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

Note by the Secretariat*

This Note introduces a proposal for two annexes to Part III of a draft Guide to Enactment of the UNCITRAL Model Law on Public Procurement that would explain changes made to the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services. The proposed annexes would contain a table of concordance between the 2011 Model Law and the 1994 Model Law and a table of concordance between the 1994 Model Law and the 2011 Model Law (excluding new provisions).

* This document was submitted less than ten weeks before the opening of the session due to the need to finalize consultations.



Guide to Enactment of the UNCITRAL Model Law on Public Procurement

Part III. Changes made to the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (continued)

Annexes

Annex 1

Table of concordance between the 2011 Model Law and the 1994 Model Law

Article of the 2011 Model Law	Relevant provisions of the 1994 Model Law
Preamble	Preamble
Chapter I. General provisions	CHAPTER I. GENERAL PROVISIONS
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Article 1. Scope of application	Article 1. Scope of application
Article 2. Definitions	Article 2. Definitions
Article 3. International obligations of this State relating to procurement [and intergovernmental agreements within [this State]]	Article 3. International obligations of this State relating to procurement [and intergovernmental agreements within (this State)]
Article 4. Procurement regulations	Article 4. Procurement regulations
Article 5. Publication of legal texts	Article 5. Public accessibility of legal texts
Article 6. Information on possible forthcoming procurement	New provisions
Article 7. Communications in procurement	Article 9. Form of communications
Article 8. Participation by suppliers or contractors	Article 8. Participation by suppliers or contractors
Article 9. Qualifications of suppliers and contractors	Article 6. Qualifications of suppliers and contractors
	Article 7. Prequalification proceedings (para. (8))
	Article 10. Rules concerning documentary evidence provided by suppliers or contractors

Article of the 2011 Model Law	Relevant provisions of the 1994 Model Law
Article 10. Rules concerning description of the subject matter of the procurement and the terms and conditions of the procurement contract or framework agreement	Article 16. Rules concerning description of goods, construction or services
Article 11. Rules concerning evaluation criteria and procedures	New provisions based on the 1994 text (1994 articles 27 (e), 34 (4), 38 (m), 39 and 48 (3))
Article 12. Rules concerning estimation of the value of procurement	New provisions
Article 13. Rules concerning the language of documents	Article 17. Language Article 29. Language of tenders
Article 14. Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions	New provisions based on the 1994 text (1994 articles 7 (3)(a)(iv) and 30 (1) to (4))
Article 15. Clarifications and modifications of solicitation documents	Article 28. Clarifications and modifications of solicitation documents
Article 16. Clarification of qualification information and of submissions	New provisions, based in part on paragraph (1) of 1994 article 34
Article 17. Tender securities	Article 32. Tender securities
Article 18. Pre-qualification proceedings	Article 7. Prequalification proceedings Also provisions related to pre-qualification of articles 23, 24 and 25
Article 19. Cancellation of the procurement	Article 12. Rejection of all tenders, proposals, offers or quotations
Article 20. Rejection of abnormally low submissions	New provisions
Article 21. Exclusion of a supplier or contractor from the procurement proceedings on the grounds of inducements from the supplier or contractor, an unfair competitive advantage or conflicts of interest	Article 15. Inducements from suppliers or contractors
Article 22. Acceptance of the successful submission and entry into force of the procurement contract	Article 13. Entry into force of the procurement contract Article 36. Acceptance of tender and entry into force of procurement contract
Article 23. Public notice of the award of a procurement contract or framework agreement	Article 14. Public notice of procurement contract awards
Article 24. Confidentiality	Articles 34 (8), 45, 48 (7) and 49 (3)

Article of the 2011 Model Law	Relevant provisions of the 1994 Model Law
Article 25. Documentary record of procurement proceedings	Article 11. Record of procurement proceedings, and article 34 (8)
Article 26. Code of conduct	New provisions
Chapter II. Methods of procurement and their conditions for use; solicitation and notices of the procurement Articles 27-35	CHAPTER II. METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE
Section I. Methods of procurement and their conditions for use Articles 27-32	
Article 27. Methods of procurement	New provisions
Article 28. General rules applicable to the selection of a procurement method	Article 18. Methods of procurement
Article 29. Conditions for the use of methods of procurement under chapter IV of this Law (restricted tendering, request for quotations and request for proposals without negotiation)	Articles 20 and 21
Article 30. Conditions for the 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)	Articles 19 and 22
Article 31. Conditions for use of an electronic reverse auction	New provisions
Article 32. Conditions for use of a framework agreement procedure	New provisions
Section II. Solicitation and notices of the procurement Articles 33-35	New provisions based on various provisions of the 1994 Model Law
Article 33. Solicitation in open tendering, two-stage tendering and procurement by means of an electronic reverse auction	Article 24. Procedures for soliciting tenders or applications to prequalify

Article of the 2011 Model Law	Relevant provisions of the 1994 Model Law
Article 34. Solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement: requirement for an advance notice of the procurement	Articles 47 (1) and (2), 49 (1), 50 (1) and 51
Article 35. Solicitation in request-for-proposals proceedings	Articles 37 and 48 (1) and (2)
Chapter III. Open tendering Articles 36-44	CHAPTER III. TENDERING PROCEEDINGS
Section I. Solicitation of tenders Articles 36-39	
Article 36. Procedures for soliciting tenders	Article 24. Procedures for soliciting tenders or applications to prequalify
Article 37. Contents of invitation to tender	Article 25. Contents of invitation to tender and invitation to prequalify (para. (1))
Article 38. Provision of solicitation documents	Article 26. Provision of solicitation documents
Article 39. Contents of solicitation documents	Article 27. Contents of solicitation documents
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Article 40. Presentation of tenders	Article 30. Submission of tenders (paras. (5) and (6))
Article 41. Period of effectiveness of tenders; modification and withdrawal of tenders	Article 31. Period of effectiveness of tenders; modification and withdrawal of tenders
Section III. Evaluation of tenders Articles 42-44	
Article 42. Opening of tenders	Article 33. Opening of tenders
Article 43. Examination and evaluation of tenders	Article 34. Examination, evaluation and comparison of tenders (paras. (2) to (7))
Article 44. Prohibition of negotiations with suppliers or contractors	Article 35. Prohibition of negotiations with suppliers or contractors

Article of the 2011 Model Law	Relevant provisions of the 1994 Model Law
Chapter IV. Procedures for restricted tendering, request for quotations and request for proposals without negotiation Articles 45-47	Chapter IV, article 42 and other relevant provisions; and chapter V, articles 47 and 50
Article 45. Restricted tendering	Article 47. Restricted tendering
Article 46. Request for quotations	Article 50. Request for quotations
Article 47. Request for proposals without negotiation	Article 42. Selection procedure without negotiation, and other relevant provisions of chapter IV. Principal method for procurement of services
Chapter V. Procedures for two-stage tendering, request for proposals with dialogue, request for proposals with consecutive negotiations, competitive negotiations and single-source procurement Articles 48-52	Chapter IV, articles 43 and 44 and other relevant provisions; chapter V, articles 46, 48, 49 and 51
Article 48. Two-stage tendering	Article 46. Two-stage tendering
Article 49. Request for proposals with dialogue	Article 43. Selection procedure with simultaneous negotiations Article 48. Request for proposals
Article 50. Request for proposals with consecutive negotiations	Article 44. Selection procedure with consecutive negotiations
Article 51. Competitive negotiations	Article 49. Competitive negotiation
Article 52. Single-source procurement	Article 51. Single-source procurement
Chapter VI. Electronic reverse auctions Articles 53-57	New provisions
Article 53. Electronic reverse auction as a stand-alone method of procurement	
Article 54. Electronic reverse auction as a phase preceding the award of the procurement contract	
Article 55. Registration for the electronic reverse auction and the timing of the holding of the auction	
Article 56. Requirements during the electronic reverse auction	
Article 57. Requirements after the electronic reverse auction	

Article of the 2011 Model Law	Relevant provisions of the 1994 Model Law
Chapter VII. Framework agreement procedures Articles 58-63	New provisions
Article 58. Award of a closed framework agreement	
Article 59. Requirements for closed framework agreements	
Article 60. Establishment of an open framework agreement	
Article 61. Requirements for open framework agreements	
Article 62. Second stage of a framework agreement procedure	
Article 63. Change during the operation of a framework agreement	
Chapter VIII. Challenge proceedings Articles 64-69	CHAPTER VI. REVIEW
Article 64. Right to challenge and appeal	Article 52. Right to review
Article 65. Effect of a challenge	New provisions
Article 66. Application for reconsideration before the procuring entity	Article 53. Review by procuring entity (or by approving authority); Article 55. Certain rules applicable to review proceedings under article 53 [and article 54], paras. (1) and (3); and Article 56. Suspension of procurement proceedings
Article 67. Application for review before an independent body	Article 54. Administrative review; Article 55. Certain rules applicable to review proceedings under article 53 [and article 54], paras. (1) and (3); and Article 56. Suspension of procurement proceedings
Article 68. Rights of participants in challenge proceedings	Article 55. Certain rules applicable to review proceedings under article 53 [and article 54], para. (2)
Article 69. Confidentiality in challenge proceedings	Article 55. Certain rules applicable to review proceedings under article 53 [and article 54] (para. (3), last sentence)

Annex 2

**Table of concordance between the 1994 Model Law and the 2011 Model Law
(excluding new provisions)**

Article of the 1994 Model Law	Relevant provisions of the 2011 Model Law
CHAPTER I. GENERAL PROVISIONS	Chapter I. General provisions
Article 1. Scope of application	Article 1. Scope of application
Article 2. Definitions	Article 2. Definitions
Article 3. International obligations of this State relating to procurement [and intergovernmental agreements within (this State)]	Article 3. International obligations of this State relating to procurement [and intergovernmental agreements within [this State]]
Article 4. Procurement regulations	Article 4. Procurement regulations
Article 5. Public accessibility of legal texts	Article 5. Publication of legal texts
Article 6 Qualifications of suppliers and contractors	Article 9. Qualifications of suppliers and contractors
Article 7. Prequalification proceedings Paragraph (3)(a)(iv) Paragraph (8)	Article 18. Pre-qualification proceedings Article 14. Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions Article 9. Qualifications of suppliers and contractors (para. (8)(d))
Article 8. Participation by suppliers or contractors	Article 8. Participation by suppliers or contractors
Article 9. Form of communications	Article 7. Communications in procurement
Article 10. Rules concerning documentary evidence provided by suppliers or contractors	Article 9. Qualifications of suppliers and contractors (para. (7))
Article 11. Record of procurement proceedings	Article 25. Documentary record of procurement proceedings
Article 12. Rejection of all tenders, proposals, offers or quotations	Article 19. Cancellation of the procurement
Article 13. Entry into force of the procurement contract	Article 22. Acceptance of the successful submission and entry into force of the procurement contract
Article 14. Public notice of procurement contract awards	Article 23. Public notice of the award of a procurement contract or framework agreement

Article of the 1994 Model Law	Relevant provisions of the 2011 Model Law
Article 15. Inducements from suppliers or contractors	Article 21. Exclusion of a supplier or contractor from the procurement proceedings on the grounds of inducements from the supplier or contractor, an unfair competitive advantage or conflicts of interest
Article 16. Rules concerning description of goods, construction or services	Article 10. Rules concerning description of the subject matter of the procurement, and the terms and conditions of the procurement contract or framework agreement
Article 17. Language	Article 13. Rules concerning the language of documents
CHAPTER II. METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE	Chapter II. Methods of procurement and their conditions for use; solicitation and notices of the procurement
Article 18. Methods of procurement	Article 28. General rules applicable to the selection of a procurement method
Article 19. Conditions for use of two-stage tendering, request for proposals or competitive negotiation	Article 30. Conditions for the 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)
Article 20. Conditions for use of restricted tendering	Article 29. Conditions for the use of methods of procurement under chapter IV of this Law (restricted tendering, request for quotations and request for proposals without negotiation)
Article 21. Conditions for use of request for quotations	Article 29. Conditions for the use of methods of procurement under chapter IV of this Law (restricted tendering, request for quotations and request for proposals without negotiation)
Article 22. Conditions for use of single-source procurement	Article 30. Conditions for the 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)
CHAPTER III. TENDERING PROCEEDINGS	Chapter III. Open tendering
SECTION I. SOLICITATION OF TENDERS AND OF APPLICATIONS TO PREQUALIFY	Section I. Solicitation of tenders
Article 23. Domestic tendering	Article 33. Solicitation in open tendering, two-stage tendering and procurement by means of an electronic reverse auction (para. (4))

Article of the 1994 Model Law	Relevant provisions of the 2011 Model Law
Provisions related to pre-qualification in: Article 24. Procedures for soliciting tenders or applications to prequalify and Article 25. Contents of invitation to tender and invitation to prequalify	Article 18. Pre-qualification proceedings
Other provisions from these articles	Article 36. Procedures for soliciting tenders Article 37. Contents of invitation to tender
Article 26. Provision of solicitation documents	Article 38. Provision of solicitation documents
Article 27. Contents of solicitation documents	Article 39. Contents of solicitation documents
Articles 28. Clarifications and modifications of solicitation documents	Article 15. Clarifications and modifications of solicitation documents
SECTION II. SUBMISSION OF TENDERS	Section II. Presentation of tenders
Article 29. Language of tenders	Article 13. Rules concerning the language of documents
Article 30. Submission of tenders Paragraphs (1) to (4)	Article 14. Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions
Paragraphs (5) and (6)	Article 40. Presentation of tenders
Article 31. Period of effectiveness of tenders; modification and withdrawal of tenders	Article 41. Period of effectiveness of tenders; modification and withdrawal of tenders
Article 32. Tender securities	Article 17. Tender securities
SECTION III. EVALUATION AND COMPARISON OF TENDERS	Section III. Evaluation of tenders
Article 33. Opening of tenders	Article 42. Opening of tenders
Article 34. Examination, evaluation and comparison of tenders Paragraph (1)	Article 16. Clarification of qualification information and of submissions
Paragraphs (2) to (7)	Article 43. Examination and evaluation of tenders
Paragraph (8)	Article 24. Confidentiality, and article 25. Documentary record of procurement proceedings (confidentiality-related provisions)
Article 35. Prohibition of negotiations with suppliers or contractors	Article 44. Prohibition of negotiations with suppliers or contractors

Article of the 1994 Model Law	Relevant provisions of the 2011 Model Law
Article 36. Acceptance of tender and entry into force of procurement contract	Article 22. Acceptance of the successful submission and entry into force of the procurement contract
CHAPTER IV. PRINCIPAL METHOD FOR PROCUREMENT OF SERVICES	Chapter IV, article 47, and Chapter V, articles 49 and 50
Article 37. Notice of solicitation of proposals	Article 35. Solicitation in request-for-proposals proceedings
Article 38. Contents of requests for proposals for services	Article 47. Request for proposals without negotiation; and article 49. Request for proposals with dialogue
Article 39. Criteria for the evaluation of proposals	Article 11. Rules concerning evaluation criteria and procedures
Article 40. Clarification and modification of requests for proposals	Article 15. Clarifications and modifications of solicitation documents
Article 41. Choice of selection procedure	Article 28. General rules applicable to the selection of a procurement method
Article 42. Selection procedure without negotiation	Article 47. Request for proposals without negotiation
Article 43. Selection procedure with simultaneous negotiations	Article 49. Request for proposals with dialogue
Article 44. Selection procedure with consecutive negotiations	Article 50. Request for proposals with consecutive negotiations
Article 45. Confidentiality	Article 24. Confidentiality
CHAPTER V. PROCEDURES FOR ALTERNATIVE METHODS OF PROCUREMENT	Chapter IV, articles 45 and 46, and Chapter V, articles 48, 49, 51 and 52
Article 46. Two-stage tendering	Article 48. Two-stage tendering
Article 47. Restricted tendering	Article 45. Restricted tendering Article 34. Solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement: requirement for an advance notice of the procurement
Article 48. Request for proposals	Article 49. Request for proposals with dialogue Article 35. Solicitation in request-for-proposals proceedings

Article of the 1994 Model Law	Relevant provisions of the 2011 Model Law
Article 49. Competitive negotiation	Article 51. Competitive negotiations Article 34. Solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement: requirement for an advance notice of the procurement
Articles 48 (7) and 49 (3)	Article 24. Confidentiality
Article 50. Request for quotations	Article 46. Request for quotations Article 34. Solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement: requirement for an advance notice of the procurement
Article 51. Single-source procurement	Article 52. Single-source procurement Article 34. Solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement: requirement for an advance notice of the procurement
CHAPTER VI. REVIEW	Chapter VIII. Challenge proceedings
Article 52. Right to review	Article 64. Right to challenge and appeal
Article 53. Review by procuring entity (or by approving authority)	Article 66. Application for reconsideration before the procuring entity
Article 54. Administrative review	Article 67. Application for review before an independent body
Article 55. Certain rules applicable to review proceedings under article 53 [and article 54]	Article 66. Application for reconsideration before the procuring entity; Article 67. Application for review before an independent body; Article 68. Rights of participants in challenge proceedings; and Article 69. Confidentiality in challenge proceedings
Article 56. Suspension of procurement proceedings	Article 65. Effect of a challenge; Article 66. Application for reconsideration before the procuring entity; Article 67. Application for review before an independent body
Article 57. Judicial review	Article 64. Right to challenge and appeal