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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 II. Part I addresses Methods of procurement and their conditions for use, comprising an introduction and commentary on articles 27 and 28. Part II addresses Solicitation and notices of the procurement, comprising an introduction and commentary on articles 33-35.



GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT

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CHAPTER II, Part I — Methods of procurement

A. Executive Summary

1. The methods and techniques presented in part I of Chapter II are included to provide for the variety of circumstances that may arise in procurement in practice. They are designed to allow the procuring entity, when considering how to conduct a procurement procedure, to take account of what it is that is to be procured (the subject-matter), the market situation (the number of potential suppliers, degree of concentration in the market, the extent to which the market is competitive), any degree of urgency, and the appropriate level of technology (such as whether electronic procurement is appropriate).

B. Enactment: policy considerations

2. Taking account of the differing stages of development of procurement systems in enacting States, this section of the Guide comments on features of certain procurement methods that are intended to permit more or less discretion, and the capacity and infrastructure needed to operate them effectively. The aim is to enable enacting States to decide whether or not each method is appropriate for its local circumstances, by reference also to the issues raised in the commentary on implementation and use in the following section [\[**hyperlink**\]](#).

3. The Model Law requires that open tendering be enacted, as the commentary to article 27 explains [\[**hyperlink**\]](#). In deciding which of the methods to provide for in addition, enacting States should provide for sufficient options to address the normal situations in which it engages in procurement. At a minimum, enacting States should provide (in addition to open tendering) a method that can be used for low-value and simple procurement, a method that can be used for emergency and other urgent procurement, and a method that can be used for more specialized or complex procurement.

4. The alternative procurement methods are designed to accommodate the procurement of various items and services, from off-the-shelf items to highly complex products, for which the use of open tendering may not be appropriate. Some of them are tendering-based methods (restricted tendering, two-stage tendering and open framework agreements within other procurement methods) that require a description of the subject-matter based on technical specifications and in which the procuring entity retains control of, and responsibility for, the technical solution. Some are request-for-proposals methods (request-for-proposals without negotiation, request-for-proposals with dialogue and request-for-proposals with consecutive negotiations) by means of which the procuring entity seeks proposals from suppliers or contractors to meet its needs, which are themselves formulated in as minimum technical requirements and standards. In these methods, the suppliers

or contractors are responsible for ensuring that their proposed solutions in fact meet the procuring entity's needs. Further alternative methods are less structured or regulated (request for quotations, competitive negotiations and single-source procurement), to reflect the particular circumstances in which they can be used (very low-value procurement, urgency, emergency, etc.); these circumstances make the use of more structured and regulated methods less appropriate or inappropriate.

5. The available methods and techniques can be considered together as a toolbox, from which the procuring entity should select the appropriate tool for the procurement concerned. It is, however, recognized that the conditions for use and the functionality of certain methods will overlap, as explained further in the commentary to article 27 below [\[**hyperlink**\]](#). Where the conditions for use for restricted tendering on the basis low-value or simple of article 28(1)(b) apply, for example, a method for low-value or simple procurement such as request for quotations or ERA may also be available and appropriate. [\[**hyperlinks**\]](#) Enacting States are encouraged to consider the extent to which the enactment of overlapping procurement methods are appropriate in their local circumstances: the greater the number of available procurement methods, the more complex the decision-making process becomes.

6. For this reason, where the enacting State is introducing procurement legislation for the first time, it may be appropriate to base the system on a more limited number of methods than the full range available under the Model Law. It may also be considered that the methods to be enacted should include tendering methods for all other than urgent and very low-value procurement (for which less structured or regulated methods are presented in the Model Law); the capacity acquired in operating these procedures will allow the introduction of methods including request-for-proposals procedures involving negotiations or dialogue, at a later stage.

7. As some methods may be considered to be more vulnerable to abuse and corruption than others, and some methods require greater levels of capacity to function successfully, the guidance to each procurement method below [\[**hyperlinks**\]](#) is designed to assist enacting States in considering which methods are appropriate for their jurisdictions, to highlight issues that may arise in their use and capacity issues that they raise, and to be a resource for those that draft regulations and guidance.

8. Historically, the rules of some multilateral development banks (MDBs) have not included procurement methods equivalent to request-for-proposals with dialogue or competitive negotiations as provided for in the Model Law. The MDBs have included methods with the features of request-for-proposals without negotiation and request-for-proposals with consecutive negotiations that are in the Model Law only for the procurement of services that are of an advisory nature, such as consulting, legal or design services. Consequently, and in the light of possible developments, potential borrowers from the MDBs should verify the applicable public procurement policies at the relevant time.

9. Nonetheless, the Commission has decided not to base the selection of procurement method on whether it is goods, construction or services that are procured, but rather in order to accommodate the circumstances of the given procurement and to maximize competition to the extent practicable (see article 27(2))

[**hyperlink**]) (for the relevant guidance, see paragraphs ** below). The Commission notes that the Model Law should reflect the fact that policies and practices evolve over time, and has therefore crafted its provisions in a flexible manner, balancing the needs of borrowers, ongoing developments in procurement methods and capacity development.

10. Finally, enacting States will wish to consider whether any international agreements to which they are party, or donor requirements, require the adaptation of the conditions for use and use of the procurement methods set out in the Model Law, as further discussed in particular in the guidance to request-for-proposals procurement methods.

C. Issues regarding implementation and use

11. In considering which methods of procurement to enact, enacting States should give particular consideration to whether the procuring entities possess adequate professional judgement and experience to select the appropriate procurement method from among the available options, and to operate it successfully. Further guidance on selection among alternative procurement methods, which highlights the capacity issues concerned, is provided in the commentary to article 27 and in the commentary to each procurement method below [**hyperlinks**].

12. Where enacting States consider that capacity development to enhance the quality of decision-making these matters would be of assistance, rules and guidance should focus in particular on how to select the appropriate procurement method where the conditions for use for several methods and/or techniques may apply. Consequently, enacting States may wish to consider the use of a typology of procurement methods and guidance on the identification of the appropriate procurement method in the circumstances concerned.

13. The footnote to article 27 [**hyperlink**] also provides that ‘States may consider whether, for certain methods of procurement, to include a requirement for external approval by a designated organ. The issues relating to whether or not to include such an ex ante mechanism are considered in Section ** of the General Remarks [**hyperlinks**]’¹

¹ Note to the Working Group: The Chapter of the Guide addressing changes from the 1994 Model Law will explain that the first part of the footnote also appeared in the 1994 Model Law, and that, in its provisions on conditions for use, the 1994 Model Law included, for each method of procurement other than tendering, the following optional language for enacting States to consider: ‘Subject to approval by ... (the enacting State designates an organ to issue the approval)’. The 1994 update Chapter will note that the Commission decided to remove that optional language from the individual provisions on conditions for use of procurement methods in the 2011 Model Law, and instead to address the concern more globally in the footnote to article 26. However, it will cross-refer to the general commentary on the ex ante approval mechanism, which could be included here as an additional safeguard.

D. Article-by-article remarks

Article 27. Methods of procurement [\[**hyperlink**\]](#).

14. The purpose of article 27 [\[**hyperlink**\]](#) is to list all methods and techniques available for procurement procedures provided for in the Model Law. Paragraph (1) lists these available methods of procurement.

15. Article 27 [\[**hyperlink**\]](#) contains a footnote advising enacting States that they ‘may choose not to incorporate all the methods of procurement listed in this article into their national legislation,’ and continues that ‘an appropriate range of options, including open tendering, should be always provided for.’ In other words, enacting States should always provide for open tendering, which is considered under the Model Law to be the method of the first resort (the default procurement method). This is because its procedures most closely support the achievement of the goals and objectives of the Model Law, through implementing the principles of competition, objectivity and transparency (as further discussed in ...). The procuring entity must therefore use this method unless the use of alternative methods of procurement (that is, all methods other than open tendering), is justified. As further elaborated in the commentary to article 28 [\[**hyperlink**\]](#), the main mechanism for justifying the use of alternative methods is through satisfying conditions for use of these alternative methods.

16. Although listed in paragraph (1)(i) as a stand-alone procurement method, electronic reverse auctions may also be used as a technique (similarly to framework agreements referred to in paragraph (2)), as the final phase preceding the award of the procurement contract in any method of procurement listed in paragraph (1), as well as in the award of procurement contracts under framework agreements.

17. Paragraph (2) refers to framework agreement procedures. The framework agreement procedure is not a method of procurement as such but a procurement technique consisting of the award of a framework agreement by means of the methods of procurement listed in paragraph (1), or through the conclusion of an open framework agreement, and of the subsequent placement of purchase orders under the awarded agreement.

Article 28. General rules applicable to the selection of a procurement method [\[**hyperlink**\]](#).

18. The purpose of article 28 [\[**hyperlink**\]](#) is to guide the procuring entity in selection of the procurement method available in the circumstances of any given procurement.

19. Paragraph (1) provides for the basic rule that open tendering is the default procurement method. There are no conditions for its use: it is always available. The implication of open tendering as the default procurement method is that the use of any other procurement method requires justification, through a consideration of whether the conditions for its use are satisfied. Paragraph (1) sets out therefore the general requirement that these other methods can be used only where the conditions for their use set out in articles 29-31 of the Model Law [\[**hyperlinks**\]](#) so permit. Thus the procuring entity does not have an unfettered discretion to choose which alternative to open tendering it wishes, but is required, as a first step, to see whether

it is available in the circumstances of the procurement at hand. The conditions for use contain safeguards in particular against abusive use of less structured and regulated methods of procurement to avoid open tendering or other methods of procurement that, although involving lengthier procedures, ensure more transparency, objectivity and competition.

20. As noted above, the conditions for use are intended to reflect the distinct and commonly encountered circumstances that may justify use of one or other of the alternative procurement methods. For example, one of the conditions justifying use of restricted tendering (article 29(1)(a)) [\[**hyperlink**\]](#) refers to the procurement of highly complex products where there are limited sources of supply. Where it is not feasible or appropriate to formulate a full description (including technical specifications) of the subject matter of the procurement at the outset of the procurement proceedings, two-stage tendering or request-for-proposals with dialogue may be appropriate. Where quality aspects may be highly significant (which is commonly the case in procurement of non-quantifiable, intellectual types of services), request-for-proposals without negotiations or with consecutive negotiations may be used. Competitive negotiations are intended for procurement involving national security issues and under situations of urgency, while resort to single-source procurement can be justified only on the listed and objective grounds (apart from situations of emergency, they include that there is only a single supplier in a given market capable of meeting the needs of the procuring entity).

21. Guidance on the conditions for use for each alternative procurement method under the Model Law is set out in [...], including, in each case, an explanation of the conditions for use for the method concerned. The guidance also considers some of the specific circumstances in which each method is available, and details of the procedures for each method (which themselves can have a bearing on the choice of procurement method). The conditions for use set out whether a particular procurement method or technique is available for a given procurement procedure, but such conditions alone will not answer the question of whether the method is appropriate for the procurement procedure under consideration.

22. The main reason why conditions for use do not provide a complete guide to choice of procurement method is that the conditions for use for more than one method may apply in the circumstances (in addition to open tendering, which is always available). What is the appropriate, or the most appropriate, procurement method can only be determined through a consideration of all the circumstances of the procurement. This is reflected in paragraph (2) of the article, which requires the procuring entity to select an alternative method of procurement to accommodate the circumstances of the given procurement. Such circumstances will differ from procurement to procurement and, as noted above in the commentary to article 27 [\[**hyperlink**\]](#), the procuring entity will need to possess appropriate professional knowledge, experience and skills to select the procurement method most suitable for the circumstances of the given procurement.

23. For example, in deciding whether to use open tendering, two-stage tendering or request-for-proposals with dialogue, the procuring entity must assess whether it wishes to retain control of the technical solution in the procurement of relatively complex subject-matter. Where it wishes to retain such control but also to refine the description and technical specifications issued at the outset of the procedure to achieve the best solution through discussions with suppliers, a two-stage tendering

procedure, rather than an open tendering procedure, may be the appropriate approach. (A consultancy may also precede the two-stage tendering procedure, to produce the design of the initial description and technical specifications.) Where the procuring entity cannot or considers it undesirable to retain such control, the request-for-proposals with dialogue procedure will be appropriate. The capacity required to operate request-for-proposals with dialogue, which involves the ability to assess and monitor different solutions, and to engage in dialogue on technical and commercial terms including price, is generally considered to be in excess of that required to operate two-stage tendering.

24. Paragraph (2) of the article requires the procuring entity, in addition, to “seek to maximize competition to the extent practicable” when selecting the procurement method. Competition in this context means, first, a preference for open solicitation to maximize the potential pool of participating suppliers, and, secondly, ensuring that the procedure does not restrict the number of participants below the number required to ensure that they in fact compete (and do not collude).

25. The requirement to maximize competition will determine the most appropriate method among those available in some situations. For example, in cases of urgency following a natural disaster or similar catastrophe, two methods are available under the Model Law: competitive negotiations and single-source procurement. The conditions for use of these methods are almost identical: they refer respectively to “an urgent” and “an extremely urgent” need for the subject matter of the procurement as a result of the catastrophe, in each case subject to the caveat that the urgency renders it impractical to use open tendering proceedings or any other method of procurement because of the time involved in using them. Although both competitive negotiations and single-source procurement are considered to provide less competition (as well as objectivity and transparency) than other procurement methods, it is clear that competition is to some degree present in competitive negotiations, and is essentially absent in single-source procurement. For this reason, only where there is an extreme degree of urgency can single-source procurement be justified: such as for the needs that arise in the immediate aftermath of the catastrophe (for example, for clean water, emergency food and shelter or immediate medical needs). Other needs, which may still arise as a direct result of the catastrophe, involve a time-frame that allows the use of competitive negotiations rather than single-source procurement (and, the further in time from the catastrophe, the less likely it is that either of these methods remains available because there will be time to use other methods). The guidance to both methods discusses this issue, and other steps that can be taken to mitigate the risks that they pose; the guidance to framework agreements also highlights the use of that technique as a manner of planning for emergencies.

26. Paragraph (3) of the article reinforces the need for justification for resort to alternative procurement methods by requiring that the statement of reasons and circumstances for such resort be included in the record of the procurement proceedings. The same requirement is repeated in article 25(1)(e) [\[**hyperlink**\]](#). The importance of such records is a key requirement that allows for the traceability of the decisions concerned, and their oversight as necessary.

Articles 29-32: Conditions for use of procurement methods

27. The commentary on the conditions for use for each procurement method has been located with the commentary on the procedures for each such method. The commentary can therefore be found as follows:

- (a) Open tendering [\[**hyperlink**\]](#);
- (b) Restricted tendering [\[**hyperlink**\]](#);
- (c) Request for quotations [\[**hyperlink**\]](#);
- (d) Request for proposals without negotiation [\[**hyperlink**\]](#);
- (e) Two-stage tendering [\[**hyperlink**\]](#);
- (f) Request for proposals with dialogue [\[**hyperlink**\]](#);
- (g) Request for proposals with consecutive negotiations [\[**hyperlink**\]](#);
- (h) Competitive negotiations [\[**hyperlink**\]](#);
- (i) Electronic reverse auction [\[**hyperlink**\]](#);
- (j) Single-source procurement [\[**hyperlink**\]](#); and
- (k) Framework agreements [\[**hyperlink**\]](#).

CHAPTER II, Part II — Solicitation and notices of the Procurement**Executive Summary**

28. Section II of Chapter II, comprising articles 33-35 of the Model Law, sets out the rules that govern solicitation in all procurement methods under the Model Law. The Model Law mandates unrestricted and public solicitation as the general rule. Such solicitation is required in open tendering under Chapter III, two-stage tendering under article 48, electronic reverse auctions under Chapter VI and open framework agreements under Chapter VII. It is also the default rule in request-for-proposals procurement methods under articles 47, 49 and 50. In other procurement methods, being restricted tendering under article 45, request-for-quotations under article 46, competitive negotiations under article 51 and single-source procurement under article 52 direct solicitation, which involves the issue of the invitation to participate to suppliers or contractors identified by the procuring entity, is an inherent feature of the procurement method. The commentary to each such method, however, sets out safeguards to ensure effective participation and competition in such procurement.

Enactment policy considerations and issues regarding implementation and use of provisions on solicitation

29. The issues regarding implementation and use of the provisions on solicitation are inextricably linked with the policy issues concerned, in that the main requirement for effective implementation and use is for a clear and detailed

explanation of the policy issues and how they delineate the elements of discretion involved in decisions regarding the manner of solicitation. For this reason, the issues are considered together in this section.

30. The default rule under the Model Law is for unrestricted and public solicitation, which involves an advertisement to invite participation in the procurement, the issue of the solicitation documents to all those that respond to the advertisement, and the full consideration of the qualifications and submissions of suppliers and contractors that submit tenders or other offers.

31. In order to promote transparency and competition, the first aspect of unrestricted and public solicitation (see, for example, paragraph (1) of article 33 [\[**hyperlink**\]](#)), involves minimum publicity procedures to be followed for soliciting tenders or other submissions from an audience wide enough to provide an effective level of competition. These procedures require the invitation to tender or to present other submissions to be advertised in a publication identified in the procurement regulations. The reasons for naming the publication in the procurement regulations rather than in the Model Law are to provide flexibility should procedures in an enacting State change, and also to ensure technical neutrality by avoiding a reference to a publication that requires a particular medium, as further explained in the commentary to articles 18 on pre-qualification and article 33 referred to above [\[**hyperlinks**\]](#). 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 be determined by enacting States. There may be paper or electronic media or combination of both, as further explained in the commentary to article 5 [\[**hyperlink**\]](#) .

32. In view of the objective of the Model Law of fostering and encouraging international participation in procurement proceedings, the second aspect of unrestricted and public solicitation is the additional publication of the invitation in international media: i.e. those with international circulation. These procedures are designed to ensure that the invitation is issued in such a manner that it will reach and be understood by an international audience of suppliers and contractors. In this regard, there is no requirement for the invitation to be published in any particular language, but it is implicit in the provisions for publication be made in a language that will make the invitation in fact accessible to all potential suppliers or contractors in the context of the procurement concerned. As noted in the commentary to article 13 [\[**hyperlink**\]](#), however, the requirements of certain multilateral development banks (MDBs) include that the invitation must be published in a language customarily used in international trade, which may in practice imply the use of English. Enacting States may wish to consider the extent to which following the requirements of the MDBs may be appropriate when adopting the provisions on solicitation. Furthermore, similar provisions on the language for publication of procurement-related information in the WTO Agreement on Government Procurement were considered to be an important safeguard towards achieving transparency and competition.

33. There are exceptions to this general rule, however. The first arises where the procuring entity engages in domestic procurement, and the second arises in cases of procurement whose low value, in the judgement of the procuring entity, means that

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.

34. The first exception — the use of domestic procurement — is possible, under article 8 of the Law [\[**hyperlink**\]](#), only on the grounds specified in the procurement regulations or in other provisions of law of the enacting State (see, further, the commentary to that article [\[**hyperlink**\]](#)). The second exemption — low-value procurement — relies largely on the judgement of the procuring entity. See, further, the commentary to articles 18 on pre-qualification and article 33 referred to above [\[**hyperlinks**\]](#).

35. The publication requirements in the Model Law are only minimum requirements. The procurement regulations may additionally require procuring entities to publish 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. 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.

36. The requirements for unrestricted and public solicitation do not apply to pre-qualification, but this is a technicality only, as article 18 on pre-qualification repeats the requirements for such solicitation as closely as possible (see, further, the commentary to article 18 [\[**hyperlink**\]](#)). The solicitation, where there have been pre-qualification proceedings, however, follows a different pattern: the invitation to tender or to present submissions follows those proceedings and is issued only to pre-qualified suppliers or contractors, under the provisions of article 18 [\[**hyperlink**\]](#) Wide international outreach to potentially interested suppliers and contractors is therefore ensured also when pre-qualification is involved, in the same way as in unrestricted and public solicitation.

37. The Model Law also provides for direct solicitation in several procurement methods: where the subject-matter of the procurement, by reason of its highly complex or specialized nature is available from a limited number of suppliers or contractors (in restricted tendering and request for proposals under articles 34(1)(a) and 35(2)(a) respectively [\[**hyperlinks**\]](#)); where the time and cost required to examine and evaluate a large number of tenders or other submissions would be disproportionate to the value of the procurement (in restricted tendering and request for proposals under articles 34(1)(a) and 35(2)(b) respectively [\[**hyperlinks**\]](#)); in request-for-proposals procedures involving classified information under article 34(2)(c) [\[**hyperlink**\]](#)); in request for quotations under article 34(2) [\[**hyperlink**\]](#)); in competitive negotiations under article 34(3) [\[**hyperlink**\]](#) and in single-source procurement under article 34(4) [\[**hyperlink**\]](#). In all cases, save as regards request-for-quotations, and competitive negotiations and single-source procurement in cases of urgency, direct solicitation must be preceded by an advance notice of the procurement, as explained in the following section, so as to introduce transparency into the process.

38. Because direct solicitation impedes the objectives of the Model Law of fostering and encouraging open participation in procurement proceedings by suppliers and contractors and promoting competition among them, the Model Law requires the procuring entity to include in the record of procurement proceedings a statement of the reasons and circumstances upon which it relied to justify the use of direct solicitation in request for proposals proceedings (see, for example, article 35(3) [\[**hyperlink**\]](#)). Together with the requirement for an advance notice of the procurement, discussed in the following section, this provision included to provide for transparency and accountability when direct solicitation is used.² Where the procurement takes place in a concentrated market, or on a repeated basis, an assessment should be made and recorded as to the likelihood of collusion before a decision to engage in direct solicitation is made (that is, at the outset of the procedure), bearing in mind, however, there may be fierce competition even in highly concentrated markets where the participants are known to each other.

Advance notice of the procurement

39. Articles 34(5) and 35(4) [\[**hyperlinks**\]](#) promote transparency and accountability as regards the decision to use the procurement methods set out in paragraph [10] above by requiring publication of a notice of the procurement in the media to be specified by the enacting State in its procurement law. Also relevant in this regard is the rule in article 28(3) (which is of general application) [\[**hyperlink**\]](#), read together with the provisions of article 25(1)(e) [\[**hyperlink**\]](#), which require the procuring entity to include in the record of procurement proceedings a statement of the grounds and circumstances relied upon to justify the selection of the procurement method concerned.

40. The provisions mandate the publication of a notice prior to the direct solicitation. The notice is therefore distinct from a public notice of the award of a procurement contract or framework agreement required under article 23 of the Model Law [\[**hyperlink**\]](#). Including the procedures described in these articles in the procurement law enables interested suppliers and contractors to identify, simply by reading the procurement law, publications that they may need to monitor in order to stay abreast of procurement opportunities in the enacting State and of the way those procurement opportunities are allocated in the market. The 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 [\[**Section/paragraphs**\]](#) [\[**\]](#) above are relevant.

41. The information to be published is the minimum needed to ensure effective public oversight and possible challenge by aggrieved suppliers or contractors under chapter VIII of the Model Law [\[**hyperlink**\]](#). In particular, the selected method of procurement may be challenged by any affected supplier or contractor if, for example, single-source procurement or restricted tendering were selected on the ground that a particular supplier or limited group of suppliers existed in the market and was or were capable of supplying the subject matter of the procurement. Any other suppliers or contractors capable of delivering the subject-matter of the procurement in the market concerned may challenge the use of the procurement

² Note to the Working Group and Commission: this paragraph was previously located in the commentary to solicitation for request-for-proposals procurement methods.

method relying on the information in the notice of the procurement. Under chapter VIII, they would be able to do so before the deadline for submission of tenders, and there may be a suspension of the procurement proceedings as a result. As is discussed in the commentary to chapter VIII, and in order to avoid vexatious challenges that can be highly disruptive when filed at the last minute, a challenging supplier or contractor has to show that its interests may or have been affected at the point in time concerned: thus, for example, it may have to show a real intention to participate in the circumstances described above (for example, by submitting a draft tender or other offer).

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

43. The requirement to publish an advance notice of the procurement is not applicable in request for quotations proceedings in the light of the very restrictive conditions for use of that method, which will constrain any excessive or abusive use of that method. Nor does it apply in the case of competitive negotiations and single-source procurement when those methods are used in urgent or extremely urgent situations due to catastrophic events (for example, under the conditions for use of these procurement methods under articles 30(4)(b) and 30(5)(b)). In the normal case, when an advance notice is in principle required, an exemption may nevertheless apply under article 24 (confidentiality), in particular in procurement involving classified information. (For the guidance on the relevant provisions of the Model Law on confidentiality and procurement involving classified information, see [\[**Section/paragraphs**\] \[**\]**](#) of the general commentary above [\[**hyperlink**\]](#); on issues of compliance and sanctions, see [\[**Sections/paragraphs** above\] \[**hyperlink**\]](#)).

Articles 33-35: Solicitation in each procurement method

44. The commentary on the particular issues arising regarding solicitation in each procurement method has been located with the introductory comments for each subsequent Chapter and the commentary on the procedures for each procurement method.

45. The commentary can therefore be found as follows:

- (a) Open tendering [\[**hyperlink**\]](#);
- (b) Restricted tendering [\[**hyperlink**\]](#);
- (c) Request for quotations [\[**hyperlink**\]](#);
- (d) Request for proposals without negotiation [\[**hyperlink**\]](#);
- (e) Two-stage tendering [\[**hyperlink**\]](#);
- (f) Request for proposals with dialogue [\[**hyperlink**\]](#);
- (g) Request for proposals with consecutive negotiations [\[**hyperlink**\]](#);

- (h) Competitive negotiations [\[**hyperlink**\]](#);
 - (i) Electronic reverse auction [\[**hyperlink**\]](#);
 - (j) Single-source procurement [\[**hyperlink**\]](#); and
 - (k) Framework agreements [\[**hyperlink**\]](#).
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