



General Assembly

Distr.: Limited
4 February 2011

Original: English

United Nations Commission on International Trade Law

Working Group I (Procurement)
Twentieth session
New York, 14-18 March 2011

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 the related provisions of chapters II and V of the UNCITRAL Model Law on Public Procurement on two-stage tendering.

* 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 two-stage tendering]

...

**Proposed text for the Guide to Enactment of the revised
Model Law addressing issues of two-stage tendering**

1. Conditions for use

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

“Article 29. Conditions for use of methods of procurement under chapter V of this Law (two-stage tendering, request for proposals with dialogue, request for proposals with consecutive negotiations, competitive negotiations and single-source procurement)

(1) A procuring entity may engage in procurement by means of two-stage tendering in accordance with article 47 of this Law where:

(a) The procuring entity assesses that discussions with suppliers or contractors are needed to refine aspects of the description of the subject matter of the procurement and to formulate them with the precision required under article 10 of this Law¹ and in order to allow the procuring entity to obtain the most satisfactory solution to its procurement needs; or

¹ The Working Group may wish to correct an inaccuracy in this condition for use identified during expert consultations on the draft guidance to this procurement method. The procedures for the method in article 47 make it clear that discussions with suppliers or contractors are optional, and need not be held, contrary to what is stated in article 29 (1). The need is, in reality, to refine certain technical aspects of the description — a step that can be carried out without discussions if the initial tenders address the aspects of which the procuring entity is unsure at the outset. An appropriate amendment to the text could read as follows: “(a) The procuring entity assesses that there is a need for a stage in the process to refine the technical and quality aspects of the subject matter of the procurement (which may include discussions with suppliers or contractors) in order for the procuring entity to formulate them in accordance with the precision required under article 10, and so as to allow the procuring entity to obtain the most satisfactory solution to its needs”. A consequential amendment to article 10 to refer to “technical and quality aspects” rather than “technical and quality characteristics” of the subject matter will be made, to ensure that there is sufficient clarity regarding the precision required to distinguish tendering procurement methods from those involving requests for proposals. The difference between these types of procurement is an issue that will be discussed in detail in the guidance to articles 26 and 27 on the choice of procurement method.

(b) Open tendering was engaged in but no tenders were presented or the procurement was cancelled by the procuring entity pursuant to article 18 (1) of this Law and where, in the judgement of the procuring entity, engaging in new open tendering proceedings or a procurement method under chapter IV of this Law would be unlikely to result in a procurement contract.”

Proposed text for the Guide:

1. Paragraph (1) of the article provides for conditions for use of two-stage tendering. The rationale behind the two-stage procedure used in this method of procurement is to combine two elements: first, to allow the procuring entity, through the examination of the technical aspects of tenders and optional discussions on them, to refine and finalize the terms and conditions of the procurement that the procuring entity may not have been able to formulate adequately at the outset of the procurement. The second is to ensure the high degree of objectivity and competition provided by the procedures for open tendering proceedings under chapter III that will apply to the selection of the successful tender under two-stage tendering proceedings.

2. UNCITRAL acknowledges that the method has stood the test of time and is successfully used for procurement, for example, of high-technology items, such as large passenger aircraft, information or communication technology systems, technical equipment and other infrastructure procurement (including turnkey contracts, large complex facilities or construction of a specialized nature). In such procurement, it may be undesirable or impractical to prepare a complete description of the procurement setting out all the technical or quality aspects (including technical specifications) at the outset. At that stage, the procuring entity may be able to formulate draft technical specifications at some level of detail, or may express its requirements in terms of output or performance. The aim of the procedure is that initial tenders responding to the description in the solicitation documents should allow the procuring entity to refine the description of the technical and quality aspects so that, at the second stage, the suppliers or contractors present their final tenders against a single technical solution. That single technical solution is then set out in the refined statement of technical and quality aspects forming part of the request to present final tenders. Thus the procuring entity remains responsible for the design of the technical solution throughout the procedure.²

3. As a consequence of the objectives of the procedure, the discussions that may be held in this procurement method with suppliers or contractors will not cover the proposed tender price. They may cover other financial aspects of the tenders only to the extent that such aspects form part of the description of the requirements of the procuring entity as set out in the solicitation documents. All price and price-related items that are not part of discussions are then submitted as part of the final tenders.

² The commentary to articles 26 and 27 will explain that in request-for-proposals proceedings, the suppliers make proposals as to how to meet the needs of the procuring entity, and so it is the suppliers that are responsible for the technical solution. It will also discuss the options available for procurement of complex subject-matter, such as a consultancy contract for design purposes, followed by open or two-stage tendering, and the use of request for proposals with dialogue proceedings. The Working Group may wish to add a cross-reference to that discussion here, rather than repeating those considerations. Hence the focus here is limited to highlighting distinct features of two-stage tendering as compared to other chapter V procurement methods.

This feature of this procurement method (as well as the absence of bargaining at any stage of the proceedings) is a further way in which this method differs from other methods available under chapter V.³

4. The flexibility and potential benefits described above are not risk-free. In particular, the procuring entity may tailor the final terms and conditions of the procurement to one particular supplier (regardless of whether discussions are held or not, though it should be acknowledged that this risk is also present in open tendering proceedings, particularly where informal market consultations precede the procurement). The transparency provisions applicable to all tendering proceedings should mitigate the risks of distorting the procurement to favour a particular supplier. The procurement system should also require the procurement planning stage to be documented and recorded.

5. This method is a structured one. The rules of open tendering regulate the solicitation procedure and the selection of the successful tender in two-stage tendering (see articles 32 and 47 of the Model Law and the guidance to them in paragraphs [...] below).

6. Subparagraph (a) deals with the procurement of technically sophisticated and complex items. The need for use of the procurement method in these circumstances may become clear at the procurement planning stage: that is, in situations in which it is evident that obtaining best value for money is unlikely if the procuring entity draws up terms and conditions of the procurement without examining initial tenders. Those initial tenders will propose technical solutions as to the exact capabilities and possible variations of what is available in the market. After its examination of the initial tenders, the procuring entity may decide that proposed solutions alone are not adequate and it is necessary to hold discussions with suppliers and contractors whose proposed technical solutions met the minimum requirements set out by the procuring entity.

7. Subparagraph (b) deals with a different situation — where open tendering was engaged in but it failed. This condition is the same as one of the conditions for resort to request for proposals with dialogue, contained in paragraph (2) (d) of this article. In such situations the procuring entity must analyse the reasons for the failure of open tendering. Where it concludes that its difficulties in formulating sufficiently precise terms and conditions of the procurement were the reasons for the failure, it may consider that a two-stage procedure in which suppliers are involved is the appropriate course. The reasons for the earlier failure should also guide the procuring entity in selecting between two-stage tendering under paragraph (1) (b) of this article and request for proposals with dialogue under paragraph (2) (d) of this article: if formulating a single set of terms and conditions (including a single technical solution) for the procurement will be possible and appropriate, two-stage tendering will be the appropriate procurement method. The procuring entity will be able to engage with suppliers or contractors in order to be

³ The Working Group decided that detailed commentary in the Guide addressing the issues in selecting among the methods of chapter V would be necessary, from the perspective both of legislators and of procuring entities, and that the guidance should address the elements of that selection that could not be addressed in a legislative text and should draw on real-life examples. If the Working Group considers that the above discussion is insufficient, it is requested to provide further guidance to assist the Secretariat in expanding it.

able to formulate those terms and conditions as necessary. (By contrast, the procuring entity may conclude that it is not possible or not appropriate to formulate a single technical solution, in which case request for proposals with dialogue may be the better course — see the guidance to that procurement method at [...].)

8. The provisions refer to the need for holding “discussions”, not “negotiations” or “dialogue”. While reflecting the iterative nature of the process, the term distinguishes the nature of talks that may be held in this method — which may not include the tender price or other financial aspects of the procurement — from the bargaining that may take place in other procurement methods regulated by chapter V of the Model Law.

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

2. Solicitation

The relevant provision of the revised Model Law on solicitation:

“Article 32. Solicitation in open tendering, two-stage tendering and in procurement by means of an electronic reverse auction

(1) An invitation to tender in open tendering or two-stage tendering and an invitation to an electronic reverse auction under article 52 of this Law shall be published in [...] (the enacting State specifies the official gazette or other official publication in which the solicitation is to be published).

(2) The invitation shall also be published in a language customarily used in international trade, in a newspaper of wide international circulation or in a relevant trade publication or technical or professional journal of wide international circulation.

(3) The provisions of this article shall not apply where the procuring entity engages in pre-qualification proceedings in accordance with article 17 of this Law.

(4) The procuring entity shall not be required to cause the invitation to be published in accordance with paragraph (2) of this article in domestic procurement and in procurement proceedings where the procuring entity decides, in view of the low value of the subject matter of the procurement, that only domestic suppliers or contractors are likely to be interested in presenting submissions.”

Proposed text for the Guide:

9. The article reflects one of the key features of open tendering — unrestricted solicitation of participation by suppliers or contractors. The same feature is present in two-stage tendering and electronic reverse auctions and is the default rule in request-for-proposals procurement methods.

10. In order to promote transparency and competition, paragraph (1) sets out the minimum publicity procedures to be followed for soliciting tenders from an audience wide enough to provide an effective level of competition. Including these procedures 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. 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.

11. In view of the objective of the Model Law of fostering and encouraging international participation in procurement proceedings, paragraph (2) requires publication of the invitations also in media with international circulation in a language customarily used in international trade. These procedures are designed to ensure that invitations to tender or to the electronic reverse auction are issued in such a manner that they will reach and be understood by an international audience of suppliers and contractors.

12. The exceptions to this rule are found in paragraph (4), and comprise cases of domestic procurement, and low-value procurement in which, in the judgement of the procuring entity, there is unlikely to be interest on the part of foreign suppliers or contractors. In such cases, the procuring entity may still solicit internationally but is not required to do so; however, where suppliers or contractors wish to participate (if they have seen an advertisement on the Internet, for example), they must be permitted to do so (see, further, paragraph [...] below).

13. The first exception — resort to domestic procurement — is possible under article 8 of the Law only on grounds specified in the procurement regulations or other provisions of law of the enacting State (for the guidance to that article, see paragraphs [...] above). The second exemption — low-value procurement — relies largely on the judgement of the procuring entity. The Model Law recognizes that in cases of low-value procurement the procuring entity would not have any legal or economic interest in precluding the participation of foreign suppliers and contractors, since a blanket exclusion of foreign suppliers and contractors in such cases might unnecessarily deprive it of the possibility of obtaining a better price. The decision, it should be emphasized, must be recorded and is open to challenge under chapter VIII, and the procuring entity will wish to consider the potential costs and benefits of its approach.

14. To promote transparency and to prevent arbitrary and excessive resort to the second exception, the enacting State may wish to establish in the procurement regulations a value threshold below which procuring entities need not, in accordance with paragraph (4) of the article, resort to international solicitation. This threshold may be the same or different from those to be set out by enacting States in enacting articles 21 (3) (b) and 22 (2) of the Model Law and may vary for different types of procurement. In the absence of any specific threshold set out by the enacting State in the procurement regulation for the purposes of implementing paragraph (4), the enacting State may wish to give guidance to procuring entities as to appropriate descriptions of low-value procurement in the State concerned, which may take into account the thresholds set out by the enacting State in enacting articles 21 (3) (b) and 22 (2) of the Model Law.^{4 5}

⁴ For the purpose of finalizing the guide to these provisions of article 32 (4), the Working Group is requested to confirm the Secretariat's understanding that the procuring entity by invoking the

15. Regardless of which approach is followed, the goal of reaching a common understanding in an enacting State of what is meant by low-value procurement should be achieved, to prevent excluding the bulk of procurement from requirement of international publication. The low-value consideration should be taken into account alongside any anticipated lack of a cross-border interest in participating in the procurement concerned (i.e. even if the procuring entity publicized the procurement in a publication of international circulation in a language customarily used in international trade, no international participation would result: foreign suppliers or contractors would simply not be interested). Thus, such publication would involve additional cost without benefit (in particular, translation costs may be applicable). Consistent practices throughout the enacting State's procuring entities in this respect are important to avoid confusion, uncertainty and concerns over the accessibility of the enacting State's procurement system.

16. Where the procuring entity has used an exemption under paragraph (4), it may invoke the other exemptions applicable in the case of the domestic procurement, such as exemption from the requirement to indicate in the solicitation documents information about currency and languages, which may no longer be pertinent in the context of the international procurement (for the guidance on this point, see paragraphs [...] below).

17. The publicity requirements in the Model Law are only minimum requirements. The procurement regulations may require procuring entities to publicize the invitation to tender by additional means that would promote widespread awareness by suppliers and contractors of procurement proceedings. These might include, for example, posting the invitation on official notice boards, a contracts bulletin and circulating it to chambers of commerce, to foreign trade missions in the country of the procuring entity and to trade missions abroad of the country of the procuring entity.⁶ Where the procuring entity uses electronic means of advertisement and communication, it is possible to include in the invitation a Web link to the solicitation documents themselves: this approach is proving beneficial in terms of both efficiency and transparency.

exemption from international solicitation under article 32 (4) will be bound by the threshold established in the Law and procurement regulations for low-value procurement; if the threshold in the procurement regulations is different from the one in articles 21 (3) (b) and 22 (2) of the Law, the one set in the Model Law will prevail; if a threshold in article 21 (3) (b) is different from the one in article 22 (2), the one in article 22 (2) will prevail as more relevant for the purposes of article 32 (4).

⁵ 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 the 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)).

⁶ This sentence is based on the 1994 commentary to article 24 of the 1994 Model Law. It reflects a general point that may be more appropriate in the general discussion on solicitation e.g. in the introductory part to section II of chapter II. If so, only a cross-reference will be needed here and the following discussion of electronic publication can be moved to that discussion in addition.

18. The article does not apply, as stated in paragraph (3), in the cases of pre-qualification. This exemption does not indicate that the need for wide international solicitation is not present when pre-qualification proceedings are involved: to the contrary, open participation is mandatory in such proceedings. The solicitation, in those cases however, follows a different pattern: an invitation to tender or to the auction is preceded by an invitation to pre-qualification. The latter is to be issued in accordance with the provisions of article 17 (2) that parallel the provisions of article 32. Wide international outreach to potentially interested suppliers and contractors is therefore ensured also when pre-qualification is involved, except in the cases referred to in article 32 (4). [Cross-reference to appropriate discussion of the principles of open pre-qualification].

3. Procedures

The relevant provision of the revised Model Law on procedures:

“Article 47. Two-stage tendering

(1) The provisions of chapter III of this Law shall apply to two-stage tendering proceedings, except to the extent those provisions are derogated from in this article.

(2) The solicitation documents shall call upon suppliers or contractors to present, in the first stage of the two-stage tendering proceedings, initial tenders containing their proposals⁷ without a tender price. The solicitation documents may solicit proposals relating to the technical, quality or other characteristics of the subject matter of the procurement as well as to contractual terms and conditions of supply, and, where relevant, the professional and technical competence and qualifications of the suppliers or contractors.

(3) The procuring entity may, in the first stage, engage in discussions with suppliers or contractors whose tenders have not been rejected pursuant to provisions of this Law, concerning any aspect of their tenders. When the procuring entity engages in discussions with any supplier or contractor, it shall extend an equal opportunity to participate in discussions to all suppliers or contractors.

(4) (a) In the second stage of the two-stage tendering proceedings, the procuring entity shall invite all suppliers or contractors whose tenders were not rejected at the first stage to present final tenders with prices in response to a revised set of terms and conditions for the procurement;

(b) In revising the relevant terms and conditions of the procurement, the procuring entity may:

(i) Delete or modify any aspect of the technical or quality characteristics of the subject matter of the procurement initially provided, and may add any new characteristic that conforms to the requirements of this Law;

⁷ The Working Group may wish to recommend that the term “proposals” be replaced with the term “proposed solutions”, so as to avoid confusion with request-for-proposals proceedings.

(ii) Delete or modify any criterion for examining or evaluating tenders initially provided, and may add any new criterion that conforms to the requirements of this Law, to the extent only that the deletion or modification is required as a result of changes made in the technical or quality characteristics of the subject matter of the procurement;

(c) Any deletion, modification or addition made pursuant to subparagraph (b) of this paragraph shall be communicated to suppliers or contractors in the invitation to present final tenders;

(d) A supplier or contractor not wishing to present a final tender may withdraw from the tendering proceedings without forfeiting any tender security that the supplier or contractor may have been required to provide;

(e) The final tenders shall be evaluated in order to ascertain the successful tender as defined in article 42 (4) (b) of this Law.”

Proposed text for the Guide:

19. This article regulates the procedures for two-stage tendering proceedings. Paragraph (1) serves as a reminder that the rules of open tendering apply to two-stage tendering, save where modification is required by the procedures particular to the latter method. Some of the open tendering rules will be applicable without modification, such as procedures for soliciting tenders (article 35), contents of invitation to tender (article 36) and provision of solicitation documents (article 37). Some other rules of chapter III will require modification in the light of the specific features of two-stage tendering described in paragraphs (2) to (4) of article 47. For example, the provisions of article 38 on the contents of the solicitation documents referring to tender price will not be relevant when initial tenders are solicited. The provisions of article 40 on the period of effectiveness of tenders and modification and withdrawal of tenders are to be read together with paragraph (4) (d) of article 47, which allows a supplier or contractor not wishing to present a final tender to withdraw from the proceedings without forfeiting any tender security (on a justification for the deviation from the applicable open tendering rules, see paragraph [30] below).

20. Some provisions of chapter III, such as article 41 on opening of tenders and provisions of article 42 on evaluation of tenders, will be applicable only to final tenders submitted in response to the revised set of terms and conditions for the procurement. The provisions on presentation of tenders in article 39 and on examination of tenders in article 42 will, on the other hand, be applicable to both initial and final tenders. The provisions of article 43, prohibiting negotiation with suppliers or contractors after tenders have been submitted, should be interpreted in the context of two-stage tendering as not preventing the non-bargaining type of discussions that may take place in two-stage tendering between the procuring entity and any supplier or contractor with respect to their initial tenders. The prohibition of negotiations of a bargaining nature applies throughout the two-stage tendering proceedings (including to the period after final tenders have been submitted).

21. Paragraph (2) contains specific rules for the solicitation of initial tenders. They modify the rules on solicitation of chapter III. At this stage, the procuring entity may solicit proposed solutions with respect to any terms and conditions of the

procurement other than tender price. In the light of the conditions for use of this procurement method (see article 29 (1); for the guidance to this article, see paragraphs [...] above), it is expected that the procuring entity will solicit various solutions relating in the first place to the technical and quality requirements for the subject matter of the procurement and, where relevant, the professional and technical competence and qualifications of the suppliers or contractors. Certain quality requirements may have a commercial impact, such as the acquisition or transfer of intellectual property rights: such aspects can properly form part of the terms and conditions of the procurement and be discussed with suppliers. For example, there may be a requirement in the solicitation documents for solutions to the use of intellectual property (for example, such rights could be licensed or acquired). If so, these requirements form part of the technical aspects of the procurement. Otherwise, the related costs for the use of the intellectual property concerned will be simply part of the tender price submitted at the second stage.

22. The article does not provide for any specific rules on presentation and examination of initial tenders. The relevant provisions of chapter III apply. In particular, the applicable provisions of article 42 (3) will regulate the instances in which rejection of initial tenders will be possible: they are where the supplier or contractor that presented a tender is not qualified; where the tender presented is not responsive; or where a supplier or contractor is excluded from the procurement proceedings on the grounds specified in article 20 (inducement, unfair competitive advantage or conflicts of interest). Other grounds for rejection specified in article 42 (3) are not applicable; they apply to situations when tender prices are examined, which is not the case at this first stage of two-stage tendering. All suppliers whose tenders are not rejected are entitled to participate further in the procurement proceedings.

23. Paragraph (3) provides for the possibility of holding discussions with suppliers or contractors whose tenders have not been rejected, concerning any aspect of their tenders. Discussions may involve any aspect of the procurement but price and are of a non-bargaining nature (on this point, see the guidance in paragraphs [...] above). Discussions will not always be necessary since the procuring entity may be able to refine and finalize the terms and conditions of the procurement itself, on the basis of the initial tenders received. The provisions of paragraph (3) require that, when the procuring entity decides to engage in discussions, it must extend an equal opportunity to discuss to all suppliers or contractors concerned.

24. Paragraph (4) regulates the procedural steps involved at the subsequent stages of the two-stage tendering to the extent that they are different from the rules of open tendering in chapter III of the Model Law. It also regulates issues arising from the preparation and issue of a final revised set of terms and conditions, such as the extent of permissible changes to the terms and conditions originally advertised.

25. Subparagraph (a) imposes the obligation on the procuring entity to extend the invitation to present final tenders, following the issuance of a revised set of terms and conditions for the procurement, to all suppliers or contractors whose tenders were not rejected at the first stage. Final tenders are equivalent to the tenders submitted in open tendering: that is, they will be assessed for responsiveness to the solicitation and will include prices.

26. Subparagraph (b) addresses the extent of permissible changes to the terms and conditions of the procurement originally announced. Changes (deletions, modifications or additions) are permitted to the technical and quality aspects of the subject matter and to the criteria for examining and evaluating tenders, under certain conditions that aim at limiting the discretion of the procuring entity in this respect. In the light of the objective of the Model Law of providing for the fair and equitable treatment of all suppliers and contractors, changes to the technical and quality aspects made following the first stage of the procedure may not change the description of the subject matter of the procurement as originally announced. If the description of the subject matter would be so changed, new procurement proceedings must be held to allow new suppliers or contractors to participate (including suppliers or contractors whose initial tenders were rejected or that would now become qualified). Article 15 (3) is relevant in this context: it requires the procuring entity to re-advertise the procurement if, as a result of clarifications and modifications of the solicitation documents, the information about procurement published when first soliciting participation of suppliers or contractors in the procurement proceedings has become materially inaccurate (for the guidance to article 15 (3), see paragraphs [...] above).

27. Subparagraph (b) (i) addresses the extent of permissible changes to the description of the subject matter of the procurement. They refer primarily to technical and quality aspects of the subject matter of the procurement in the light of the main aim of the two-stage tendering — to enhance the precision of technical and quality specifications of the subject matter of the procurement, to narrow down the possible options to the one that would best meet the procuring entity's needs, and on that basis to finalize a single set of terms and conditions of the procurement.

28. Changes to technical or quality aspects of the subject matter of the procurement may necessarily require changes to the examination and/or evaluation criteria, as otherwise the examination and/or evaluation criteria at the second stage would not reflect the applicable technical and quality aspects. Subparagraph (b) (ii) therefore provides that only those changes may be introduced to the examination and evaluation criteria that are strictly necessary as a result of changes made to the technical or quality aspects of the subject matter of the procurement.

29. Subparagraph (c) requires any changes made to the terms and conditions of the procurement as originally announced to be communicated to suppliers or contractors, through the medium of the invitation to present final tenders.

30. Subparagraph (d) permits suppliers or contractors to refrain from submitting a final tender without forfeiture of any tender security that may have been required for entry into the first stage. The latter provision is included to enhance participation by suppliers or contractors since, upon the deadline for submission of initial tenders, the suppliers or contractors cannot be expected to know what changes to the terms and conditions of the procurement may subsequently be made. In the light of the features of this procurement method, tender securities most likely will be required however in the context of presentation of final tenders rather than of initial tenders.

31. Subparagraph (e) subjects the procedural steps involved in examination and evaluation of final tenders and determination of the successful tender to the rules of open tendering in chapter III of the Model Law.

32. Enacting States should note the particular importance of the provisions of article 23 on confidentiality in the context of this procurement method (as in any other procurement method under chapter V). The risks of revealing, inadvertently or otherwise, commercially sensitive information of competing suppliers or contractors may arise not only at the stage of discussions but also in the formulation of the revised set of the terms and conditions of the procurement (for example, in the use of requirements, symbols and terminology to describe the revised technical and quality aspects of the subject matter, which may inadvertently reveal the source of information) and in the communication, as required under paragraph (4) (c), of changes made to the terms and conditions originally advertised to the suppliers or contractors. In conformity with the requirements of article 23, the procuring entity must respect the confidentiality of the suppliers or contractors' technical proposals throughout the process. The importance of this safeguard should not be underestimated if the integrity of, and fairness and public confidence in, the procurement process is to be preserved, and the participation of suppliers or contractors in the ongoing and any future two-stage procurement proceedings is to be ensured.

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

4. Points regarding two-stage 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

33. The provisions on two-stage tendering in the revised Model Law draw on the provisions of the 1994 Model Law regulating the same procurement method (article 19 (1)). Changes have been made to the 1994 provisions to make the primary condition for use of this procurement method (as reflected in subparagraph (a) of article 29 (1)) more specific and distinct from the conditions for use of other procurement methods of chapter V (in the 1994 text, the same conditions for use applied to three procurement methods: two-stage tendering, request for proposals and competitive negotiations). In addition, the phrasing of the conditions for use in subparagraph (a) has been amended to make it clear that discussions with suppliers or contractors are an optional feature of the method.

34. A reference to seeking external approval for the use of this procurement method, which was present in the 1994 text, has been deleted in conformity with the UNCITRAL decision 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).

Procedures

35. The procedures for two-stage tendering are based on article 46 of the 1994 Model Law. Substantive revisions, aimed at enhancing precision and strengthening safeguards against abuses in this procurement method, have been made in paragraph (3) and (4) of the article [detail to be added at a later date].