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Possible revisions to the UNCITRAL Model Law on Procurement of Goods, Construction and Services — a revised text of the Model Law

Note by the Secretariat

Addendum

This note sets out a proposal for chapter IV (Procedures for restricted tendering, request for quotations and request for proposals without negotiation) of the revised Model Law, comprising articles 39-41.

The Secretariat's comments are set out in the accompanying footnotes.



Chapter IV. PROCEDURES FOR RESTRICTED TENDERING, REQUEST FOR QUOTATIONS AND REQUEST FOR PROPOSALS WITHOUT NEGOTIATION¹

Article 39. Restricted tendering²

- (1) The procuring entity shall solicit tenders in accordance with the provisions of article [29 ter] of this Law.
- (2) The provisions of chapter III of this Law shall apply to restricted tendering proceedings, except to the extent that those provisions are derogated from this article.

Article 40. Request for quotations

- (1) The procuring entity shall request quotations in accordance with the provisions of article [29 ter] of this Law.³ Each supplier or contractor from whom 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.⁴

Article 41. Request for proposals without negotiation

- (1) The procuring entity shall solicit proposals by issuing an invitation to participate in the request for proposals without negotiation proceedings in accordance with article [29 quater] of this Law except as otherwise provided for in that article.
- (2) The invitation shall include:
 - (a) The name and address of the procuring entity;
 - (b) A description of the subject matter of the procurement, and the desired or required time and location for the provision of such subject matter;

¹ The title of the chapter was revised pursuant to A/CN.9/690, para. 149.

² The article was revised pursuant to the deliberations at the Working Group's seventeenth session (in particular, provisions on a pre-selection procedure have been deleted) (A/CN.9/687, paras. 159-169) and in the light of the newly proposed section II of chapter II, in particular article 29 ter that incorporates some of the provisions that were previously in this article.

³ Amended in the light of new article 29 ter.

⁴ A/CN.9/687, para. 170.

(c) The terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;

(d) The criteria and procedures to be used for ascertaining the qualifications of suppliers or contractors and any documentary evidence or other information that must be presented by suppliers or contractors to demonstrate their qualifications, in conformity with article [9] of this Law;

(e) The criteria and procedures for opening the proposals and for examining and evaluating the proposals in accordance with articles [10 and 11] of this Law, including the minimum requirements with respect to technical and quality characteristics that proposals must meet in order to be considered responsive in accordance with article [10] of this Law, and a statement that proposals that fail to meet those requirements will be rejected as non-responsive;

(f) A declaration pursuant to article [8] of this Law;

(g) The means of obtaining the request for proposals and the place where it may be obtained;

(h) The price, if any, charged by the procuring entity for the request for proposals;

(i) If a price is charged for the request for proposals, the means and currency of payment for the request for proposals;⁵

(j) The language or languages in which the requests for proposals are available;⁶

(k) The manner, place and deadline for presenting proposals.

(3) The procuring entity shall issue the request for proposals:

(a) Where an invitation to participate in the request for proposals without negotiation proceedings has been published in accordance with the provisions of article [29 quater] of this Law, to each supplier or contractor that responds to the invitation in accordance with the procedures and requirements specified therein;

(b) In the case of pre-qualification, to each supplier or contractor pre-qualified in accordance with article [16] of this Law;

(c) In the case of direct solicitation, to each supplier or contractor selected by the procuring entity;⁷

⁵ Amended pursuant to A/CN.9/690, para. 22(b). The accompanying Guide text will note that the procuring entity may decide not to include reference to the currency of payment in domestic procurement, if it would be unnecessary in the circumstances.

⁶ Amended pursuant to A/CN.9/690, para. 22(b). The accompanying Guide text will note that the procuring entity may decide not to include this information in domestic procurement, if it would be unnecessary in the circumstances, and will add that an indication of the language or languages may still be important in some multilingual countries.

⁷ It is the Secretariat's understanding that provisions on pre-selection of article 43 would not be applicable to this procurement method, and thus no mention of pre-selection is made here as compared to the similar provisions in article 43 of the current draft.

and that pays the price, if any, charged for the request for proposals. The price that the procuring entity may charge for the request for proposals shall reflect only the cost of providing it to suppliers or contractors.⁸

(4) The request for proposals shall include, in addition to the information referred to in paragraphs (2)(a) to (e) and (k) of this article, the following information:

(a) Instructions for preparing and presenting proposals, including instructions to suppliers or contractors to present simultaneously to the procuring entity proposals in two envelopes: one envelope containing the technical and quality characteristics of the proposal and the other envelope containing the financial aspects of the proposal;

(b) If suppliers or contractors are permitted to present proposals for only a portion of the subject matter of the procurement, a description of the portion or portions for which proposals may be presented;⁹

(c) The currency or currencies in which the proposal price is to be formulated or expressed, and the currency that will be used for the purpose of evaluating proposals, and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;¹⁰

(d) The manner in which the proposal price is to be formulated or expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;¹¹

(e) The means by which, pursuant to article [14] of this Law, suppliers or contractors may seek clarifications of the request for proposals, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of suppliers or contractors;¹²

(f) References to this Law, the procurement regulations and other laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving classified information, and the place¹³ where these laws and regulations may be found;¹⁴

(g) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with

⁸ Amended to align with the similar wording found elsewhere in the current draft.

⁹ Based on article 38 (i) of the 1994 Model Law.

¹⁰ Based on article 38 (j) and (n) of the 1994 Model Law. Amended pursuant to A/CN.9/690, para. 22(b). The accompanying Guide text will note that the procuring entity may decide not to include reference to the currency in domestic procurement, if it would be unnecessary in the circumstances.

¹¹ Based on article 38 (k) of the 1994 Model Law.

¹² Based on article 38 (q) of the 1994 Model Law.

¹³ Reference to the place was added by the Secretariat further to the suggestions of experts. The accompanying Guide text will explain that the place refers not to the physical location but rather an official publication, portal, etc. where authoritative texts of laws and regulations of the enacting State are made available to the public and systematically maintained.

¹⁴ Based on article 38 (s) of the 1994 Model Law.

and to receive communications directly from suppliers or contractors in connection with the procurement proceedings, without the intervention of an intermediary;¹⁵

(h) Notice of the right provided under article [61] of this Law to seek review of non-compliance with the provisions of this Law together with information about duration of a standstill period and, if none will apply, a statement to that effect and reasons therefor;¹⁶

(i) Any formalities that will be required once the proposal has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract, and approval by a higher authority or the Government and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval;¹⁷

(j) Any other requirements that may be established by the procuring entity in conformity with this Law and the procurement regulations relating to the preparation and presentation of proposals and to the procurement proceedings.¹⁸

(5) Before opening the envelopes containing the financial aspects of the proposals, the procuring entity shall examine and evaluate the technical and quality characteristics of proposals in accordance with the criteria and procedures specified in the request for proposals.

(6) The results of the examination and evaluation of the technical and quality characteristics of the proposals shall be immediately included in the record of the procurement proceedings.

(7) The proposals whose technical and quality characteristics fail to meet the relevant minimum requirements shall be considered to be non-responsive and shall be rejected on that ground. The notice of rejection and reasons for rejection,¹⁹ together with an unopened envelope containing the financial aspects of the proposal, shall be promptly dispatched to each respective supplier or contractor whose proposal was rejected.

(8) The proposals whose technical and quality characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive. The procuring entity shall promptly communicate to each supplier or contractor presenting such a proposal the score of the technical and quality characteristics of its respective proposal. The procuring entity shall invite all such suppliers or contractors to the opening of the envelopes containing the financial aspects of their proposals.

(9) The score of the technical and quality characteristics of each responsive proposal and the corresponding financial aspect of that proposal shall be read out in the presence of the suppliers or contractors invited in accordance with paragraph (8) of this article to the opening of the envelopes containing the financial aspects of the proposals.

¹⁵ Based on article 38 (p) of the 1994 Model Law.

¹⁶ Based on article 38 (t) of the 1994 Model Law.

¹⁷ Based on article 38 (u) of the 1994 Model Law.

¹⁸ Based on article 38 (v) of the 1994 Model Law.

¹⁹ A/CN.9/687, para. 178.

(10) The procuring entity shall compare the financial aspects of the responsive proposals and on that basis identify the successful proposal in accordance with the criteria and the procedure set out in the request for proposals. The successful proposal shall be the proposal with the best combined evaluation in terms of the criteria other than price specified in the request for proposals and the price.²⁰

²⁰ A/CN.9/687, paras. 179-181. The article is designed for the award of the contract on the basis of the best combined evaluation in terms of the criteria other than price specified in the request for proposals and the price. The accompanying Guide text will explain that the procuring entity can award on the basis of the lowest price alone if it sets out sufficiently high the relevant threshold for the minimum quality and technical characteristics of the proposals. In such case, the procuring entity, before opening the envelopes containing the financial aspects of the proposals, would examine the technical and quality characteristics of proposals and reject non-responsive ones. No evaluation of quality and technical characteristics of responsive proposals would take place and thus no scores or ratings would be assigned since scores or ratings would not be relevant where the award is made to the responsive proposal with the lowest price.