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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 Chapter VII of the UNCITRAL Model Law on Public Procurement on framework agreements, comprising commentary on articles 58-59 of chapter VII (Framework agreements procedures).



GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT

...

B. Provisions on framework agreements procedures (continued)

Article 58. Award of a closed framework agreement

1. The purpose of the article is to set rules for the award of a closed framework agreement. Provisions apply to both framework agreement procedures with second-stage competition and framework agreement procedures without second-stage competition, both of which, as explained in ... above, may lead to the award of a closed framework agreement.

2. Paragraph (1), by referring in its subparagraph (b) to chapter II of the Model Law [\[**hyperlink**\]](#), requires the procuring entity to follow the provisions of chapter II of the Model Law in selecting the procurement method appropriate for the award of a closed framework agreement, and the procedures applicable to the procurement method selected. Neither the conditions for use nor this paragraph limit the procurement methods that can be used to award a closed framework agreement, on the condition, however, that the use of open tendering must be considered first and the use of any other method of procurement must be justified. The choice takes account of both the circumstances of the procurement(s) concerned and the need to maximize competition as required by article 28 [\[**hyperlink**\]](#). However, the importance of rigorous competition at the first stage of closed framework agreements means that the application of exceptions to open tendering should be carefully scrutinized, particularly in the light of the competition risks in framework agreements procedures and types of purchases for which framework agreements are appropriate (as to which, see paragraphs** of the Introduction to this Chapter above [\[**hyperlink**\]](#)).

3. Examples of when procurement methods alternative to open tendering may be appropriate include the use of framework agreements for the swift and cost-effective procurement of low-cost, repeated and urgent items, such as maintenance or cleaning services (for which open tendering procurements may not be cost-effective), and specialized items such as drugs, energy supplies and textbooks, for which the procedure can protect sources of supply in limited markets. The use of competitive negotiations or single-source procurement may be appropriate for the award of a closed framework agreement in situations of urgency. If the procuring entity is unable to draft specifications or define the main terms and conditions of the procurement at the outset, such as in more complex services or construction procurement, framework agreements are less likely to be appropriate because the uncertainties involved may diminish participation, but there are examples in practice of effective framework agreements concluded through dialogue-based

request for proposals methods.¹ (See, also, the guidance to conditions for use of procurement methods in Sections ** above [**hyperlinks**].) The linked decisions to use a framework agreement procedure and the choice of the procurement method and type of solicitation, which involve discretion and require appropriate capacity, are such that guidance and regulations to enhance decision-making will be crucial to allow for the potential benefits of the technique to accrue, as discussed in paragraphs ** of the Introduction to this Chapter above [**hyperlink**].

4. Paragraph (1) also envisages derogations from the procedures for the procurement method chosen as required to reflect a framework agreement procedure, such as that references to “tenders” or other submissions are to be construed as references to “initial” tenders or submissions where there will be second-stage competition involving second-stage tenders or submissions, and references to the selection of the successful supplier or contractor and to the conclusion of a procurement contract are to be construed as references to the admission of supplier(s) or contractors(s) to the framework agreement and the conclusion of that agreement. Enacting States may wish to provide guidance on the possible derogations, noting that the flexibility required to provide for closed framework agreements with and without second-stage competition and with one or more supplier or contractor parties means that the extent of the derogations will vary from case to case.

5. Paragraph (2) sets out the information that should be provided when soliciting participation in the framework agreement procedure. The solicitation documents must follow the normal rules for the procurement method chosen: that is, they must set out the terms and conditions upon which suppliers or contractors are to provide the subject matter of the procurement and the procedures for the award of procurement contracts (which will take place under the framework agreement). The two-stage nature of framework agreement procedures, which end with the award of procurement contract(s), means that the information provided to potential suppliers or contractors at the outset should cover both stages of the procurement. Hence the provisions regulate information pertaining to both stages, while making allowance for the fact that some terms and conditions of the procurement, disclosed in the solicitation documents in “traditional” procurement, will be refined or established at the second stage of the procedure.

6. The chapeau to paragraph (2) requires the normal solicitation information to be set out in full “mutatis mutandis”, meaning that information should be adapted to particularities of any given framework agreement procedure. This information must be repeated in the framework agreement itself, or, if it is feasible and would achieve administrative efficiency, and the legal system in the jurisdiction concerned treats annexes as an integral part of a document, the solicitation documents can be annexed to the framework agreement. In other words, the solicitation documents must set out the terms and conditions upon which suppliers or contractors are to provide the subject matter of the procurement, the criteria that will be used to select the successful suppliers or contractors, and the procedures for the award of procurement contracts under the framework agreement. This information is required

¹ The statement reflects the results of consultations with experts. If the Working Group wishes to include this comment, the provision of guidance to the Secretariat on specific examples is requested.

to enable suppliers or contractors to understand the extent of the commitment required of them, which itself will enable the submission of the best price and quality offers. Thus, the normal safeguard that all the terms and conditions of the procurement (including the specifications and whether the selection of suppliers or contractors will be based on the lowest-priced or most advantageous submission) must be pre-disclosed also applies.

7. Deviations from the requirement to provide exhaustive information about the terms and conditions of the procurement at the time of solicitation of participation in the framework agreement procedure are permitted only so far as needed to accommodate the procurement concerned. For example, the procuring entity is unlikely to be able to fulfil the requirement of article 39(d) [\[**hyperlink**\]](#) for the solicitation documents to set out “the quantity of the goods; services to be performed; the location where the goods are to be delivered, construction is to be effected or services are to be provided; and the desired or required time, if any, when goods are to be delivered, construction is to be effected or services are to be provided”. However, the extent of the necessary deviation will vary: the procuring entity may know the dates of each intended purchase, but not the quantities, or vice versa; alternatively, it may know the total quantity but not the purchase dates; or it may know none or all of these things.

8. Details, which are normally required to be provided when soliciting participation in a single-stage procedure, and which will be omitted in a framework agreement procedure will vary from procedure to procedure. Any failure to provide information that goes beyond the permissible deviations will be susceptible to challenge. Consequently, if the total quantity and delivery details regarding the purchases envisaged under the framework agreement are known at the first stage of the procurement, they must be disclosed. If the total quantity is not known at the first stage of the procurement, minimum and maximum quantities for the purchases envisaged under the framework agreement should be included, to the extent that they are known, failing which estimates should be provided.

9. Paragraph (2)(b) requires disclosure of whether there will be one or more supplier or contractor parties to the agreement. The administrative efficiencies of framework agreements tend to indicate that multiple-supplier framework agreements are more commonly appropriate, but the nature of the market concerned may indicate that a single-supplier framework agreement is beneficial (for example, where confidentiality or security of supply is an important consideration, or where there is only one supplier or contractor in the market).

10. There is no requirement for either a minimum or a maximum number of suppliers or contractors parties to a framework agreement. A minimum number may be appropriate to ensure security of supply; where second-stage competition is envisaged, there need to be sufficient suppliers or contractors to ensure effective competition, and the terms of solicitation may require a minimum number, or a sufficient number to ensure such effective competition. Where the stated minimum

is not achieved, the procuring entity [may/must] cancel the procurement using the provisions of article 19 [\[**hyperlink**\]](#).²

11. A maximum number may also be appropriate where the procuring entity envisages that there will be more qualified suppliers or contractors presenting responsive submissions than can be accommodated. This situation may reflect the administrative capacity of the procuring entity, notably in that more participants may defeat the administrative efficiency of the procedure. An alternative reason for limiting the number of participants is to ensure that each has a realistic chance of being awarded a contract under the framework agreement, and to encourage it to price its offer and to offer the best possible quality accordingly.

12. Where a minimum and/or a maximum of suppliers or contractors is or are to be imposed, the relevant number(s) must be notified in the solicitation documents. The procurement record should, as a matter of best practice, include a justification of the procuring entity's decision(s) — and recording such information is an example of the additional information that the enacting State may wish to include under article 25(1), or in supporting regulations under article 25(1)(w) [\[**hyperlinks**\]](#). Where a maximum is stated, the criteria and procedures for selecting the participants should be to identify the relevant number of lowest-priced or most advantageous submissions. This approach involves ranking to select the suppliers or contractors to become parties to the framework agreement; although a defined maximum may be administratively simple, it has been observed, identifying a strictly defined number in advance could invite challenges from those whose submissions are ranked just below the winning suppliers or contractors' (i.e. where there is very little to choose between successful and unsuccessful suppliers or contractors). A statement that a number within a defined range may be an appropriate alternative approach, provided that its intended use is clearly set out in the solicitation documents.

13. Paragraph (2)(d) requires that the form, terms and conditions of the framework agreement including, for example, whether there is to be second-stage competition, and evaluation criteria for the second stage, are to be provided in the solicitation documents. These transparency provisions are an application of the general principle of the Model Law that all terms and conditions of the procurement are to be determined in advance, as also reflected in the chapeau provisions of paragraph (2) (see paragraphs [** above](#)).

14. There is no exemption regarding the qualification and evaluation criteria and procedures for their application both for admission to the framework agreement and for any second-stage competition, save that the evaluation criteria to be applied at the second stage can vary within a pre-determined range, as explained in the commentary to article 59(1)(d) [\[**hyperlink**\]](#), below. If this flexibility is to be used, the applicable range must be disclosed in the solicitation documents.

15. One feature of selection that is more complex in the context of framework agreements than traditional procurement is the relative weight to be applied in the selection criteria for both stages of the procurement, if any. Particularly where

² The provision of guidance to the Secretariat is requested on consequences of the failure to achieve the minimum required number, for example where it was intended to have a multi-supplier framework but only one supplier or contractor is qualified and responsive.

longer term and centralized purchasing are concerned, there may be benefits in terms of value for money and administrative efficiency in permitting the procuring entity to set the relative weights and their precise needs only when making individual purchases (that is, at the second stage of the procedure). On the other hand, transparency considerations, objectivity in the process, and the need to prevent changes to selection criteria during a procurement are central features of the Model Law designed to prevent the abusive manipulation of selection criteria, and the use of vague and broad criteria that could be used to favour certain suppliers or contractors. Permitting changes to relative weights during the operation of a framework agreement might facilitate non-transparent or abusive changes to the selection criteria. The Model Law seeks to address these competing objectives by providing that relative weights at the second stage can be varied within a pre-established range or matrix set out in the framework agreement and thus also in the solicitation documents, and provided that the variation does not lead to a change in the description of the subject matter of the procurement (see article 63 [\[**hyperlink**\]](#)).

16. Further guidance on the form, terms and conditions of the framework agreement is provided in the commentary to article 59 below [\[**hyperlink**\]](#).

17. Paragraph (3) provides that the provisions of article 22 [\[**hyperlink**\]](#) on the acceptance of the successful submission and entry into force of the procurement contract apply to the award of a closed framework agreement, adapted as necessary to the framework agreement procedure (see the commentary to article 21 at [**above \[**hyperlink**\]](#)). This provision is necessary because article 22 addresses the conclusion of a procurement contract and, as the definitions of the framework agreement and relevant procedures in article 2 make clear, the framework agreement itself is not a procurement contract (see, further, paragraphs ... above).

18. The suppliers or contractors that will be parties to the framework agreement are selected on the basis set out in the solicitation documents, i.e. those submitting the lowest-price or most advantageous submission(s). The selection is made on the basis of a full examination of the initial submissions (where there is to be second-stage competition) or of the submissions (where there is no second-stage competition), and assessment of the suppliers' or contractors' qualifications. The responsive submissions are then evaluated, applying the evaluation criteria disclosed in the solicitation documents, and subject to any applicable minimum or maximum number of suppliers or contractors parties as set in the solicitation documents.³

19. Thereafter, the notification provisions and standstill period required by article 22 apply to the procedure through a cross reference in paragraph (3) (the exemptions envisaged to the standstill period under article 22(3) [\[**hyperlink**\]](#) either do not or are most unlikely to apply to the award of a closed framework agreement). The award of the closed framework agreement may also be made subject to external approval; where framework agreements are being used

³ With reference to paragraph (2) (c) of article 58 of the draft Model Law, should the regulations require a maximum number (under the ML wording the procuring entity has the discretion to establish either a maximum or minimum)? Otherwise, all suppliers or contractors presenting responsive submissions must be accepted and there would be no real evaluation at the first stage.

across government ministries and agencies, ex ante control mechanisms of this type may be considered appropriate. If so, additional wording can be included in paragraph (3) or elsewhere in article 58 [\[**hyperlink**\]](#) or in supporting regulations, based on the optional wording found in article 30(2) [\[**hyperlink**\]](#).

20. In order to forestall concerns that the normal publicity mechanisms under procurement systems may not apply to framework agreements (because they are not procurement contracts) and to some procurement contracts under them (if they are under the publication threshold), article 23 [\[**hyperlink**\]](#) of the Model Law requires the publication of a notice where a closed framework agreement is made in the same manner as the award of a procurement contract. (Article 22 also applies in full to procurement contracts concluded under a framework agreement.)

21. As the definitions of the framework agreement and relevant procedures in article 2 [\[**hyperlink**\]](#) make clear, the framework agreement is not a procurement contract as defined in the Model Law, but it may be an enforceable contract in enacting States. States may therefore wish to issue guidance on the implications of binding the Government through the first stage of the procedure. Suppliers' or contractors' submissions may be binding under the law of the enacting State; under a closed framework agreement without second-stage competition, the terms and conditions of the procurement are set and the first-stage submissions will be enforceable in the normal manner. Where there is to be second-stage competition, however, States may wish to provide guidance to ensure that the extent to which suppliers or contractors can vary their first-stage (initial) submissions at the second stage is clear, where the result is less favourable to the procuring entity (e.g. by increasing prices if market conditions change).

22. The framework agreement, depending on its terms and conditions and the law that governs agreements by procuring entities in the enacting State concerned, may be a binding contract. Nonetheless, the definition of the "procurement contract" under article 2(k) of the Model Law [\[**hyperlink**\]](#) does not include a framework agreement. The procurement contract for the purposes of article 2(k) of the Model Law is concluded at the second stage of the procedure, when the procuring entity awards a procurement contract under the framework agreement. Technically, the award occurs when the procuring entity issues an acceptance notice accepting the supplier's or contractor's second-stage submission in accordance with article 22 [\[**hyperlink**\]](#) of the Model Law. This means that the safeguards and procedures under the Model Law apply throughout the framework agreement procedure.

Article 59. Requirements of closed framework agreements

23. The purpose of the article is to set out the terms and conditions of the closed framework agreement and the award of contracts under that agreement. As some terms and conditions of the procurement are not set at the outset of a framework agreement procedure (by contrast with "traditional" procurement), it is important for transparency reasons to require all those determined at the first stage, and the mechanism for determining the remainder to be contained in the framework agreement itself. This safeguard will ensure that the terms and conditions of the procurement are known and consistent throughout the procedure. The framework agreement will therefore contain the terms and conditions that will apply to the second stage of the framework agreement procedure, including how the terms and

conditions that were not established at the first stage will be settled: this information being important to encourage participation and transparency, it is also to be disclosed in the solicitation documents under article 58 [\[**hyperlink**\]](#).

24. The law of the enacting State will address such issues as the enforceability of the agreement in terms of contract law, as discussed in the commentary in the introduction to this Chapter [\[**hyperlink**\]](#).

25. The chapeau provisions of paragraph (1) require the framework agreement to be in writing, in order to support the safeguards in paragraph (1) described above. They are supplemented by paragraph (2) of the article that allows under certain conditions to conclude individual agreements between the procuring entity and each supplier or contractor that is a party (see further paragraph **** below**).

26. Paragraph (1)(a) refers to the limited duration of all closed framework agreements to the maximum set out in the procurement regulations, as discussed in paragraphs ****** of the introduction to this Chapter [\[**hyperlink**\]](#). The main reason for imposing such a statutory maximum is that the potentially anti-competitive effect of these agreements is considered to increase as their duration increases. It is important to note that the limit is the maximum duration, and not the average or appropriate duration: the latter may vary as market conditions change, and in any event should reflect the nature of the procurement concerned, financial issues such as budgetary allocations, and regional or developmental differences within or among States.

27. The Model Law does not provide for extensions to concluded framework agreements or exemptions from the prescribed maximum duration: allowing such variations would defeat the purpose of the regime contemplated by the Model Law. If enacting States wish to provide for extensions in exceptional circumstances, clear regulations or guidance will be required to ensure that any extensions are of short duration and limited scope. For example, new procurements may not be justified in cases of a natural disaster or restricted sources of supply, when the public may be able to benefit from the terms and conditions of the existing framework agreement. Guidance should also address the issue of a lengthy or sizeable purchase order or procurement contract towards the end of the validity of the framework agreement, not only to avoid abuse, but to ensure that procuring entities are not purchasing outdated or excessively priced items. If suppliers or contractors consider that procuring entities are using framework agreements beyond their intended scope, future participation may also be compromised: the efficacy of the technique in the longer term will depend, among other things, upon whether or not the terms are commercially viable for both parties.

28. Paragraph (1)(b) requires the terms and conditions of the procurement to be recorded in the framework agreement (and under article 58 [\[**hyperlink**\]](#) will have been set out in the solicitation documents). These terms and conditions will include the description of the subject-matter of the procurement, which should fulfil the requirements of article 10 [\[**hyperlink**\]](#), and the evaluation criteria in accordance with the requirements of article 11 [\[**hyperlink**\]](#). (For guidance on the evaluation criteria in framework agreements procedures, see paragraphs **** below**.) These terms and conditions should also be set in the light of the considerations that underpin the procuring entity's decision on the type of framework to be selected, as discussed in paragraphs ****** of the commentary in the

Introduction to this Chapter [\[**hyperlink**\]](#). Where the subject-matter of the procurement is highly technical but may require customization, for example, an overly narrow approach to drafting the description and the use of detailed technical specifications may limit the usefulness of the framework agreement. The use of functional descriptions may enhance the efficacy of such a procedure, also by allowing for technological development and variations to suit the precise need at the time of the procurement contract. On the other hand, a precise technical description can enhance first-stage competition where no second-stage competition is to take place, should needs not be expected to vary. In addition, the procuring entity must ensure that the description is as accurate as possible both for transparency reasons and to encourage participation in the procedure, and the guidance referred to in the commentary in the Introduction to this Chapter [\[**hyperlink**\]](#) may assist in this process.

29. Paragraph (1)(c) requires setting out in the framework agreement estimates of the terms and conditions that cannot be established with precision at the outset of the procedure. They are usually to be refined or established through second-stage competition, such as the timing, frequency and quantities of anticipated purchases, and the contract price. To the extent the estimates are known, they must be set out (see paragraph [** above](#)). Providing the best available estimates, where firm commitments are not possible, will also encourage participation. Naturally, the limitations on estimates should also be recorded, or a statement that accurate estimates are not possible (for example, where emergency procurement is concerned).

30. Maximum or minimum aggregate values for the framework agreement may be known; if so, they should be disclosed in the agreement itself, failing which an estimate should be set out. An alternative approach is, where there are multiple procuring entities that will use the framework agreement, to allow each procuring entity to set different maxima depending on the nature and potential obsolescence of the items to be procured; in such cases, the relevant values for each procuring entity should be included. The maximum values or annual values may be limited by budgetary procedures in individual States; if so, guidance to these provisions should set out other sources of regulation in detail.

31. The contract price may or may not be established at the first stage. Where the subject-matter is subject to price or currency fluctuations, or the combination of service-providers may vary, it may be counter-productive to try to set a contract price at the outset. A common criticism of framework agreements of this type is that there is a tendency towards contract prices at hourly rates that are generally relatively expensive, and task-based or project-based pricing should therefore be encouraged, where appropriate.

32. It will generally be the case that the agreement will provide that suppliers or contractors may not increase their prices or reduce the quality of their submissions at the second stage of the procedure, because of the obvious commercial disadvantages and resultant lack of security of supply that would ensue, but in certain markets, where price fluctuations are the norm, the framework agreement may appropriately provide a price adjustment mechanism to match the market.

33. Paragraph (1)(d) requires the framework agreement to identify whether or not second-stage competition will be used to award the procurement contracts under the

framework agreement, and if it will be used, to define terms and conditions of such second-stage competition. Paragraphs (1)(d)(i) and (ii) require the substantive rules and procedures for any second-stage competition to be set out in the framework agreement. The rules and procedures are designed to ensure effective competition at the second stage: for example, all suppliers or contractors parties to the framework agreement are, in principle, entitled to participate at the second stage, as is explained further in the commentary to article 62 below [\[**hyperlink**\]](#). The framework agreement must also set out the envisaged frequency of the competition, and anticipated time frame for presenting second-stage submissions — this information is not binding on the procuring entity, and is included both to enhance participation through providing to suppliers or contractors the best available information and to encourage effective procurement planning.

34. A key determinant of whether second-stage competition will be effective is the manner in which evaluation criteria will be designed and applied. A balance is needed between evaluation criteria that are so inflexible that there may be effectively only one supplier or contractor at the second stage, with consequential harm to value for money and administrative efficiency, and the use of such broad or vague criteria that their relative weights and the process can be manipulated to favour certain suppliers or contractors. The rules in paragraph (1)(d)(iii) therefore provide that the relative weight to be applied in the evaluation criteria during the second-stage competition should be disclosed at the first stage of the procedure. However, they also provide for limited flexibility to vary or give greater precision to the evaluation criteria at the second stage, reflecting the fact that multiple purchasers might use a framework agreement, with different relative weights to suit their individual evaluation criteria, and that some framework agreements may be of long duration. This flexibility will also be useful for centralized purchasing agencies, and to avoid the negative impact on value for money if one common standard must be applied to all users of the framework agreement.

35. The mechanism in paragraph (1)(d)(iii) therefore allows for relative weights of the evaluation criteria at the second stage to be varied within a pre-established range or matrix set out in the framework agreement and the solicitation documents. This flexibility has to be read together with the qualification provided in article 63 [\[**hyperlink**\]](#) that the variation must be authorized by the framework agreement but in any event may not lead to a change to the description of the subject matter of the procurement. Thus even if within the permitted scope of variations under the framework agreement, a change would not be acceptable if it effectively leads to the change in the description of the subject matter of the procurement (for example, if the minimum quality requirements were waived or altered).⁴

36. Flexibility in applying evaluation criteria should be monitored to ensure that it does not become a substitute for adequate procurement planning, does not distort purchasing decisions in favour of administrative ease, does not encourage the use of broad terms of reference that are not based on a careful identification of needs, and does not encourage the abusive direction of procurement contracts to favoured suppliers or contractors. These latter points may be of increased significance where procurement is outsourced to a fee-earning centralized purchasing agency, which

⁴ The Working Group may consider that further relevant examples should be provided, to underscore that this flexibility should be the exception rather than the rule. If so, the provision of guidance to the Secretariat is requested.

may use framework agreements to generate income (see, further, the discussion of outsourcing in paragraphs ** of the commentary in the Introduction to Chapter VII, above [**hyperlink**]). Oversight processes may assist in avoiding the use of relatively flexible evaluation criteria in framework agreements to hide the use of inappropriate criteria based on agreements or connections between procuring entities and suppliers or contractors, and to detect abuse in pre-determining the second-stage results that would negate first-stage competition, the risks of which are elevated with recurrent purchases. Transparency in the application of the flexibility, and the use of a pre-determined and pre-disclosed range both facilitates such oversight and ensures that the mechanism complies with the requirement of the United Nations Convention against Corruption that requires the evaluation criteria to be set and disclosed in advance (article 9(1)(b) of the Convention). Enacting States will wish to provide that their oversight regimes examine the use of a range of evaluation criteria, in order to ensure that the range set out in the framework agreement is not so wide as to make the safeguards meaningless in practice.

37. Paragraph (1)(e) notes that the framework agreement must also set out whether the award of the procurement contract(s) under the framework agreement will be made to the lowest-priced or most advantageous submission (for a discussion of those terms, see the commentary to ** above [**hyperlink**]). The basis of the award will normally, but need not necessarily, be the same as that for the first stage; for example, the procuring entity may decide that among the highest-ranked suppliers or contractors at the first stage (chosen using the most advantageous submission), the lowest-priced responsive submission to the precise terms of the second-stage invitation to participate will be appropriate. Where the enacting State has issued laws on competition policy, or there are provisions on that policy in the procurement regulations, the evaluation criteria, subject to the normal transparency requirements, can include the effect on the market for the subject-matter of the procurement concerned. While such policies will not permit rotation among suppliers or contractors, they may allow the awards of procurement contracts to take account of competition policy. On the question of socio-economic policies generally, see section ** of the general commentary at ** above [**hyperlink**].

38. Paragraph (2) provides limited flexibility to the procuring entity to enter into separate agreements with individual suppliers or contractors that are parties to the framework agreement. General principles of transparency and fair and equitable treatment indicate that each supplier or contractor should be subject to the same terms and conditions; the provisions therefore limit exceptions to minor variations that concern only those provisions that justify the conclusion of separate agreements; those justifications are to be put on the record. An example may be the need to execute separate agreements to protect intangible or intellectual property rights and to accommodate different licensing terms or where suppliers or contractors have presented submissions for only part of the procurement. Nonetheless, the result should not involve different contractual obligations for different suppliers or contractors parties to the framework agreement.

39. Paragraph (3) requires all information necessary to allow for the framework agreement to operate effectively, in addition to the above requirements, to be set out in the agreement itself. This approach is also intended to ensure transparency and predictability in the process. Such information may include technical issues such as requirements for connection to a website if the framework agreement is to operate

electronically, particular software, technical features and, if relevant, capacity. These requirements can be supplemented by detailed regulations to ensure that the technology used by the procuring entity does not operate as a barrier to access to the relevant part of the procurement market, applying the principles set out in article 7 [\[**hyperlink**\]](#) (see commentary to that article, at [** above \[**hyperlink**\]](#)).

40. In multi-supplier framework agreements, each supplier or contractor party will wish to know the extent of its commitment both at the outset and periodically during operation of the framework agreement (such as after a purchase is made under the framework agreement). Enacting States may therefore wish to encourage procuring entities to inform the suppliers or contractors about the extent of their commitments.
