendering instead of open tendering.

For a discussion of the changes in conditions for use from the 1994 text, see section A.5 below.

2. Solicitation

The relevant provision of the revised Model Law on solicitation:

“Article 33. Solicitation in restricted tendering ...

(1) (a) When the procuring entity engages in procurement by means of restricted tendering on the grounds specified in article 28 (1) (a) of this Law, it shall solicit tenders from all suppliers and contractors from which the subject matter of the procurement is available;

(b) When the procuring entity engages in procurement by means of restricted tendering on the grounds specified in article 28 (1) (b) of this Law, it shall select suppliers or contractors from which to solicit tenders in a non-discriminatory manner, and it shall select a sufficient number of suppliers or contractors to ensure effective competition.”

Proposed text for the Guide:

10. Paragraph (1) sets out minimum solicitation requirements in restricted tendering. They have been drafted in order to give effect to the purpose of article 28 (1) of limiting the use of restricted tendering to truly exceptional cases while maintaining the appropriate degree of competition. They are tailored specifically to each of the two exceptional cases reflected in the conditions for use

in article 28 (1). When resort is made to restricted tendering on the ground referred to in article 28 (1) (a), that is the procurement of technically complex or specialized subject matter that is available from only a limited number of suppliers, all the suppliers or contractors that could provide the subject matter of the procurement in the market envisaged to be covered by the procurement are required to be invited to participate. When the ground is that the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement, the case referred to in article 28 (1) (b), suppliers or contractors should be invited in a non-discriminatory manner and in a sufficient number to ensure effective competition. The requirement of selection in a non-discriminatory manner would presuppose notification to the public in accordance with paragraph (5) of this article of not only the procuring entity's decision that restricted tendering would be used but also of the maximum number of participants to be selected, and the manner of selection (for example, on a random or lottery basis, or on the basis of the "first come first served" principle, up to the maximum number notified — see, also, paragraphs [5-7] above).

3. Advance notice of the procurement

The relevant provision of the revised Model Law:

“Article 33. ... Requirement for an advance notice of the procurement

...

(5) Prior to direct solicitation in accordance with the provisions of paragraphs (1), (3) and (4) of this article, the procuring entity shall cause a notice of the procurement to be published in ... (the enacting State specifies the official gazette or other official publication in which the notice is to be published). The notice shall contain at a minimum the following information:

(a) The name and address of the procuring entity;

(b) A summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into in the procurement proceedings, including the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the construction to be effected, or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods or for the completion of the construction, or the timetable for the provision of the services;

(c) A declaration pursuant to article 8 of this Law; and

(d) The method of procurement to be used.

(6) The requirements of paragraph (5) shall not apply in the case of urgency as referred to in articles 29 (4) (b) and 29 (5) (b).”

*Proposed text for the Guide as regards restricted tendering:*¹

11. Paragraph (5) promotes transparency and accountability as regards the decision to use [restricted tendering] by requiring publication of a notice of the procurement in the media to be specified by the enacting State in its procurement law. Also relevant in this regard is the rule in article 27 (3) (which is of general application), read together with the provisions of article 24 (1) (e), which require the procuring entity to include in the record of procurement proceedings a statement of the grounds and circumstances relied upon to justify the selection of the procurement method concerned.

12. The paragraph mandates the publication of the notice prior to the direct solicitation. It is therefore distinct from a public notice of the award of a procurement contract or framework agreement required under article 22 of the Model Law. Including the procedures described in this article in the procurement law enables interested suppliers and contractors to identify, simply by reading the procurement law, publications that they may need to monitor in order to stay abreast of procurement opportunities in the enacting State and of the way those procurement opportunities are allocated in the market. (The procuring entity should also be aware of the implications of this notice provision in restricted tendering as discussed in paragraphs [4-7] above.) The Model Law does not regulate the means and media of publication, which are left to determination by enacting States. There may be paper or electronic media or combination of both. In this context, considerations raised in the guidance to article 5 in paragraphs ... above are relevant.

13. The information to be published is a minimum needed to ensure effective public oversight and possible challenge by aggrieved suppliers or contractors under chapter VIII of the Model Law. In particular, the selected method of procurement may be challenged by any affected supplier or contractor if, for example, single-source procurement or restricted tendering were selected on the ground that a particular supplier or limited group of suppliers existed in the market and was or were capable of supplying the subject matter of the procurement. Any other suppliers or contractors capable of delivering the same subject matter of the procurement in the market intended to be covered by the procurement might challenge the use of the procurement method relying on the information in the notice of the procurement. Under chapter VIII, they would be able to do so before the deadline for submission of tenders and could benefit from provisions on the mandatory suspension of the procurement proceedings if the application for review is filed with the independent review body. As is discussed in the commentary to chapter VIII, and in order to avoid vexatious challenges that can be highly disruptive when filed at the last minute, a supplier has to show that its interests may or have been affected at the point in time concerned: thus, for example, it may have to show a real intention to participate in the circumstances described above (for example, by submitting a draft tender or other offer).

¹ The Working Group may wish to consider whether a general discussion of solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement to accompany article 33 or article 33 (5), with a cross-reference in the guidance to each procurement method concerned, would be preferable to a discussion of solicitation in each such procurement method. While the discussion in some provisions in the paragraphs below are tailored to restricted tendering, some other provisions in those paragraphs are of general application to the procurement methods addressed in article 33.

14. The requirement for an advance notice of the procurement in restricted tendering, competitive negotiations and single-source procurement is essential in the fight against corruption and as a means to achieve transparency. Together with the provisions of chapter VIII, they enable and encourage aggrieved suppliers or contractors to seek redress earlier in the procurement process rather than at a later stage where redress may not be possible or will be costly to the public and available remedies will thus be limited.

15. The requirement to publish an advance notice of the procurement is not applicable in request for quotations proceedings in the light of the very restrictive conditions for use of that method, which will constrain any excessive or abusive use of that method. Nor does it apply in the case of competitive negotiations and single-source procurement when those methods are used in urgent or extremely urgent situations due to catastrophic events (for example, under the conditions for use of these procurement methods under articles 29 (4) (b) and 29 (5) (b)). In the normal case, when an advance notice is in principle required, an exemption may nevertheless apply under article 23 (confidentiality), in particular in procurement involving classified information. (For the guidance on the relevant provisions of the Model Law on confidentiality and procurement involving classified information, see paragraphs ... above).

For a discussion of the changes in solicitation and notice requirements from the 1994 text, see section A.5 below.

4. Procedures

The relevant provision of the revised Model Law on procedures:

“Article 44. Restricted tendering

- (1) The procuring entity shall solicit tenders in accordance with the provisions of article 33 (1) and (5) of this Law.
- (2) The provisions of chapter III of this Law, except for articles 35 to 37, shall apply to restricted tendering proceedings.”

Proposed text for the Guide:

16. The article regulates the procedures for restricted tendering. The provisions are very short since the relevant provisions of other chapters of the Model Law regulate the procedural steps required in this procurement method, cross-reference to which is made in this article.

17. As noted in the comments to article 33 (1), the solicitation requirements for this procurement method are designed to ensure that, in the case of resort to restricted tendering on the grounds referred to in article 28 (1) (a), tenders are solicited from all suppliers or contractors from whom the subject matter of the procurement is available in the market intended to be covered by the procurement, and, in the case of resort to restricted tendering on the grounds referred to in article 28 (1) (b), from a sufficient number of suppliers or contractors to ensure effective competition. Incorporation of those solicitation requirements, together with the requirement to publish an advance notice of the procurement in accordance with article 33 (5), is an important safeguard to ensure that the use of restricted tendering does not subvert the objective of the Model Law of promoting

competition, is justifiable in each case with reference to the transparent criteria and may be challenged in accordance with chapter VIII.

18. Paragraph (2) of the article makes it clear that the procedures to be applied in restricted tendering are those normally applied to tendering proceedings, with the exception of open solicitation and requirements applicable in the case of open solicitation. Paragraph (2) therefore excludes articles 35 to 37 from application to restricted tendering. Article 35 regulates procedures for soliciting tenders in open tendering and is therefore not applicable to restricted tendering. Article 36 regulates contents of an invitation to tender to be published in open tendering. In restricted tendering, it is not necessarily that an invitation to tender is issued and if it is issued, it does not necessarily include all information listed in article 36. As regards article 37, in restricted tendering, solicitation documents will be provided to all suppliers that were directly invited and that expressed interest in tendering. Some provisions of article 37 will therefore not be applicable to restricted tendering. If the procuring entity decides to charge a price for the solicitation documents in restricted tendering, it will, despite the exclusion of article 37 from application to restricted tendering, be bound by the provision in the last sentence of article 37 (“the price that the procuring entity may charge for the solicitation documents shall reflect only the cost of providing them to suppliers or contractors”). This provision appears in other articles of the Model Law in the similar context and may be considered as referring to good practice that is aimed at preventing the procuring entity from charging excessively high unjustifiable amounts for solicitation documents. The negative effect of such charges on participation in procurement of suppliers or contractors, in particular SMMs, and prices that suppliers or contractors participating in the procurement would eventually offer in their tenders, proposals, offers, quotations or bids, should be carefully considered.²

For a discussion of the changes in procedures from the 1994 text, see section A.5 below.

5. Points regarding restricted tendering proceedings proposed to be discussed in the Section of the Guide to Enactment addressing changes from the 1994 text of the Model Law

Conditions for use

19. The provisions in the revised Model Law addressing restricted tendering are based on article 20 of the 1994 Model Law, with two main changes. The first of which was to delete from the revised text references to an approval by a designated organ. This change implements the decision of UNCITRAL not to require, as a general rule, in the revised Model Law the procuring entity to seek an approval of another body for steps to be taken by the procuring entity (for the guidance on this point, see paragraphs ... above).

20. The second change was to delete the 1994 reference to “reasons of economy and efficiency” from the revised text. This deletion reflects the UNCITRAL decision not to refer to any objective of the Model Law listed in its Preamble in the

² As regards the final sentence, the Working Group may consider that a cross-reference to the guidance to article 37, for example will be sufficient, as that guidance will discuss this point in more detail.

articles of the text itself (for further discussion of this point, see paragraphs ... above). The procuring entity should, in any event, consider the objective of “maximizing economy and efficiency in procurement” and all other objectives of the Model Law when selecting any procurement method — a consideration that should also be applied at all other stages of the procurement proceedings, as appropriate. In addition, it was also considered that the reference to “economy and efficiency” was relevant in the context of the second condition for use of this procurement method (to avoid disproportionate costs and time), not to its use where there was a limited supply base.

Solicitation

21. The provisions set out in article 33 (1) and (5) are based on article 47 (1) and (5) of the 1994 Model Law, respectively, with drafting changes to ensure consistency of style and specification of the minimum information to be included in the advance notice of procurement. The provisions of the revised Model Law also make it clear that the notice is to be published before the direct solicitation is made.

Procedures

22. Provisions of article 44 are based on article 47 (3) of the 1994 Model Law, with the exclusion of specific articles of chapter III regulating open tendering that are not applicable to restricted tendering, as explained in paragraph [18] above.

B. Proposed text for the Guide to Enactment of the revised Model Law addressing issues of request for quotations

1. Conditions for use

The relevant provision of the revised Model Law on conditions for use:

“Article 28. Conditions for use of methods of procurement under chapter IV of this Law (... request for quotations ...)

(2) A procuring entity may engage in procurement by means of a request for quotations in accordance with article 45 of this Law for the procurement of readily available goods or services that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market, so long as the estimated value of the procurement contract is less than the threshold amount set out in the procurement regulations.”

Proposed text for the Guide:

1. Paragraph (2) of this article sets out conditions for use of request for quotations. This method of procurement provides a procedure appropriate for low-value purchases of a standardized nature (commonly referred to as “off-the-shelf items”). In such cases, engaging in tendering proceedings, which can be costly and time-consuming, may not be justified. Article 28 (2) limits the use of this method strictly to procurement of a value below the threshold set in the procurement regulations. That threshold may or may not be the same as the one required to be set in the provisions of the Model Law exempting low-value procurement from the mandatory application of a standstill period (article 21 (3) (b)) or from the

requirement of public notice of the procurement contract award (article 22 (2)). It is recommended however that the threshold to be set in the procurement regulations for the purposes of paragraph (2) of this article should be harmonized with the thresholds set for the purposes of enacting articles 21 (3) (b) and 22 (2) of the Model Law, to ease the implementation of these related provisions of the Model Law.

2. [Unlike those other provisions that require setting a threshold in the Law itself, the threshold referred to in paragraph (2) of this article is to be set in the procurement regulations.]³ Enacting States will wish to provide guidance to procuring entities on the concept of low-value procurement, by reference to the thresholds, among other things, to ensure consistency of approach. (See, also, the guidance to article 32 (4) addressing the exemption of low-value procurement from international solicitation in paragraphs ... below).

3. In enacting article 28, it should be made clear that use of request for quotations is not mandatory for procurement below the threshold value. Article 27 containing the requirement to maximize competition and to have regard for the circumstances surrounding the procurement when choosing a procurement method, and the conditions for use of other procurement methods that might be appropriate, will guide the procuring entity in considering alternatives to request for quotations (for the relevant guidance to article 27, see paragraphs ... above).

4. In particular, the method is not intended to be used for repeated purchases, because of the risk of restricting the market and of abuse in so doing (such as through an abusive selection of participating suppliers or in justifying the need for repeated purchases by, for example, splitting procurement to avoid exceeding the threshold under article 12 (see, further, below)). For repeated purchases, establishing an open framework agreement or, if more complex items are involved, concluding a closed framework agreement as a result of tendering proceedings, is a preferred alternative. The use of electronic catalogues may assist in promoting transparency where the procedure is used on a periodic, rather than repeated, basis.

5. Where procurement of more complex items is involved and thus evaluation of prices alone is not sufficient, tendering with its greater transparency safeguards should be used, even though the value of the procurement may fall below the threshold established for the use of request for quotations.⁴ Restricted tendering on the ground set out in article 28 (1) (b) may in particular be appropriate in such

³ At its nineteenth session, the Working Group was requested to consider whether the Model Law, instead of fixing any threshold in its provisions, should refer the matter to the procurement regulations consistently throughout the Model Law, in particular in the light of the fluctuating value of currencies (inflation, etc.) (A/CN.9/WG.I/WP.75/Add.2, footnotes 31 and 38). The Working Group did not consider that suggestion. However, the suggestion was made, during expert consultations on the guidance to be provided for this procurement method, that the Working Group and Commission may wish to reconsider the point so as to ensure consistent approach to the location of thresholds. Given the need for periodic adjustment as economic circumstances change, the thresholds themselves may best be set out in regulations (by comparison with article 22 (2)).

⁴ The Working Group may wish to consider including a discussion of the use of tendering even where the subject matter of the procurement is not produced to the particular design of the procuring entity, and the use of performance or output-based specifications that refer to industry standards.

cases. Where initial low-value procurement would have the long-term consequence of committing the procuring entity to a particular type of technological system, the use of other methods of procurement, leading in particular to conclusion of a framework agreement, is recommended. For procurement of commodities, simple services and similar items, an alternative approach may be to use an electronic reverse auction. (For the relevant guidance to article 28 (1) (b) as applicable to restricted tendering, see paragraphs ... above; for the relevant guidance to provisions on electronic reverse auctions, see paragraphs ... below; and for the relevant guidance to provisions on framework agreements, see paragraphs ... below.)

6. The provisions of paragraph (2) should be read together with article 12 of the Model Law containing rules on estimating the value of the procurement. That article gives added and important effect to the intended limited scope for the use of request for quotations. It does so by prohibiting the artificial division of the subject matter of the procurement for the purpose of circumventing the value limit on the use of request for quotations with a view to avoiding use of the more competitive methods of procurement, a prohibition that is essential to the objectives of the Model Law.

For a discussion of the changes in conditions for use from the 1994 text, see Section B.4 below.

2. Solicitation

The relevant provision of the revised Model Law on solicitation:

“Article 33. Solicitation in ... request for quotations ...

(2) Where the procuring entity engages in procurement by means of request for quotations in accordance with article 28 (2) of this Law, it shall request quotations from as many suppliers or contractors as practicable, but from at least three.”

Proposed text for the Guide:

7. Paragraph (2) sets out rules of solicitation in the case of request for quotations. The objectives of the Model Law of fostering and encouraging participation and competition are applicable to procurement regardless of its value. Thus, the procuring entity is bound to request quotations from as many suppliers or contractors as practicable, but from at least three, without exception. This minimum requirement is present in the light of the type of the subject matter supposed to be procured by means of request for quotations — readily available goods or services that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market (article 28 (2)). For this type of procurement, it should always be possible to request quotations from at least three suppliers or contractors that are capable of providing the subject matter of the procurement. The use of electronic procurement also allows the procuring entity to reach a broader audience and ensure that a sufficient number of quotations is sought.

8. Enacting States may wish to provide guidance to ensure that the selection of participants in request-for-quotations procedures is not carried out in a way so as to restrict market access or to allow abuse of the procedures (examples might include

the selection of two suppliers whose prices are known to be high, or two suppliers that are geographically remote, so as to direct the procurement towards a third, chosen supplier). The considerations raised as regards the manner of selection of participating suppliers in the context of the use of restricted tendering on the ground of article 28 (1) (b) are relevant here (see paragraphs ... above). In addition, procedures that require the comparison of historical offers and to ensure rotation among suppliers, where the same items may be procured occasionally, are useful. Oversight procedures should identify the winning suppliers under this method, so that repeat awards can be evaluated.

9. Electronic methods of requesting quotations may be particularly cost-effective for low-value procurement and ensuring also more transparent selection. The use of electronic catalogues as a source of quotations may in particular be considered to offer better opportunity for transparency in the selection of suppliers from which to request quotations, in that such selection can be evaluated against those suppliers offering relevant items in catalogues (see, also, the guidance on framework agreements under chapter VII for the repeated procurement of low-cost items).⁵ Ensuring adequate transparency is a key issue, given that procurement under this method is not required to be preceded by a notice of the procurement (see, further, paragraph ... above).

10. The requirement to request quotations from at least three suppliers or contractors should not however be interpreted as invalidating the procurement where in response to request for quotations addressed to three or more suppliers only one or two quotations were received.

For a discussion of the changes in solicitation from the 1994 text, see section B.4 below.

3. Procedures

The relevant provision of the revised Model Law on procedures:

“Article 45. Request for quotations

(1) The procuring entity shall request quotations in accordance with the provisions of article 33 (2) of this Law. Each supplier or contractor from which a quotation is requested shall be informed whether any elements other than the charges for the subject matters of the procurement themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.

(2) Each supplier or contractor is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a quotation presented by the supplier or contractor.

(3) The successful quotation shall be the lowest-priced quotation meeting the needs of the procuring entity as set out in the request for quotations.”

⁵ A/CN.9/668, para. 208.

Proposed text for the Guide:

11. The article sets out procedures for request for quotations. In the light of the nature and low value of the subject matter to be procured by means of request for quotations, only minimum procedural requirements are included, which are designed to provide for the fair and equitable treatment of suppliers or contractors participating in the procurement. Overseeing the use of the method, using electronic tools where possible to amortise the costs of so doing in low-value procurement, can introduce transparency and safeguards against abuse in practice.

12. With respect to the requirement in paragraph (1) that suppliers from whom quotations are requested should be informed as to the charges to be included in the quotation, the procuring entity may wish to consider using recognized trade terms, in particular INCOTERMS.

For a discussion of the changes in procedures from the 1994 text, see section B.4 immediately below.

4. Points regarding request for quotations proceedings proposed to be discussed in the Section of the Guide to Enactment addressing changes from the 1994 text of the Model Law

Conditions for use

13. The request-for-quotations method in the revised text is based on article 21 of the 1994 Model Law. The wording of the latter article has been amended so as to allow the use of request for quotations for all types of standardized or common procurement that is not tailored by means of specifications or technical requirements. Use of the method under the revised text does not contain a requirement for external approval, in conformity with the decision of UNCITRAL not to require, as a general rule, in the revised Model Law the procuring entity to seek an approval of another body for steps to be taken by the procuring entity (for the guidance on this point, see paragraphs ... above). Paragraph (2) of the 1994 text has been deleted in the light of new article 12 setting rules concerning estimation of the value of procurement applicable to all procurement methods, not only request for quotations.

Solicitation

14. The provisions in the revised Model Law (article 33 (2)) are based on the first sentence of article 50 of the 1994 Model Law. The words “if possible” in the reference to the minimum three suppliers or contractors from which quotations should be requested have been deleted in the revised text since they were considered to raise the risk of abuse and subjectivity in selecting suppliers from which to solicit quotations. As explained in paragraph [7] above, in the light of the type of the subject matter supposed to be procured by means of request for quotations — off-the-shelf items — it should always be possible to request quotations from at least three suppliers of contractors that are capable of providing the subject matter of the procurement.

Procedures

15. Article 45 is based on the remaining provisions of article 50 of the 1914 Model Law, with the addition of the phrase “as set out in the request for quotations” in the end of paragraph (3). The phrase has been added to ensure equal treatment of suppliers by requiring that information about the needs of the procuring entity that has been provided to participating suppliers at the outset of the procurement remains valid throughout the procurement proceedings and is the basis for the selection of the successful quotation.
