

# UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT\*

## *Preamble*

WHEREAS the [Government] [Parliament] of ... considers it desirable to regulate procurement so as to promote the objectives of:

- (a) Maximizing economy and efficiency in procurement;
- (b) Fostering and encouraging participation in procurement proceedings by suppliers and contractors regardless of nationality, thereby promoting international trade;
- (c) Promoting competition among suppliers and contractors for the supply of the subject matter of the procurement;
- (d) Providing for the fair, equal and equitable treatment of all suppliers and contractors;
- (e) Promoting the integrity of, and fairness and public confidence in, the procurement process;
- (f) Achieving transparency in the procedures relating to procurement.

Be it therefore enacted as follows:

## **Chapter I. General provisions**

### *Article 1*

#### *Scope of application*

This Law applies to all public procurement.

### *Article 2*

#### *Definitions*

For the purposes of this Law:

- (a) “Currency” includes the monetary unit of account;
- (b) “Direct solicitation” means solicitation addressed directly to one supplier or contractor or a restricted number of suppliers or contractors. This excludes solicitation addressed to a limited number of suppliers or contractors following pre-qualification or pre-selection proceedings;
- (c) “Domestic procurement” means procurement limited to domestic suppliers or contractors pursuant to article 8 of this Law;
- (d) “Electronic reverse auction” means an online real-time purchasing technique utilized by the procuring entity to select the successful submission, which involves the presentation by suppliers or contractors of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;

\* *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17), annex I.*

(e) “Framework agreement procedure” means a procedure conducted in two stages: a first stage to select a supplier (or suppliers) or a contractor (or contractors) to be a party (or parties) to a framework agreement with a procuring entity, and a second stage to award a procurement contract under the framework agreement to a supplier or contractor party to the framework agreement:

(i) “Framework agreement” means an agreement between the procuring entity and the selected supplier (or suppliers) or contractor (or contractors) concluded upon completion of the first stage of the framework agreement procedure;

(ii) “Closed framework agreement” means a framework agreement to which no supplier or contractor that is not initially a party to the framework agreement may subsequently become a party;

(iii) “Open framework agreement” means a framework agreement to which a supplier (or suppliers) or a contractor (or contractors) in addition to the initial parties may subsequently become a party or parties;

(iv) “Framework agreement procedure with second-stage competition” means a procedure under an open framework agreement or a closed framework agreement with more than one supplier or contractor in which certain terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded are to be established or refined through a second-stage competition;

(v) “Framework agreement procedure without second-stage competition” means a procedure under a closed framework agreement in which all terms and conditions of the procurement are established when the framework agreement is concluded;

(f) “Pre-qualification” means the procedure set out in article 18 of this Law to identify, prior to solicitation, suppliers or contractors that are qualified;

(g) “Pre-qualification documents” means documents issued by the procuring entity under article 18 of this Law that set out the terms and conditions of the pre-qualification proceedings;

(h) “Pre-selection” means the procedure set out in paragraph 3 of article 49 of this Law to identify, prior to solicitation, a limited number of suppliers or contractors that best meet the qualification criteria for the procurement concerned;

(i) “Pre-selection documents” means documents issued by the procuring entity under paragraph 3 of article 49 of this Law that set out the terms and conditions of the pre-selection proceedings;

(j) “Procurement” or “public procurement” means the acquisition of goods, construction or services by a procuring entity;

(k) “Procurement contract” means a contract concluded between the procuring entity and a supplier (or suppliers) or a contractor (or contractors) at the end of the procurement proceedings;

(l) “Procurement involving classified information” means procurement in which the procuring entity may be authorized by the procurement regulations or by

other provisions of law of this State to take measures and impose requirements for the protection of classified information;

(m) “Procurement regulations” means regulations enacted in accordance with article 4 of this Law;

(n) “Procuring entity” means:

*Option I*

(i) Any governmental department, agency, organ or other unit, or any subdivision or multiplicity thereof, that engages in procurement, except ...; [and]

*Option II*

(i) Any department, agency, organ or other unit, or any subdivision or multiplicity thereof, of the [Government] [*other term used to refer to the national Government of the enacting State*] that engages in procurement, except ...; [and]

(ii) [*The enacting State may insert in this subparagraph and, if necessary, in subsequent subparagraphs other entities or enterprises, or categories thereof, to be included in the definition of “procuring entity”*];

(o) “Socio-economic policies” means environmental, social, economic and other policies of this State authorized or required by the procurement regulations or other provisions of law of this State to be taken into account by the procuring entity in the procurement proceedings. [*The enacting State may expand this subparagraph by providing an illustrative list of such policies.*];

(p) “Solicitation” means an invitation to tender, present submissions or participate in request-for-proposals proceedings or an electronic reverse auction;

(q) “Solicitation document” means a document issued by the procuring entity, including any amendments thereto, that sets out the terms and conditions of the given procurement;

(r) “Standstill period” means the period starting from the dispatch of a notice as required by paragraph 2 of article 22 of this Law, during which the procuring entity cannot accept the successful submission and during which suppliers or contractors can challenge, under chapter VIII of this Law, the decision so notified;

(s) “A submission (or submissions)” means a tender (or tenders), a proposal (or proposals), an offer (or offers), a quotation (or quotations) and a bid (or bids) referred to collectively or generically, including, where the context so requires, an initial or indicative submission (or submissions);

(t) “Supplier or contractor” means, according to the context, any potential party or any party to the procurement proceedings with the procuring entity;

(u) “Tender security” means a security required from suppliers or contractors by the procuring entity and provided to the procuring entity to secure the fulfilment of any obligation referred to in paragraph 1 (f) of article 17 of this Law and includes such arrangements as bank guarantees, surety bonds, standby letters of credit,

cheques for which a bank is primarily liable, cash deposits, promissory notes and bills of exchange. For the avoidance of doubt, the term excludes any security for the performance of the contract.

### *Article 3*

*International obligations of this State relating to procurement [and intergovernmental agreements within [this State]]*<sup>1</sup>

To the extent that this Law conflicts with an obligation of this State under or arising out of any:

(a) Treaty or other form of agreement to which it is a party with one or more other States; [or]

(b) Agreement entered into by this State with an intergovernmental international financing institution[,] [; or]

[(c) Agreement between the federal Government of [name of federal State] and any subdivision or subdivisions of [name of federal State] or between any two or more such subdivisions,]

the requirements of the treaty or agreement shall prevail, but in all other respects the procurement shall be governed by this Law.

### *Article 4*

*Procurement regulations*

The [name of the organ or authority authorized to promulgate the procurement regulations] is authorized to promulgate procurement regulations to fulfil the objectives and to implement the provisions of this Law.

### *Article 5*

*Publication of legal texts*

1. This Law, the procurement regulations and other legal texts of general application in connection with procurement covered by this Law, and all amendments thereto, shall be promptly made accessible to the public and systematically maintained.

2. Judicial decisions and administrative rulings with precedent value in connection with procurement covered by this Law shall be made available to the public.

### *Article 6*

*Information on possible forthcoming procurement*

1. Procuring entities may publish information regarding planned procurement activities for forthcoming months or years.

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<sup>1</sup> The text in brackets in this article is relevant to, and intended for consideration by, federal States.

2. Procuring entities may also publish an advance notice of possible future procurement.
3. Publication under this article does not constitute a solicitation, does not oblige the procuring entity to issue a solicitation and does not confer any rights on suppliers or contractors.

#### *Article 7*

##### *Communications in procurement*

1. Any document, notification, decision or other information generated in the course of a procurement and communicated as required by this Law, including in connection with challenge proceedings under chapter VIII or in the course of a meeting, or forming part of the record of procurement proceedings under article 25 of this Law shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.
2. Direct solicitation and communication of information between suppliers or contractors and the procuring entity referred to in article 16, paragraph 1 (d) of article 17, paragraphs 6 and 9 of article 18, paragraph 2 (a) of article 41 and paragraphs 2 to 4 of article 50 of this Law may be made by means that do not provide a record of the content of the information, on the condition that immediately thereafter confirmation of the communication is given to the recipient of the communication in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.
3. The procuring entity, when first soliciting the participation of suppliers or contractors in the procurement proceedings, shall specify:
  - (a) Any requirement of form;
  - (b) In procurement involving classified information, if the procuring entity considers it necessary, measures and requirements needed to ensure the protection of classified information at the requisite level;
  - (c) The means to be used to communicate information by or on behalf of the procuring entity to a supplier or contractor or to any person, or by a supplier or contractor to the procuring entity or other entity acting on its behalf;
  - (d) The means to be used to satisfy all requirements under this Law for information to be in writing or for a signature; and
  - (e) The means to be used to hold any meeting of suppliers or contractors.
4. The procuring entity may use only those means of communication that are in common use by suppliers or contractors in the context of the particular procurement. In any meeting held with suppliers or contractors, the procuring entity shall use only those means that ensure in addition that suppliers or contractors can fully and contemporaneously participate in the meeting.
5. The procuring entity shall put in place appropriate measures to secure the authenticity, integrity and confidentiality of information concerned.

## *Article 8*

### *Participation by suppliers or contractors*

1. Suppliers or contractors shall be permitted to participate in procurement proceedings without regard to nationality, except where the procuring entity decides to limit participation in procurement proceedings on the basis of nationality on grounds specified in the procurement regulations or other provisions of law of this State.
2. Except when authorized or required to do so by the procurement regulations or other provisions of law of this State, the procuring entity shall establish no other requirement aimed at limiting the participation of suppliers or contractors in procurement proceedings that discriminates against or among suppliers or contractors or against categories thereof.
3. The procuring entity, when first soliciting the participation of suppliers or contractors in the procurement proceedings, shall declare whether the participation of suppliers or contractors in the procurement proceedings is limited pursuant to this article and on which ground. Any such declaration may not later be altered.
4. A procuring entity that decides to limit the participation of suppliers or contractors in procurement proceedings pursuant to this article shall include in the record of the procurement proceedings a statement of the reasons and circumstances on which it relied.
5. The procuring entity shall make available to any person, upon request, its reasons for limiting the participation of suppliers or contractors in the procurement proceedings pursuant to this article.

## *Article 9*

### *Qualifications of suppliers and contractors*

1. This article applies to the ascertainment by the procuring entity of the qualifications of suppliers or contractors at any stage of the procurement proceedings.
2. Suppliers or contractors shall meet such of the following criteria as the procuring entity considers appropriate and relevant in the circumstances of the particular procurement:
  - (a) That they have the necessary professional, technical and environmental qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the procurement contract;
  - (b) That they meet ethical and other standards applicable in this State;
  - (c) That they have the legal capacity to enter into the procurement contract;
  - (d) That they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing;

(e) That they have fulfilled their obligations to pay taxes and social security contributions in this State;

(f) That they have not, and their directors or officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of ... years [*the enacting State specifies the period of time*] preceding the commencement of the procurement proceedings, or have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings.

3. Subject to the right of suppliers or contractors to protect their intellectual property or trade secrets, the procuring entity may require suppliers or contractors participating in procurement proceedings to provide appropriate documentary evidence or other information to satisfy itself that the suppliers or contractors are qualified in accordance with the criteria referred to in paragraph 2 of this article.

4. Any requirement established pursuant to this article shall be set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents and shall apply equally to all suppliers or contractors. A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors other than those provided for in this Law.

5. The procuring entity shall evaluate the qualifications of suppliers or contractors in accordance with the qualification criteria and procedures set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents.

6. Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with article 8 of this Law, the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors that discriminates against or among suppliers or contractors or against categories thereof, or that is not objectively justifiable.

7. Notwithstanding paragraph 6 of this article, the procuring entity may require the legalization of documentary evidence provided by the supplier or contractor presenting the successful submission so as to demonstrate its qualifications for the particular procurement. In doing so, the procuring entity shall not impose any requirements as to the legalization of the documentary evidence other than those provided for in the laws of this State relating to the legalization of documents of the type in question.

8. (a) The procuring entity shall disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications of the supplier or contractor was false or constituted a misrepresentation;

(b) A procuring entity may disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications of the supplier or contractor was materially inaccurate or materially incomplete;

(c) Other than in a case to which subparagraph (a) of this paragraph applies, a procuring entity may not disqualify a supplier or contractor on the ground that information submitted concerning the qualifications of the supplier or contractor was inaccurate or incomplete in a non-material respect. The supplier or contractor

may, however, be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring entity;

(d) The procuring entity may require a supplier or contractor that was pre-qualified in accordance with article 18 of this Law to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify such supplier or contractor. The procuring entity shall disqualify any supplier or contractor that fails to demonstrate its qualifications again if requested to do so. The procuring entity shall promptly notify each supplier or contractor requested to demonstrate its qualifications again as to whether or not the supplier or contractor has done so to the satisfaction of the procuring entity.

#### *Article 10*

##### *Rules concerning description of the subject matter of the procurement and the terms and conditions of the procurement contract or framework agreement*

1. (a) The pre-qualification or pre-selection documents, if any, shall set out a description of the subject matter of the procurement;

(b) The procuring entity shall set out in the solicitation documents the detailed description of the subject matter of the procurement that it will use in the examination of submissions, including the minimum requirements that submissions must meet in order to be considered responsive and the manner in which those minimum requirements are to be applied.

2. Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with article 8 of this Law, no description of the subject matter of a procurement that may restrict the participation of suppliers or contractors in or their access to the procurement proceedings, including any restriction based on nationality, shall be included or used in the pre-qualification or pre-selection documents, if any, or in the solicitation documents.

3. The description of the subject matter of the procurement may include specifications, plans, drawings, designs, requirements, testing and test methods, packaging, marking or labelling or conformity certification, and symbols and terminology.

4. To the extent practicable, the description of the subject matter of the procurement shall be objective, functional and generic. It shall set out the relevant technical, quality and performance characteristics of that subject matter. There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement and provided that words such as “or equivalent” are included.

5. (a) Standardized features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the subject matter of the procurement shall be used, where available, in formulating the description of the subject matter of the procurement to be included in the pre-qualification or pre-selection documents, if any, and in the solicitation documents;

(b) Due regard shall be had for the use of standardized trade terms and standardized conditions, where available, in formulating the terms and conditions of



the procurement and the procurement contract or the framework agreement to be entered into in the procurement proceedings, and in formulating other relevant aspects of the pre-qualification or pre-selection documents, if any, and solicitation documents.

#### *Article 11*

##### *Rules concerning evaluation criteria and procedures*

1. Except for the criteria set out in paragraph 3 of this article, the evaluation criteria shall relate to the subject matter of the procurement.

2. The evaluation criteria relating to the subject matter of the procurement may include:

(a) Price;

(b) The cost of operating, maintaining and repairing goods or of construction; the time for delivery of goods, completion of construction or provision of services; the characteristics of the subject matter of the procurement, such as the functional characteristics of goods or construction and the environmental characteristics of the subject matter; and the terms of payment and of guarantees in respect of the subject matter of the procurement;

(c) Where relevant in procurement conducted in accordance with articles 47, 49 and 50 of this Law, the experience, reliability and professional and managerial competence of the supplier or contractor and of the personnel to be involved in providing the subject matter of the procurement.

3. In addition to the criteria set out in paragraph 2 of this article, the evaluation criteria may include:

(a) Any criteria that the procurement regulations or other provisions of law of this State authorize or require to be taken into account;

(b) A margin of preference for the benefit of domestic suppliers or contractors or for domestically produced goods, or any other preference, if authorized or required by the procurement regulations or other provisions of law of this State. The margin of preference shall be calculated in accordance with the procurement regulations.

4. To the extent practicable, all non-price evaluation criteria shall be objective, quantifiable and expressed in monetary terms.

5. The procuring entity shall set out in the solicitation documents:

(a) Whether the successful submission will be ascertained on the basis of price or price and other criteria;

(b) All evaluation criteria established pursuant to this article, including price as modified by any preference;

(c) The relative weights of all evaluation criteria, except where the procurement is conducted under article 49 of this Law, in which case the procuring entity may list all evaluation criteria in descending order of importance;

(d) The manner of application of the criteria in the evaluation procedure.

6. In evaluating submissions and determining the successful submission, the procuring entity shall use only those criteria and procedures that have been set out in the solicitation documents and shall apply those criteria and procedures in the manner that has been disclosed in those solicitation documents. No criterion or procedure shall be used that has not been set out in accordance with this provision.

#### *Article 12*

##### *Rules concerning estimation of the value of procurement*

1. A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to limit competition among suppliers or contractors or otherwise avoid its obligations under this Law.
2. In estimating the value of procurement, the procuring entity shall include the estimated maximum total value of the procurement contract or of all procurement contracts envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.

#### *Article 13*

##### *Rules concerning the language of documents*

1. The pre-qualification or pre-selection documents, if any, and the solicitation documents shall be formulated in [*the enacting State specifies its official language or languages*] [and in a language customarily used in international trade, unless decided otherwise by the procuring entity in the circumstances referred to in paragraph 4 of article 33 of this Law].
2. Applications to pre-qualify or for pre-selection, if any, and submissions may be formulated and presented in the language of the pre-qualification or pre-selection documents, if any, and solicitation documents, respectively, or in any other language permitted by those documents.

#### *Article 14*

##### *Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions*

1. The manner, place and deadline for presenting applications to pre-qualify or for pre-selection shall be set out in the invitation to pre-qualify or for pre-selection and in the pre-qualification or pre-selection documents, as applicable. The manner, place and deadline for presenting submissions shall be set out in the solicitation documents.
2. Deadlines for presenting applications to pre-qualify or for pre-selection or for presenting submissions shall be expressed as a specific date and time and shall allow sufficient time for suppliers or contractors to prepare and present their applications or submissions, taking into account the reasonable needs of the procuring entity.
3. If the procuring entity issues a clarification or modification of the pre-qualification, pre-selection or solicitation documents, it shall, prior to the applicable deadline for presenting applications to pre-qualify or for pre-selection or for presenting submissions, extend the deadline if necessary or as required under

paragraph 3 of article 15 of this Law in order to afford suppliers or contractors sufficient time to take the clarification or modification into account in their applications or submissions.

4. The procuring entity may, at its absolute discretion, prior to a deadline for presenting applications to pre-qualify or for pre-selection or for presenting submissions, extend the applicable deadline if it is not possible for one or more suppliers or contractors to present their applications or submissions by the deadline initially stipulated because of any circumstance beyond their control.

5. Notice of any extension of the deadline shall be given promptly to each supplier or contractor to which the procuring entity provided the pre-qualification, pre-selection or solicitation documents.

#### *Article 15*

##### *Clarifications and modifications of solicitation documents*

1. A supplier or contractor may request a clarification of the solicitation documents from the procuring entity. The procuring entity shall respond to any request by a supplier or contractor for clarification of the solicitation documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting submissions. The procuring entity shall respond within a time period that will enable the supplier or contractor to present its submission in a timely fashion and shall, without identifying the source of the request, communicate the clarification to all suppliers or contractors to which the procuring entity has provided the solicitation documents.

2. At any time prior to the deadline for presenting submissions, the procuring entity may for any reason, whether on its own initiative or as a result of a request for clarification by a supplier or contractor, modify the solicitation documents by issuing an addendum. The addendum shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the solicitation documents and shall be binding on those suppliers or contractors.

3. If as a result of a clarification or modification issued in accordance with this article, the information published when first soliciting the participation of suppliers or contractors in the procurement proceedings becomes materially inaccurate, the procuring entity shall cause the amended information to be published in the same manner and place in which the original information was published and shall extend the deadline for presentation of submissions as provided for in paragraph 3 of article 14 of this Law.

4. If the procuring entity convenes a meeting of suppliers or contractors, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all suppliers or contractors to which the procuring entity provided the solicitation documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their submissions.

## *Article 16*

### *Clarification of qualification information and of submissions*

1. At any stage of the procurement proceedings, the procuring entity may ask a supplier or contractor for clarification of its qualification information or of its submission, in order to assist in the ascertainment of qualifications or the examination and evaluation of submissions.
2. The procuring entity shall correct purely arithmetical errors that are discovered during the examination of submissions. The procuring entity shall give prompt notice of any such correction to the supplier or contractor that presented the submission concerned.
3. No substantive change to qualification information or to a submission, including changes aimed at making an unqualified supplier or contractor qualified or an unresponsive submission responsive, shall be sought, offered or permitted.
4. No negotiations shall take place between the procuring entity and a supplier or contractor with respect to qualification information or submissions, nor shall any change in price be made pursuant to a clarification that is sought under this article.
5. Paragraph 4 of this article shall not apply to proposals submitted under articles 49, 50, 51 and 52 of this Law.
6. All communications generated under this article shall be included in the record of the procurement proceedings.

## *Article 17*

### *Tender securities*

1. When the procuring entity requires suppliers or contractors presenting submissions to provide a tender security:
  - (a) The requirement shall apply to all suppliers or contractors;
  - (b) The solicitation documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring entity. In cases of domestic procurement, the solicitation documents may in addition stipulate that the tender security shall be issued by an issuer in this State;
  - (c) Notwithstanding the provisions of subparagraph (b) of this paragraph, a tender security shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in this State if the tender security and the issuer otherwise conform to requirements set out in the solicitation documents, unless the acceptance by the procuring entity of such a tender security would be in violation of a law of this State;
  - (d) Prior to presenting a submission, a supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer of a tender security or of a proposed confirmer, if required; the procuring entity shall respond promptly to such a request;
  - (e) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the tender security

on the ground that the issuer or the confirmer, as the case may be, has become insolvent or has otherwise ceased to be creditworthy;

(f) The procuring entity shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Any requirement that refers directly or indirectly to the conduct of the supplier or contractor presenting the submission may relate only to:

(i) Withdrawal or modification of the submission after the deadline for presenting submissions, or before the deadline if so stipulated in the solicitation documents;

(ii) Failure to sign a procurement contract if so required by the solicitation documents; and

(iii) Failure to provide a required security for the performance of the contract after the successful submission has been accepted or failure to comply with any other condition precedent to signing the procurement contract specified in the solicitation documents.

2. The procuring entity shall make no claim to the amount of the tender security and shall promptly return, or procure the return of, the security document after the earliest of the following events:

(a) The expiry of the tender security;

(b) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents;

(c) The cancellation of the procurement;

(d) The withdrawal of a submission prior to the deadline for presenting submissions, unless the solicitation documents stipulate that no such withdrawal is permitted.

#### *Article 18*

##### *Pre-qualification proceedings*

1. The procuring entity may engage in pre-qualification proceedings with a view to identifying, prior to solicitation, suppliers and contractors that are qualified. The provisions of article 9 of this Law shall apply to pre-qualification proceedings.

2. If the procuring entity engages in pre-qualification proceedings, it shall cause an invitation to pre-qualify to be published in the publication identified in the procurement regulations. Unless decided otherwise by the procuring entity in the circumstances referred to in paragraph 4 of article 33 of this Law, the invitation to pre-qualify shall also be published internationally, so as to be widely accessible to international suppliers or contractors.

3. The invitation to pre-qualify shall include the following information:

(a) The name and address of the procuring entity;

(b) A summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into in the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, the completion of the construction or the provision of the services;

(c) The criteria and procedures to be used for ascertaining the qualifications of suppliers or contractors, in conformity with article 9 of this Law;

(d) A declaration as required by article 8 of this Law;

(e) The means of obtaining the pre-qualification documents and the place where they may be obtained;

(f) The price, if any, to be charged by the procuring entity for the pre-qualification documents and, subsequent to pre-qualification, for the solicitation documents;

(g) If a price is to be charged, the means of payment for the pre-qualification documents and, subsequent to pre-qualification, for the solicitation documents, and the currency of payment;

(h) The language or languages in which the pre-qualification documents and, subsequent to pre-qualification, the solicitation documents are available;

(i) The manner, place and deadline for presenting applications to pre-qualify and, if already known, the manner, place and deadline for presenting submissions, in conformity with article 14 of this Law.

4. The procuring entity shall provide a set of pre-qualification documents to each supplier or contractor that requests them in accordance with the invitation to pre-qualify and that pays the price, if any, charged for those documents. The price that the procuring entity may charge for the pre-qualification documents shall reflect only the cost of providing them to suppliers or contractors.

5. The pre-qualification documents shall include the following information:

(a) Instructions for preparing and presenting pre-qualification applications;

(b) Any documentary evidence or other information that must be presented by suppliers or contractors to demonstrate their qualifications;

(c) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the pre-qualification proceedings without the intervention of an intermediary;

(d) References to this Law, the procurement regulations and other laws and regulations directly pertinent to the pre-qualification proceedings, and the place where those laws and regulations may be found;

(e) 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 applications to pre-qualify and to the pre-qualification proceedings.

6. The procuring entity shall respond to any request by a supplier or contractor for clarification of the pre-qualification documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting applications to pre-qualify. The procuring entity shall respond within a time period that will enable the supplier or contractor to present its application to pre-qualify in a timely fashion. The response to any request that might reasonably be expected to be of interest to other suppliers or contractors shall, without identifying the source of the request, be communicated to all suppliers or contractors to which the procuring entity has provided the pre-qualification documents.
7. The procuring entity shall take a decision with respect to the qualifications of each supplier or contractor presenting an application to pre-qualify. In reaching that decision, the procuring entity shall apply only the criteria and procedures set out in the invitation to pre-qualify and in the pre-qualification documents.
8. Only suppliers or contractors that have been pre-qualified are entitled to participate further in the procurement proceedings.
9. The procuring entity shall promptly notify each supplier or contractor presenting an application to pre-qualify whether or not it has been pre-qualified. It shall also make available to any person, upon request, the names of all suppliers or contractors that have been pre-qualified.
10. The procuring entity shall promptly communicate to each supplier or contractor that has not been pre-qualified the reasons therefor.

#### *Article 19*

##### *Cancellation of the procurement*

1. The procuring entity may cancel the procurement at any time prior to the acceptance of the successful submission and, after the successful submission is accepted, under the circumstances referred to in paragraph 8 of article 22 of this Law. The procuring entity shall not open any tenders or proposals after taking a decision to cancel the procurement.
2. The decision of the procuring entity to cancel the procurement and the reasons for the decision shall be included in the record of the procurement proceedings and promptly communicated to any supplier or contractor that presented a submission. The procuring entity shall in addition promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was published, and return any tenders or proposals that remain unopened at the time of the decision to the suppliers or contractors that presented them.
3. Unless the cancellation of the procurement is a consequence of irresponsible or dilatory conduct on the part of the procuring entity, the procuring entity shall incur no liability, solely by virtue of its invoking paragraph 1 of this article, towards suppliers or contractors that have presented submissions.

## *Article 20*

### *Rejection of abnormally low submissions*

1. The procuring entity may reject a submission if the procuring entity has determined that the price, in combination with other constituent elements of the submission, is abnormally low in relation to the subject matter of the procurement and raises concerns with the procuring entity as to the ability of the supplier or contractor that presented that submission to perform the procurement contract, provided that the procuring entity has taken the following actions:

(a) The procuring entity has requested in writing from the supplier or contractor details of the submission that gives rise to concerns as to the ability of the supplier or contractor to perform the procurement contract; and

(b) The procuring entity has taken account of any information provided by the supplier or contractor following this request and the information included in the submission, but continues, on the basis of all such information, to hold concerns.

2. The decision of the procuring entity to reject a submission in accordance with this article, the reasons for that decision, and all communications with the supplier or contractor under this article shall be included in the record of the procurement proceedings. The decision of the procuring entity and the reasons therefor shall be promptly communicated to the supplier or contractor concerned.

## *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*

1. A procuring entity shall exclude a supplier or contractor from the procurement proceedings if:

(a) The supplier or contractor offers, gives or agrees to give, directly or indirectly, to any current or former officer or employee of the procuring entity or other governmental authority a gratuity in any form, an offer of employment or any other thing of service or value, so as to influence an act or decision of, or procedure followed by, the procuring entity in connection with the procurement proceedings; or

(b) The supplier or contractor has an unfair competitive advantage or a conflict of interest, in violation of provisions of law of this State.

2. Any decision of the procuring entity to exclude a supplier or contractor from the procurement proceedings under this article and the reasons therefor shall be included in the record of the procurement proceedings and promptly communicated to the supplier or contractor concerned.



*Article 22*

*Acceptance of the successful submission and entry into force of the procurement contract*

1. The procuring entity shall accept the successful submission unless:
  - (a) The supplier or contractor presenting the successful submission is disqualified in accordance with article 9 of this Law;
  - (b) The procurement is cancelled in accordance with paragraph 1 of article 19 of this Law;
  - (c) The submission found successful at the end of evaluation is rejected as abnormally low under article 20 of this Law; or
  - (d) The supplier or contractor presenting the successful submission is excluded from the procurement proceedings on the grounds specified in article 21 of this Law.
2. The procuring entity shall promptly notify each supplier or contractor that presented submissions of its decision to accept the successful submission at the end of the standstill period. The notice shall contain, at a minimum, the following information:
  - (a) The name and address of the supplier or contractor presenting the successful submission;
  - (b) The contract price or, where the successful submission was ascertained on the basis of price and other criteria, the contract price and a summary of other characteristics and relative advantages of the successful submission; and
  - (c) The duration of the standstill period as set out in the solicitation documents and in accordance with the requirements of the procurement regulations. The standstill period shall run from the date of the dispatch of the notice under this paragraph to all suppliers or contractors that presented submissions.
3. Paragraph 2 of this article shall not apply to awards of procurement contracts:
  - (a) Under a framework agreement procedure without second-stage competition;
  - (b) Where the contract price is less than the threshold amount set out in the procurement regulations; or
  - (c) Where the procuring entity determines that urgent public interest considerations require the procurement to proceed without a standstill period. The decision of the procuring entity that such urgent considerations exist and the reasons for the decision shall be included in the record of the procurement proceedings.
4. Upon expiry of the standstill period or, where there is none, promptly after the successful submission was ascertained, the procuring entity shall dispatch the notice of acceptance of the successful submission to the supplier or contractor that presented that submission, unless the [*name of court or courts*] or the [*name of the relevant organ designated by the enacting State*] orders otherwise.
5. Unless a written procurement contract and/or approval by another authority is/are required, a procurement contract in accordance with the terms and conditions

of the successful submission enters into force when the notice of acceptance is dispatched to the supplier or contractor concerned, provided that the notice is dispatched while the submission is still in effect.

6. Where the solicitation documents require the supplier or contractor whose submission has been accepted to sign a written procurement contract conforming to the terms and conditions of the accepted submission:

(a) The procuring entity and the supplier or contractor concerned shall sign the procurement contract within a reasonable period of time after the notice of acceptance is dispatched to the supplier or contractor concerned;

(b) Unless the solicitation documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract enters into force when the contract is signed by the supplier or contractor concerned and by the procuring entity. Between the time when the notice of acceptance is dispatched to the supplier or contractor concerned and the entry into force of the procurement contract, neither the procuring entity nor that supplier or contractor shall take any action that interferes with the entry into force of the procurement contract or with its performance.

7. Where the solicitation documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract shall not enter into force before the approval is given. The solicitation documents shall specify the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval. A failure to obtain the approval within the time specified in the solicitation documents shall not extend the period of effectiveness of submissions specified in the solicitation documents or the period of effectiveness of the tender security required under article 17 of this Law, unless extended under the provisions of this Law.

8. If the supplier or contractor whose submission has been accepted fails to sign any written procurement contract as required or fails to provide any required security for the performance of the contract, the procuring entity may either cancel the procurement or decide to select the next successful submission from among those remaining in effect, in accordance with the criteria and procedures set out in this Law and in the solicitation documents. In the latter case, the provisions of this article shall apply *mutatis mutandis* to such submission.

9. Notices under this article are dispatched when they are promptly and properly addressed or otherwise directed and transmitted to the supplier or contractor or conveyed to an appropriate authority for transmission to the supplier or contractor by any reliable means specified in accordance with article 7 of this Law.

10. Upon the entry into force of the procurement contract and, if required, the provision by the supplier or contractor of a security for the performance of the contract, notice of the procurement contract shall be given promptly to other suppliers or contractors, specifying the name and address of the supplier or contractor that has entered into the contract and the contract price.

### *Article 23*

#### *Public notice of the award of a procurement contract or framework agreement*

1. Upon the entry into force of the procurement contract or conclusion of a framework agreement, the procuring entity shall promptly publish notice of the award of the procurement contract or the framework agreement, specifying the name of the supplier (or suppliers) or contractor (or contractors) to which the procurement contract or the framework agreement was awarded and, in the case of procurement contracts, the contract price.
2. Paragraph 1 is not applicable to awards where the contract price is less than the threshold amount set out in the procurement regulations. The procuring entity shall publish a cumulative notice of such awards from time to time but at least once a year.
3. The procurement regulations shall provide for the manner of publication of the notices required under this article.

### *Article 24*

#### *Confidentiality*

1. In its communications with suppliers or contractors or with any person, the procuring entity shall not disclose any information if non-disclosure of such information is necessary for the protection of essential security interests of the State or if disclosure of such information would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the suppliers or contractors or would impede fair competition, unless disclosure of that information is ordered by the [*name of the court or courts*] or the [*name of the relevant organ designated by the enacting State*] and, in such case, subject to the conditions of such an order.
2. Other than when providing or publishing information pursuant to paragraphs 2 and 10 of article 22 and to articles 23, 25 and 42 of this Law, the procuring entity shall treat applications to pre-qualify or for pre-selection and submissions in such a manner as to avoid the disclosure of their contents to competing suppliers or contractors or to any other person not authorized to have access to this type of information.
3. Any discussions, communications, negotiations or dialogue between the procuring entity and a supplier or contractor pursuant to paragraph 3 of article 48 and to articles 49 to 52 of this Law shall be confidential. Unless required by law or ordered by the [*name of the court or courts*] or the [*name of the relevant organ designated by the enacting State*], no party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to these discussions, communications, negotiations or dialogue without the consent of the other party.
4. Subject to the requirements in paragraph 1 of this article, in procurement involving classified information, the procuring entity may:
  - (a) Impose on suppliers or contractors requirements aimed at protecting classified information; and

(b) Demand that suppliers or contractors ensure that their sub-contractors comply with requirements aimed at protecting classified information.

*Article 25*

*Documentary record of procurement proceedings*

1. The procuring entity shall maintain a record of the procurement proceedings that includes the following information:

(a) A brief description of the subject matter of the procurement;

(b) The names and addresses of suppliers or contractors that presented submissions, the name and address of the supplier (or suppliers) or contractor (or contractors) with which the procurement contract is entered into and the contract price (and, in the case of a framework agreement procedure, the name and address of the supplier (or suppliers) or contractor (or contractors) with which the framework agreement is concluded);

(c) A statement of the reasons and circumstances relied upon by the procuring entity for the decision as regards means of communication and any requirement of form;

(d) In procurement proceedings in which the procuring entity, in accordance with article 8 of this Law, limits the participation of suppliers or contractors, a statement of the reasons and circumstances relied upon by the procuring entity for imposing such a limit;

(e) If the procuring entity uses a method of procurement other than open tendering, a statement of the reasons and circumstances relied upon by the procuring entity to justify the use of such other method;

(f) In the case of procurement by means of an electronic reverse auction or involving an electronic reverse auction as a phase preceding the award of the procurement contract, a statement of the reasons and circumstances relied upon by the procuring entity for the use of the auction and information about the date and time of the opening and closing of the auction;

(g) In the case of a framework agreement procedure, a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected;

(h) If the procurement is cancelled pursuant to paragraph 1 of article 19 of this Law, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision to cancel the procurement;

(i) If any socio-economic policies were considered in the procurement proceedings, details of such policies and the manner in which they were applied;

(j) If no standstill period was applied, a statement of the reasons and circumstances relied upon by the procuring entity in deciding not to apply a standstill period;

(k) In the case of a challenge or appeal under chapter VIII of this Law, a copy of the application for reconsideration or review and the appeal, as applicable,

and a copy of all decisions taken in the relevant challenge or appeal proceedings, or both, and the reasons therefor;

(l) A summary of any requests for clarification of the pre-qualification or pre-selection documents, if any, or of the solicitation documents and the responses thereto, as well as a summary of any modifications to those documents;

(m) Information relative to the qualifications, or lack thereof, of suppliers or contractors that presented applications to pre-qualify or for pre-selection, if any, or submissions;

(n) If a submission is rejected pursuant to article 20 of this Law, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;

(o) If a supplier or contractor is excluded from the procurement proceedings pursuant to article 21 of this Law, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;

(p) A copy of the notice of the standstill period given in accordance with paragraph 2 of article 22 of this Law;

(q) If the procurement proceedings resulted in the award of a procurement contract in accordance with paragraph 8 of article 22 of this Law, a statement to that effect and of the reasons therefor;

(r) The contract price and other principal terms and conditions of the procurement contract; where a written procurement contract has been concluded, a copy thereof. (In the case of a framework agreement procedure, in addition a summary of the principal terms and conditions of the framework agreement or a copy of any written framework agreement that was concluded);

(s) For each submission, the price and a summary of the other principal terms and conditions;

(t) A summary of the evaluation of submissions, including the application of any preference pursuant to paragraph 3 (b) of article 11 of this Law, and the reasons and circumstances on which the procuring entity relied to justify any rejection of bids presented during the auction;

(u) Where exemptions from disclosure of information were invoked under paragraph 1 of article 24 or under article 69 of this Law, the reasons and circumstances relied upon in invoking them;

(v) In procurement involving classified information, any requirements imposed on suppliers or contractors for the protection of classified information pursuant to paragraph 4 of article 24 of this Law; and

(w) Other information required to be included in the record in accordance with the provisions of this Law or the procurement regulations.

2. The portion of the record referred to in subparagraphs (a) to (k) of paragraph 1 of this article shall, on request, be made available to any person after the successful submission has been accepted or the procurement has been cancelled.

3. Subject to paragraph 4 of this article, or except as disclosed pursuant to paragraph 3 of article 42 of this Law, the portion of the record referred to in

subparagraphs (p) to (t) of paragraph 1 of this article shall, after the decision on acceptance of the successful submission has become known to them, be made available, upon request, to suppliers or contractors that presented submissions.

4. Except when ordered to do so by the [*name of court or courts*] or the [*name of the relevant organ designated by the enacting State*], and subject to the conditions of such an order, the procuring entity shall not disclose:

(a) Information from the record of the procurement proceedings if its non-disclosure is necessary for the protection of essential security interests of the State or if its disclosure would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the suppliers or contractors or would impede fair competition;

(b) Information relating to the examination and evaluation of submissions, other than the summary referred to in subparagraph (t) of paragraph 1 of this article.

5. The procurement entity shall record, file and preserve all documents relating to the procurement proceedings, according to procurement regulations or other provisions of law of this State.

#### *Article 26*

##### *Code of conduct*

A code of conduct for officers or employees of procuring entities shall be enacted. It shall address, inter alia, the prevention of conflicts of interest in procurement and, where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declarations of interest in particular procurements, screening procedures and training requirements. The code of conduct so enacted shall be promptly made accessible to the public and systematically maintained.

## **Chapter II. Methods of procurement and their conditions for use; solicitation and notices of the procurement**

### **Section I. Methods of procurement and their conditions for use**

#### *Article 27*

##### *Methods of procurement<sup>2</sup>*

1. The procuring entity may conduct procurement by means of:
  - (a) Open tendering;
  - (b) Restricted tendering;
  - (c) Request for quotations;

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<sup>2</sup> States may choose not to incorporate all the methods of procurement listed in this article into their national legislation, although an appropriate range of options, including open tendering, should be always provided for. On this question, see the Guide to Enactment of the UNCITRAL Model Law on Public Procurement (A/CN.9/...). States may consider whether, for certain methods of procurement, to include a requirement for high-level approval by a designated organ. On this question, see the Guide to Enactment.

- (d) Request for proposals without negotiation;
  - (e) Two-stage tendering;
  - (f) Request for proposals with dialogue;
  - (g) Request for proposals with consecutive negotiations;
  - (h) Competitive negotiations;
  - (i) Electronic reverse auction; and
  - (j) Single-source procurement.
2. The procuring entity may engage in a framework agreement procedure in accordance with the provisions of chapter VII of this Law.

#### *Article 28*

##### *General rules applicable to the selection of a procurement method*

1. Except as otherwise provided for in articles 29 to 31 of this Law, a procuring entity shall conduct procurement by means of open tendering.
2. A procuring entity may use a method of procurement other than open tendering only in accordance with articles 29 to 31 of this Law, shall select the other method of procurement to accommodate the circumstances of the procurement concerned and shall seek to maximize competition to the extent practicable.
3. If the procuring entity uses a method of procurement other than open tendering, it shall include in the record required under article 25 of this Law a statement of the reasons and circumstances upon which it relied to justify the use of that method.

#### *Article 29*

##### *Conditions for the use of methods of procurement under chapter IV of this Law (restricted tendering, requests for quotations and requests for proposals without negotiation)*

1. The procuring entity may engage in procurement by means of restricted tendering in accordance with article 45 of this Law when:
  - (a) The subject matter of the procurement, by reason of its highly complex or specialized nature, is available only from a limited number of suppliers or contractors; or
  - (b) The time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement.
2. A procuring entity may engage in procurement by means of a request for quotations in accordance with article 46 of this Law for the procurement of readily available goods or services that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market, so long as the estimated value of the procurement contract is less than the threshold amount set out in the procurement regulations.

3. The procuring entity may engage in procurement by means of request for proposals without negotiation in accordance with article 47 of this Law where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals.

#### *Article 30*

*Conditions for the use of methods of procurement under chapter V of this Law (two-stage tendering, requests for proposals with dialogue, requests for proposals with consecutive negotiations, competitive negotiations and single-source procurement)*

1. A procuring entity may engage in procurement by means of two-stage tendering in accordance with article 48 of this Law where:

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

(b) Open tendering was engaged in but no tenders were presented or the procurement was cancelled by the procuring entity pursuant to paragraph 1 of article 19 of this Law and where, in the judgement of the procuring entity, engaging in new open-tendering proceedings or a procurement method under chapter IV of this Law would be unlikely to result in a procurement contract.

2. [Subject to approval by the [*name of the organ designated by the enacting State to issue the approval*]],<sup>3</sup> a procuring entity may engage in procurement by means of request for proposals with dialogue in accordance with article 49 of this Law where:

(a) It is not feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement in accordance with article 10 of this Law, and the procuring entity assesses that dialogue with suppliers or contractors is needed to obtain the most satisfactory solution to its procurement needs;

(b) The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs;

(c) The procuring entity determines that the selected method is the most appropriate method of procurement for the protection of essential security interests of the State; or

(d) Open tendering was engaged in but no tenders were presented or the procurement was cancelled by the procuring entity pursuant to paragraph 1 of article 19 of this Law and where, in the judgement of the procuring entity, engaging

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<sup>3</sup> The enacting State may consider enacting the provisions in brackets if it wishes to subject the use of this procurement method to a measure of ex ante control.



in new open-tendering proceedings or a procurement method under chapter IV of this Law would be unlikely to result in a procurement contract.

3. A procuring entity may engage in procurement by means of request for proposals with consecutive negotiations in accordance with article 50 of this Law where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals, and it assesses that consecutive negotiations with suppliers or contractors are needed in order to ensure that the financial terms and conditions of the procurement contract are acceptable to the procuring entity.

4. A procuring entity may engage in competitive negotiations, in accordance with the provisions of article 51 of this Law, in the following circumstances:

(a) There is an urgent need for the subject matter of the procurement, and engaging in open-tendering proceedings or any other competitive method of procurement, because of the time involved in using those methods, would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;

(b) Owing to a catastrophic event, there is an urgent need for the subject matter of the procurement, making it impractical to use open-tendering proceedings or any other competitive method of procurement because of the time involved in using those methods; or

(c) The procuring entity determines that the use of any other competitive method of procurement is not appropriate for the protection of essential security interests of the State.

5. A procuring entity may engage in single-source procurement in accordance with the provisions of article 52 of this Law in the following exceptional circumstances:

(a) The subject matter of the procurement is available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights in respect of the subject matter of the procurement, such that no reasonable alternative or substitute exists, and the use of any other procurement method would therefore not be possible;

(b) Owing to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in any other method of procurement would be impractical because of the time involved in using those methods;

(c) The procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies must be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;

(d) The procuring entity determines that the use of any other method of procurement is not appropriate for the protection of essential security interests of the State; or

(e) [Subject to approval by the [*name of the organ designated by the enacting State to issue the approval*] and,] following public notice and adequate opportunity to comment, procurement from a particular supplier or contractor is necessary in order to implement a socio-economic policy of this State, provided that procurement from no other supplier or contractor is capable of promoting that policy.

#### *Article 31*

##### *Conditions for use of an electronic reverse auction*

1. A procuring entity may engage in procurement by means of an electronic reverse auction in accordance with the provisions of chapter VI of this Law, under the following conditions:

(a) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;

(b) There is a competitive market of suppliers or contractors anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; and

(c) The criteria to be used by the procuring entity in determining the successful submission are quantifiable and can be expressed in monetary terms.

2. A procuring entity may use an electronic reverse auction as a phase preceding the award of the procurement contract in a procurement method, as appropriate under the provisions of this Law. It may also use an electronic reverse auction for award of a procurement contract in a framework agreement procedure with second-stage competition in accordance with the provisions of this Law. An electronic reverse auction under this paragraph may be used only where the conditions of paragraph 1 (c) of this article are satisfied.

#### *Article 32*

##### *Conditions for use of a framework agreement procedure*

1. A procuring entity may engage in a framework agreement procedure in accordance with chapter VII of this Law where it determines that:

(a) The need for the subject matter of the procurement is expected to arise on an indefinite or repeated basis during a given period of time; or

(b) By virtue of the nature of the subject matter of the procurement, the need for that subject matter may arise on an urgent basis during a given period of time.

2. The procuring entity shall include in the record required under article 25 of this Law a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected.

## **Section II. Solicitation and notices of the procurement**

### *Article 33*

#### *Solicitation in open tendering, two-stage tendering and procurement by means of an electronic reverse auction*

1. An invitation to tender in open tendering or two-stage tendering and an invitation to an electronic reverse auction under article 53 of this Law shall be published in the publication identified in the procurement regulations.
2. The invitation shall also be published internationally, so as to be widely accessible to international suppliers or contractors.
3. The provisions of this article shall not apply where the procuring entity engages in pre-qualification proceedings in accordance with article 18 of this Law.
4. The procuring entity shall not be required to cause the invitation to be published in accordance with paragraph 2 of this article in domestic procurement and in procurement proceedings where the procuring entity decides, in view of the low value of the subject matter of the procurement, that only domestic suppliers or contractors are likely to be interested in presenting submissions.

### *Article 34*

#### *Solicitation in restricted tendering, request for quotations, competitive negotiations and single-source procurement: requirement for an advance notice of the procurement*

1. (a) When the procuring entity engages in procurement by means of restricted tendering on the grounds specified in paragraph 1 (a) of article 29 of this Law, it shall solicit tenders from all suppliers and contractors from which the subject matter of the procurement is available;  
  
(b) When the procuring entity engages in procurement by means of restricted tendering on the grounds specified in paragraph 1 (b) of article 29 of this Law, it shall select suppliers or contractors from which to solicit tenders in a non-discriminatory manner, and it shall select a sufficient number of suppliers or contractors to ensure effective competition.
2. Where the procuring entity engages in procurement by means of request for quotations in accordance with paragraph 2 of article 29 of this Law, it shall request quotations from as many suppliers or contractors as practicable, but from at least three.
3. Where the procuring entity engages in procurement by means of competitive negotiations in accordance with paragraph 4 of article 30 of this Law, it shall engage in negotiations with a sufficient number of suppliers or contractors to ensure effective competition.
4. Where the procuring entity engages in single-source procurement in accordance with paragraph 5 of article 30 of this Law, it shall solicit a proposal or price quotation from a single supplier or contractor.

5. Prior to direct solicitation in accordance with the provisions of paragraphs 1, 3 and 4 of this article, the procuring entity shall cause a notice of the procurement to be published in the publication identified in the procurement regulations. The notice shall contain at a minimum the following information:

(a) The name and address of the procuring entity;

(b) A summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into in the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, the completion of the construction or the provision of the services;

(c) A declaration pursuant to article 8 of this Law; and

(d) The method of procurement to be used.

6. The requirements of paragraph 5 of this article shall not apply in cases of urgent need as referred to in paragraphs 4 (a), 4 (b) and 5 (b) of article 30 of this Law.

#### *Article 35*

##### *Solicitation in request-for-proposals proceedings*

1. An invitation to participate in request-for-proposals proceedings shall be published in accordance with paragraphs 1 and 2 of article 33 of this Law, except where:

(a) The procuring entity engages in pre-qualification proceedings in accordance with article 18 of this Law or in pre-selection proceedings in accordance with paragraph 3 of article 49 of this Law;

(b) The procuring entity engages in direct solicitation under the conditions set out in paragraph 2 of this article; or

(c) The procuring entity decides not to cause the invitation to be published in accordance with paragraph 2 of article 33 of this Law in the circumstances referred to in paragraph 4 of article 33 of this Law.

2. The procuring entity may engage in direct solicitation in request-for-proposals proceedings if:

(a) The subject matter to be procured is available from only a limited number of suppliers or contractors, provided that the procuring entity solicits proposals from all those suppliers or contractors;

(b) The time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the subject matter to be procured, provided that the procuring entity solicits proposals from a sufficient number of suppliers or contractors to ensure effective competition and selects suppliers or contractors from which to solicit proposals in a non-discriminatory manner; or

(c) The procurement involves classified information, provided that the procuring entity solicits proposals from a sufficient number of suppliers or contractors to ensure effective competition.

3. The procuring entity shall include in the record required under article 25 of this Law a statement of the reasons and circumstances upon which it relied to justify the use of direct solicitation in request-for-proposals proceedings.

4. The procuring entity shall cause a notice of the procurement to be published in accordance with the requirements set out in paragraph 5 of article 34 of this Law when it engages in direct solicitation in request-for-proposals proceedings.

## **Chapter III. Open tendering**

### **Section I. Solicitation of tenders**

#### *Article 36*

##### *Procedures for soliciting tenders*

The procuring entity shall solicit tenders by causing an invitation to tender to be published in accordance with the provisions of article 33 of this Law.

#### *Article 37*

##### *Contents of invitation to tender*

The invitation to tender shall include the following information:

(a) The name and address of the procuring entity;

(b) A summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, the completion of the construction or the provision of the services;

(c) A summary of the criteria and procedures to be used for ascertaining the qualifications of suppliers or contractors, and of any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications, in conformity with article 9 of this Law;

(d) A declaration pursuant to article 8 of this Law;

(e) The means of obtaining the solicitation documents and the place where they may be obtained;

(f) The price, if any, to be charged by the procuring entity for the solicitation documents;

(g) If a price is to be charged for the solicitation documents, the means and currency of payment;

- (h) The language or languages in which the solicitation documents are available;
- (i) The manner, place and deadline for presenting tenders.

#### *Article 38*

##### *Provision of solicitation documents*

The procuring entity shall provide the solicitation documents to each supplier or contractor that responds to the invitation to tender in accordance with the procedures and requirements specified therein. If pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of solicitation documents to each supplier or contractor that has been pre-qualified and that pays the price, if any, charged for those documents. The price that the procuring entity may charge for the solicitation documents shall reflect only the cost of providing them to suppliers or contractors.

#### *Article 39*

##### *Contents of solicitation documents*

The solicitation documents shall include the following information:

- (a) Instructions for preparing tenders;
- (b) The criteria and procedures, in conformity with the provisions of article 9 of this Law, that will be applied in the ascertainment of the qualifications of suppliers or contractors and in any further demonstration of qualifications pursuant to paragraph 5 of article 43 of this Law;
- (c) The requirements as to documentary evidence or other information that must be presented by suppliers or contractors to demonstrate their qualifications;
- (d) A detailed description of the subject matter of the procurement, in conformity with article 10 of this Law; the quantity of the goods; the 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;
- (e) The terms and conditions of the procurement contract, to the extent that they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;
- (f) If alternatives to the characteristics of the subject matter of the procurement, the contractual terms and conditions or other requirements set out in the solicitation documents are permitted, a statement to that effect and a description of the manner in which alternative tenders are to be evaluated;
- (g) If suppliers or contractors are permitted to present tenders for only a portion of the subject matter of the procurement, a description of the portion or portions for which tenders may be presented;
- (h) The manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost

of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;

(i) The currency or currencies in which the tender price is to be formulated and expressed;

(j) The language or languages, in conformity with article 13 of this Law, in which tenders are to be prepared;

(k) Any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by suppliers or contractors presenting tenders in accordance with article 17 of this Law, and any such requirements for any security for the performance of the procurement contract to be provided by the supplier or contractor that enters into the procurement contract, including securities such as labour and material bonds;

(l) If a supplier or contractor may not modify or withdraw its tender prior to the deadline for presenting tenders without forfeiting its tender security, a statement to that effect;

(m) The manner, place and deadline for presenting tenders, in conformity with article 14 of this Law;

(n) The means by which, pursuant to article 15 of this Law, suppliers or contractors may seek clarification of the solicitation documents and a statement as to whether the procuring entity intends to convene a meeting of suppliers or contractors at this stage;

(o) The period of time during which tenders shall be in effect, in conformity with article 41 of this Law;

(p) The manner, place, date and time for the opening of tenders, in conformity with article 42 of this Law;

(q) The criteria and procedure for examining tenders against the description of the subject matter of the procurement;

(r) The criteria and procedure for evaluating tenders in accordance with article 11 of this Law;

(s) The currency that will be used for the purpose of evaluating tenders pursuant to paragraph 4 of article 43 of this Law and either the exchange rate that will be used for the conversion of tender prices into that currency or a statement that the rate published by a specified financial institution and prevailing on a specified date will be used;

(t) 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 place where those laws and regulations may be found;

(u) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings without the intervention of an intermediary;

(v) Notice of the right provided under article 64 of this Law to challenge or appeal decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefor;

(w) Any formalities that will be required, once a successful tender has been accepted, for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by another authority pursuant to article 22 of this Law, and the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval;

(x) Any other requirements established by the procuring entity in conformity with this Law and the procurement regulations relating to the preparation and presentation of tenders and to other aspects of the procurement proceedings.

## **Section II. Presentation of tenders**

### *Article 40*

#### *Presentation of tenders*

1. Tenders shall be presented in the manner, at the place and by the deadline specified in the solicitation documents.
2. (a) A tender shall be presented in writing, signed and:
  - (i) If in paper form, in a sealed envelope; or
  - (ii) If in any other form, according to the requirements specified by the procuring entity in the solicitation documents, which shall ensure at least a similar degree of authenticity, security, integrity and confidentiality;
- (b) The procuring entity shall provide to the supplier or contractor a receipt showing the date and time when its tender was received;
- (c) The procuring entity shall preserve the security, integrity and confidentiality of a tender and shall ensure that the content of the tender is examined only after it is opened in accordance with this Law.
3. A tender received by the procuring entity after the deadline for presenting tenders shall not be opened and shall be returned unopened to the supplier or contractor that presented it.

### *Article 41*

#### *Period of effectiveness of tenders; modification and withdrawal of tenders*

1. Tenders shall be in effect during the period of time specified in the solicitation documents.
2. (a) Prior to the expiry of the period of effectiveness of tenders, the procuring entity may request suppliers or contractors to extend the period for an additional specified period of time. A supplier or contractor may refuse the request without forfeiting its tender security;



(b) Suppliers or contractors that agree to an extension of the period of effectiveness of their tenders shall extend or procure an extension of the period of effectiveness of tender securities provided by them or provide new tender securities to cover the extended period of effectiveness of their tenders. A supplier or contractor whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.

3. Unless otherwise stipulated in the solicitation documents, a supplier or contractor may modify or withdraw its tender prior to the deadline for presenting tenders without forfeiting its tender security. The modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for presenting tenders.

### **Section III. Evaluation of tenders**

#### *Article 42*

##### *Opening of tenders*

1. Tenders shall be opened at the time specified in the solicitation documents as the deadline for presenting tenders. They shall be opened at the place and in accordance with the manner and procedures specified in the solicitation documents.

2. All suppliers or contractors that have presented tenders, or their representatives, shall be permitted by the procuring entity to participate in the opening of tenders.

3. The name and address of each supplier or contractor whose tender is opened and the tender price shall be announced to those persons present at the opening of tenders, communicated on request to suppliers or contractors that have presented tenders but that are not present or represented at the opening of tenders, and included immediately in the record of the procurement proceedings required by article 25 of this Law.

#### *Article 43*

##### *Examination and evaluation of tenders*

1. (a) Subject to subparagraph (b) of this paragraph, the procuring entity shall regard a tender as responsive if it conforms to all requirements set out in the solicitation documents in accordance with article 10 of this Law;

(b) The procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the solicitation documents or if it contains errors or oversights that can be corrected without touching on the substance of the tender. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of tenders.

2. The procuring entity shall reject a tender:

(a) If the supplier or contractor that presented the tender is not qualified;

(b) If the supplier or contractor that presented the tender does not accept a correction of an arithmetical error made pursuant to article 16 of this Law;

- (c) If the tender is not responsive;
  - (d) In the circumstances referred to in article 20 or 21 of this Law.
3. (a) The procuring entity shall evaluate the tenders that have not been rejected in order to ascertain the successful tender, as defined in subparagraph (b) of this paragraph, in accordance with the criteria and procedures set out in the solicitation documents. No criterion or procedure shall be used that has not been set out in the solicitation documents;
- (b) The successful tender shall be:
    - (i) Where price is the only award criterion, the tender with the lowest tender price; or
    - (ii) Where there are price and other award criteria, the most advantageous tender ascertained on the basis of the criteria and procedures for evaluating tenders specified in the solicitation documents in accordance with article 11 of this Law.
4. When tender prices are expressed in two or more currencies, for the purpose of evaluating and comparing tenders, the tender prices of all tenders shall be converted to the currency specified in the solicitation documents according to the rate set out in those documents, pursuant to subparagraph (s) of article 39 of this Law.
5. Whether or not it has engaged in pre-qualification proceedings pursuant to article 18 of this Law, the procuring entity may require the supplier or contractor presenting the tender that has been found to be the successful tender pursuant to paragraph 3 (b) of this article to demonstrate its qualifications again, in accordance with criteria and procedures conforming to the provisions of article 9 of this Law. The criteria and procedures to be used for such further demonstration shall be set out in the solicitation documents. Where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.
6. If the supplier or contractor presenting the successful tender is requested to demonstrate its qualifications again in accordance with paragraph 5 of this article but fails to do so, the procuring entity shall reject that tender and shall select the next successful tender from among those remaining in effect, in accordance with paragraph 3 of this article, subject to the right of the procuring entity to cancel the procurement in accordance with paragraph 1 of article 19 of this Law.

#### *Article 44*

##### *Prohibition of negotiations with suppliers or contractors*

No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a tender presented by the supplier or contractor.

## **Chapter IV. Procedures for restricted tendering, requests for quotations and requests for proposals without negotiation**

### *Article 45*

#### *Restricted tendering*

1. The procuring entity shall solicit tenders in accordance with the provisions of paragraphs 1 and 5 of article 34 of this Law.
2. The provisions of chapter III of this Law, except for articles 36 to 38, shall apply to restricted-tendering proceedings.

### *Article 46*

#### *Request for quotations*

1. The procuring entity shall request quotations in accordance with the provisions of paragraph 2 of article 34 of this Law. Each supplier or contractor from which a quotation is requested shall be informed whether any elements other than the charges for the subject matter of the procurement itself, 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.

### *Article 47*

#### *Request for proposals without negotiation*

1. The procuring entity shall solicit proposals by causing an invitation to participate in the request-for-proposals-without-negotiation proceedings to be published in accordance with paragraph 1 of article 35 of this Law, unless an exception provided for in that article applies.
2. The invitation shall include:
  - (a) The name and address of the procuring entity;
  - (b) A detailed description of the subject matter of the procurement, in conformity with article 10 of this Law, and the desired or required time and location for the provision of such subject matter;
  - (c) The terms and conditions of the procurement contract, to the extent that they are already known to the procuring entity, and the form of the contract, 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, quality and performance 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, to be charged by the procuring entity for the request for proposals;

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

(j) The language or languages in which the request for proposals is available;

(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 paragraph 1 of article 35 of this Law, to each supplier or contractor responding 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 18 of this Law;

(c) In the case of direct solicitation under paragraph 2 of article 35 of this Law, to each supplier or contractor selected by the procuring entity;

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.

4. The request for proposals shall include, in addition to the information referred to in subparagraphs (a) to (e) and (k) of paragraph 2 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, quality and performance 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;

(c) The currency or currencies in which the proposal price is to be formulated and expressed, 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 and prevailing on a specified date will be used;

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

(e) The means by which, pursuant to article 15 of this Law, suppliers or contractors may seek clarification of the request for proposals, and a statement as to whether the procuring entity intends to convene a meeting of suppliers or contractors at this stage;

(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 place where those laws and regulations may be found;

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

(h) Notice of the right provided under article 64 of this Law to challenge or appeal decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefor;

(i) Any formalities that will be required, once the successful 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 another authority pursuant to article 22 of this Law, and the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval;

(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.

5. Before opening the envelopes containing the financial aspects of the proposals, the procuring entity shall examine and evaluate the technical, quality and performance 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, quality and performance characteristics of the proposals shall immediately be included in the record of the procurement proceedings.

7. The proposals whose technical, quality and performance characteristics fail to meet the relevant minimum requirements shall be considered to be non-responsive

and shall be rejected on that ground. A notice of rejection and the reasons for the rejection, together with the unopened envelope containing the financial aspects of the proposal, shall promptly be dispatched to each respective supplier or contractor whose proposal was rejected.

8. The proposals whose technical, quality and performance 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, quality and performance 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, quality and performance 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.

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: (a) the criteria other than price specified in the request for proposals; and (b) the price.

## **Chapter V. Procedures for two-stage tendering, requests for proposals with dialogue, requests for proposals with consecutive negotiations, competitive negotiations and single-source procurement**

### *Article 48*

#### *Two-stage tendering*

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

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

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

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

(b) In revising the relevant terms and conditions of the procurement, the procuring entity may not modify the subject matter of the procurement but may refine aspects of the description of the subject matter of the procurement by:

(i) Deleting or modifying any aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided and adding any new characteristics that conform to the requirements of this Law;

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

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

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

(e) The final tenders shall be evaluated in order to ascertain the successful tender as defined in paragraph 3 (b) of article 43 of this Law.

#### *Article 49*

##### *Request for proposals with dialogue*

1. The procuring entity shall solicit proposals by causing an invitation to participate in the request-for-proposals-with-dialogue proceedings to be published in accordance with paragraph 1 of article 35 of this Law, unless an exception provided for in that article applies.

2. The invitation shall include:

(a) The name and address of the procuring entity;

(b) A description of the subject matter of the procurement, to the extent known, and the desired or required time and location for the provision of such subject matter;

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

(d) The intended stages of the procedure;

(e) 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;

(f) The minimum requirements 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;

(g) A declaration pursuant to article 8 of this Law;

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

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

(j) If a price is to be charged for the request for proposals, the means and currency of payment;

(k) The language or languages in which the request for proposals is available;

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

3. For the purpose of limiting the number of suppliers or contractors from which to request proposals, the procuring entity may engage in pre-selection proceedings. The provisions of article 18 of this Law shall apply *mutatis mutandis* to the pre-selection proceedings, except to the extent that those provisions are derogated from in this paragraph:

(a) The procuring entity shall specify in the pre-selection documents that it will request proposals from only a limited number of pre-selected suppliers or contractors that best meet the qualification criteria specified in the pre-selection documents;

(b) The pre-selection documents shall set out the maximum number of pre-selected suppliers or contractors from which the proposals will be requested and the manner in which the selection of that number will be carried out. In establishing such a limit, the procuring entity shall bear in mind the need to ensure effective competition;

(c) The procuring entity shall rate the suppliers or contractors that meet the criteria specified in the pre-selection documents according to the manner of rating that is set out in the invitation to pre-selection and the pre-selection documents;

(d) The procuring entity shall pre-select suppliers or contractors that acquired the best rating, up to the maximum number indicated in the pre-selection documents but at least three, if possible;

(e) The procuring entity shall promptly notify each supplier or contractor whether it has been pre-selected and shall, upon request, communicate to suppliers or contractors that have not been pre-selected the reasons therefor. It shall make available to any person, upon request, the names of all suppliers or contractors that have been pre-selected.



4. The procuring entity shall issue the request for proposals:

(a) Where an invitation to participate in the request-for-proposals-with-dialogue proceedings has been published in accordance with the provisions of paragraph 1 of article 35 of this Law, to each supplier or contractor responding 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 18 of this Law;

(c) Where pre-selection proceedings have been engaged in, to each pre-selected supplier or contractor in accordance with the procedures and requirements specified in the pre-selection documents;

(d) In the case of direct solicitation under paragraph 2 of article 35 of this Law, to each supplier or contractor selected by the procuring entity;

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.

5. The request for proposals shall include, in addition to the information referred to in paragraphs 2 (a) to (f) and (l) of this article, the following information:

(a) Instructions for preparing and presenting proposals;

(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;

(c) The currency or currencies in which the proposal price is to be formulated and expressed, 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 and prevailing on a specified date will be used;

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

(e) The means by which, pursuant to article 15 of this Law, suppliers or contractors may seek clarification of the request for proposals and a statement as to whether the procuring entity intends to convene a meeting of suppliers or contractors at this stage;

(f) Any element of the description of the subject matter of the procurement or term or condition of the procurement contract that will not be the subject of dialogue during the procedure;

(g) Where the procuring entity intends to limit the number of suppliers or contractors that it will invite to participate in the dialogue, the minimum number of suppliers or contractors, which shall be not lower than three, if possible, and, where appropriate, the maximum number of suppliers or contractors and the criteria and

procedure, in conformity with the provisions of this Law, that will be followed in selecting either number;

(h) The criteria and procedure for evaluating the proposals in accordance with article 11 of this Law;

(i) 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 place where those laws and regulations may be found;

(j) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings without the intervention of an intermediary;

(k) Notice of the right provided under article 64 of this Law to challenge or appeal decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefor;

(l) Any formalities that will be required, once the successful offer has been accepted, for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by another authority pursuant to article 22 of this Law, and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval;

(m) 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.

6. (a) The procuring entity shall examine all proposals received against the established minimum requirements and shall reject each proposal that fails to meet these minimum requirements on the ground that it is non-responsive;

(b) Where a maximum limit on the number of suppliers or contractors that can be invited to participate in the dialogue has been established and the number of responsive proposals exceeds that limit, the procuring entity shall select the maximum number of responsive proposals in accordance with the criteria and procedure specified in the request for proposals;

(c) A notice of rejection and the reasons for the rejection shall be promptly dispatched to each respective supplier or contractor whose proposal was rejected.

7. The procuring entity shall invite each supplier or contractor that presented a responsive proposal, within any applicable maximum, to participate in the dialogue. The procuring entity shall ensure that the number of suppliers or contractors invited to participate in the dialogue, which shall be at least three, if possible, is sufficient to ensure effective competition.

8. The dialogue shall be conducted by the same representatives of the procuring entity on a concurrent basis.

9. During the course of the dialogue, the procuring entity shall not modify the subject matter of the procurement, any qualification or evaluation criterion, any minimum requirements established pursuant to paragraph 2 (f) of this article, any element of the description of the subject matter of the procurement or any term or condition of the procurement contract that is not subject to the dialogue as specified in the request for proposals.

10. Any requirements, guidelines, documents, clarifications or other information generated during the dialogue that is communicated by the procuring entity to a supplier or contractor shall be communicated at the same time and on an equal basis to all other participating suppliers or contractors, unless such information is specific or exclusive to that supplier or contractor or such communication would be in breach of the confidentiality provisions of article 24 of this Law.

11. Following the dialogue, the procuring entity shall request all suppliers or contractors remaining in the proceedings to present a best and final offer with respect to all aspects of their proposals. The request shall be in writing and shall specify the manner, place and deadline for presenting best and final offers.

12. No negotiations shall take place between the procuring entity and suppliers or contractors with respect to their best and final offers.

13. The successful offer shall be the offer that best meets the needs of the procuring entity as determined in accordance with the criteria and procedure for evaluating the proposals set out in the request for proposals.

#### *Article 50*

##### *Request for proposals with consecutive negotiations*

1. The provisions of paragraphs 1 to 7 of article 47 of this Law shall apply mutatis mutandis to procurement conducted by means of request for proposals with consecutive negotiations, except to the extent that those provisions are derogated from in this article.

2. Proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive. The procuring entity shall rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposals and shall:

(a) Promptly communicate to each supplier or contractor presenting a responsive proposal the score of the technical, quality and performance characteristics of its respective proposal and its ranking;

(b) Invite the supplier or contractor that has attained the best ranking, in accordance with those criteria and procedure, for negotiations on the financial aspects of its proposal; and

(c) Inform other suppliers or contractors that presented responsive proposals that their proposals may be considered for negotiation if negotiations with the supplier (or suppliers) or contractor (or contractors) with a better ranking do not result in a procurement contract.

3. If it becomes apparent to the procuring entity that the negotiations with the supplier or contractor invited pursuant to paragraph 2 (b) of this article will not result in a procurement contract, the procuring entity shall inform that supplier or contractor that it is terminating the negotiations.

4. The procuring entity shall then invite for negotiations the supplier or contractor that attained the second-best ranking; if the negotiations with that supplier or contractor do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors still participating in the procurement proceedings for negotiations on the basis of their ranking until it arrives at a procurement contract or rejects all remaining proposals.

5. During the course of the negotiations, the procuring entity shall not modify the subject matter of the procurement; any qualification, examination or evaluation criterion, including any established minimum requirements; any element of the description of the subject matter of the procurement; or term or condition of the procurement contract other than financial aspects of proposals that are subject to the negotiations as specified in the request for proposals.

6. The procuring entity may not reopen negotiations with any supplier or contractor with which it has terminated negotiations.

#### *Article 51*

##### *Competitive negotiations*

1. Paragraphs 3, 5 and 6 of article 34 of this Law shall apply to the procedure preceding the negotiations.

2. Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that is communicated by the procuring entity to a supplier or contractor before or during the negotiations shall be communicated at the same time and on an equal basis to all other suppliers or contractors engaging in negotiations with the procuring entity relative to the procurement, unless such information is specific or exclusive to that supplier or contractor or such communication would be in breach of the confidentiality provisions of article 24 of this Law.

3. Following completion of negotiations, the procuring entity shall request all suppliers or contractors remaining in the proceedings to present, by a specified date, a best and final offer with respect to all aspects of their proposals.

4. No negotiations shall take place between the procuring entity and suppliers or contractors with respect to their best and final offers.

5. The successful offer shall be the offer that best meets the needs of the procuring entity.

#### *Article 52*

##### *Single-source procurement*

Paragraphs 4 to 6 of article 34 of this Law shall apply to the procedure preceding the solicitation of a proposal or price quotation from a single supplier or contractor. The procuring entity shall engage in negotiations with the supplier or contractor

from which a proposal or price quotation is solicited unless such negotiations are not feasible in the circumstances of the procurement concerned.

## **Chapter VI. Electronic reverse auctions**

### *Article 53*

#### *Electronic reverse auction as a stand-alone method of procurement*

1. The procuring entity shall solicit bids by causing an invitation to the electronic reverse auction to be published in accordance with article 33 of this Law. The invitation shall include:

- (a) The name and address of the procuring entity;
- (b) A detailed description of the subject matter of the procurement, in conformity with article 10 of this Law, and the desired or required time and location for the provision of such subject matter;
- (c) The terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;
- (d) A declaration pursuant to article 8 of this Law;
- (e) 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;
- (f) The criteria and procedure for examining bids against the description of the subject matter of the procurement;
- (g) The criteria and procedure for evaluating bids in accordance with article 11 of this Law, including any mathematical formula that will be used in the evaluation procedure during the auction;
- (h) The manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;
- (i) The currency or currencies in which the bid price is to be formulated and expressed;
- (j) The minimum number of suppliers or contractors required to register for the auction in order for the auction to be held, which shall be sufficient to ensure effective competition;
- [(k) If any limit on the number of suppliers or contractors that can be registered for the auction is imposed in accordance with paragraph 2 of this article, the relevant maximum number and the criteria and procedure, in conformity with paragraph 2 of this article, that will be followed in selecting it;]
- (l) How the auction can be accessed, including appropriate information regarding connection to the auction;

(m) The deadline by which suppliers or contractors must register for the auction and the requirements for registration;

(n) The date and time of the opening of the auction and the requirements for identification of bidders at the opening of the auction;

(o) The criteria governing the closing of the auction;

(p) Other rules for the conduct of the auction, including the information that will be made available to the bidders in the course of the auction, the language in which it will be made available and the conditions under which the bidders will be able to bid;

(q) 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 place where those laws and regulations may be found;

(r) The means by which suppliers or contractors may seek clarification of information relating to the procurement proceedings;

(s) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the procurement proceedings before and after the auction without the intervention of an intermediary;

(t) Notice of the right provided under article 64 of this Law to challenge or appeal decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefor;

(u) Any formalities that will be required after the auction for a procurement contract to enter into force, including, where applicable, ascertainment of qualifications or responsiveness in accordance with article 57 of this Law and the execution of a written procurement contract pursuant to article 22 of this Law;

(v) Any other requirements established by the procuring entity in conformity with this Law and the procurement regulations relating to the procurement proceedings.

[2. The procuring entity may impose a maximum limit on the number of suppliers or contractors that can be registered for the electronic reverse auction only to the extent that capacity constraints in its communications system so require, and shall select the suppliers or contractors to be so registered in a non-discriminatory manner. The procuring entity shall include a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum limit in the record required under article 25 of this Law.]

3. The procuring entity may decide, in the light of the circumstances of the given procurement, that the electronic reverse auction shall be preceded by an examination or evaluation of initial bids. In such case, the invitation to the auction shall, in addition to information listed in paragraph 1 of this article, include:

(a) An invitation to present initial bids, together with instructions for preparing initial bids;

(b) The manner, place and deadline for presenting initial bids.

4. Where the electronic reverse auction has been preceded by an examination or evaluation of initial bids, the procuring entity shall promptly after the completion of the examination or evaluation of initial bids:

(a) Dispatch the notice of rejection and reasons for rejection to each supplier or contractor whose initial bid was rejected;

(b) Issue an invitation to the auction to each qualified supplier or contractor whose initial bid is responsive, providing all information required to participate in the auction;

(c) Where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation, as relevant to the supplier or contractor to which the invitation is addressed.

#### *Article 54*

##### *Electronic reverse auction as a phase preceding the award of the procurement contract*

1. Where an electronic reverse auction is to be used as a phase preceding the award of the procurement contract in a procurement method, as appropriate, or in a framework agreement procedure with second-stage competition, the procuring entity shall notify suppliers or contractors when first soliciting their participation in the procurement proceedings that an auction will be held, and shall provide, in addition to other information required to be included under provisions of this Law, the following information about the auction:

(a) The mathematical formula that will be used in the evaluation procedure during the auction;

(b) How the auction can be accessed, including appropriate information regarding connection to the auction.

2. Before the electronic reverse auction is held, the procuring entity shall issue an invitation to the auction to all suppliers or contractors remaining in the proceedings, specifying:

(a) The deadline by which the suppliers or contractors must register for the auction and requirements for registration;

(b) The date and time of the opening of the auction and requirements for the identification of bidders at the opening of the auction;

(c) Criteria governing the closing of the auction;

(d) Other rules for the conduct of the auction, including the information that will be made available to the bidders during the auction and the conditions under which the bidders will be able to bid.

3. Where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation as relevant to the supplier or contractor to which the invitation is addressed.

#### *Article 55*

##### *Registration for the electronic reverse auction and the timing of the holding of the auction*

1. Confirmation of registration for the electronic reverse auction shall be communicated promptly to each registered supplier or contractor.
2. If the number of suppliers or contractors registered for the electronic reverse auction is insufficient to ensure effective competition, the procuring entity may cancel the auction. The cancellation of the auction shall be communicated promptly to each registered supplier or contractor.
3. The period of time between the issuance of the invitation to the electronic reverse auction and the auction shall be sufficiently long to allow suppliers or contractors to prepare for the auction, taking into account the reasonable needs of the procuring entity.

#### *Article 56*

##### *Requirements during the electronic reverse auction*

1. The electronic reverse auction shall be based on:
  - (a) Price, where the procurement contract is to be awarded to the lowest-priced bid; or
  - (b) Price and other criteria specified to suppliers or contractors under articles 53 and 54 of this Law, as applicable, where the procurement contract is to be awarded to the most advantageous bid.
2. During the auction:
  - (a) All bidders shall have an equal and continuous opportunity to present their bids;
  - (b) There shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to suppliers or contractors under articles 53 and 54 of this Law, as applicable;
  - (c) Each bidder must receive, instantaneously and on a continuous basis during the auction, sufficient information allowing it to determine the standing of its bid vis-à-vis other bids;
  - (d) There shall be no communication between the procuring entity and the bidders or among the bidders, other than as provided for in subparagraphs (a) and (c) of this paragraph.
3. The procuring entity shall not disclose the identity of any bidder during the auction.
4. The auction shall be closed in accordance with the criteria specified to suppliers or contractors under articles 53 and 54 of this Law, as applicable.



5. The procuring entity shall suspend or terminate the auction in the case of failures in its communication system that put at risk the proper conduct of the auction or for other reasons stipulated in the rules for the conduct of the auction. The procuring entity shall not disclose the identity of any bidder in the case of suspension or termination of the auction.

#### *Article 57*

##### *Requirements after the electronic reverse auction*

1. The bid that at the closure of the electronic reverse auction is the lowest-priced bid or the most advantageous bid, as applicable, shall be the successful bid.
2. In procurement by means of an auction that was not preceded by examination or evaluation of initial bids, the procuring entity shall ascertain after the auction the responsiveness of the successful bid and the qualifications of the supplier or contractor submitting it. The procuring entity shall reject that bid if it is found to be unresponsive or if the supplier or contractor submitting it is found unqualified. Without prejudice to the right of the procuring entity to cancel the procurement in accordance with paragraph 1 of article 19 of this Law, the procuring entity shall select the bid that was the next lowest-priced or next most advantageous bid at the closure of the auction, provided that that bid is ascertained to be responsive and the supplier or contractor submitting it is ascertained to be qualified.
3. Where the successful bid at the closure of the auction appears to the procuring entity to be abnormally low and gives rise to concerns on the part of the procuring entity as to the ability of the bidder that presented it to perform the procurement contract, the procuring entity may follow the procedures described in article 20 of this Law. If the procuring entity rejects the bid as abnormally low under article 20, it shall select the bid that at the closure of the auction was the next lowest-priced or next most advantageous bid. This provision is without prejudice to the right of the procuring entity to cancel the procurement in accordance with paragraph 1 of article 19 of this Law.

## **Chapter VII. Framework agreement procedures**

#### *Article 58*

##### *Award of a closed framework agreement*

1. The procuring entity shall award a closed framework agreement:
  - (a) By means of open-tendering proceedings, in accordance with provisions of chapter III of this Law, except to the extent that those provisions are derogated from in this chapter; or
  - (b) By means of other procurement methods, in accordance with the relevant provisions of chapters II, IV and V of this Law, except to the extent that those provisions are derogated from in this chapter.
2. The provisions of this Law regulating pre-qualification and the contents of the solicitation in the context of the procurement methods referred to in paragraph 1 of this article shall apply mutatis mutandis to the information to be provided to

suppliers or contractors when first soliciting their participation in a closed framework agreement procedure. The procuring entity shall in addition specify at that stage:

(a) That the procurement will be conducted as a framework agreement procedure, leading to a closed framework agreement;

(b) Whether the framework agreement is to be concluded with one or more than one supplier or contractor;

(c) If the framework agreement will be concluded with more than one supplier or contractor, any minimum or maximum limit on the number of suppliers or contractors that will be parties thereto;

(d) The form, terms and conditions of the framework agreement in accordance with article 59 of this Law.

3. The provisions of article 22 of this Law shall apply *mutatis mutandis* to the award of a closed framework agreement.

#### *Article 59*

##### *Requirements for closed framework agreements*

1. A closed framework agreement shall be concluded in writing and shall set out:

(a) The duration of the framework agreement, which shall not exceed the maximum duration established by the procurement regulations;

(b) The description of the subject matter of the procurement and all other terms and conditions of the procurement established when the framework agreement is concluded;

(c) To the extent that they are known, estimates of the terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded;

(d) Whether, in a closed framework agreement concluded with more than one supplier or contractor, there will be a second-stage competition to award a procurement contract under the framework agreement and, if so:

(i) A statement of the terms and conditions of the procurement that are to be established or refined through second-stage competition;

(ii) The procedures for and the anticipated frequency of any second-stage competition, and envisaged deadlines for presenting second-stage submissions;

(iii) The procedures and criteria to be applied during the second-stage competition, including the relative weight of such criteria and the manner in which they will be applied, in accordance with articles 10 and 11 of this Law. If the relative weights of the evaluation criteria may be varied during the second-stage competition, the framework agreement shall specify the permissible range;

(e) Whether the award of a procurement contract under the framework agreement will be to the lowest-priced or to the most advantageous submission; and

(f) The manner in which the procurement contract will be awarded.

2. A closed framework agreement with more than one supplier or contractor shall be concluded as one agreement between all parties unless:

(a) The procuring entity determines that it is in the interests of a party to the framework agreement that a separate agreement with any supplier or contractor party be concluded;

(b) The procuring entity includes in the record required under article 25 of this Law a statement of the reasons and circumstances on which it relied to justify the conclusion of separate agreements; and

(c) Any variation in the terms and conditions of the separate agreements for a given procurement is minor and concerns only those provisions that justify the conclusion of separate agreements.

3. The framework agreement shall contain, in addition to information specified elsewhere in this article, all information necessary to allow the effective operation of the framework agreement, including information on how the agreement and notifications of forthcoming procurement contracts thereunder can be accessed and appropriate information regarding connection, where applicable.

#### *Article 60*

##### *Establishment of an open framework agreement*

1. The procuring entity shall establish and maintain an open framework agreement online.

2. The procuring entity shall solicit participation in the open framework agreement by causing an invitation to become a party to the open framework agreement to be published following the requirements of article 33 of this Law.

3. The invitation to become a party to the open framework agreement shall include the following information:

(a) The name and address of the procuring entity establishing and maintaining the open framework agreement and the name and address of any other procuring entities that will have the right to award procurement contracts under the framework agreement;

(b) That the procurement will be conducted as a framework agreement procedure leading to an open framework agreement;

(c) The language (or languages) of the open framework agreement and all information about the operation of the agreement, including how the agreement and notifications of forthcoming procurement contracts thereunder can be accessed and appropriate information regarding connection;

(d) The terms and conditions for suppliers or contractors to be admitted to the open framework agreement, including:

(i) A declaration pursuant to article 8 of this Law;

[(ii) If any maximum limit on the number of suppliers or contractors that are parties to the open framework agreement is imposed in accordance with paragraph 7 of this article, the relevant number and the criteria and procedure,

in conformity with paragraph 7 of this article, that will be followed in selecting it;]

(iii) Instructions for preparing and presenting the indicative submissions necessary to become a party to the open framework agreement, including the currency or currencies and the language (or languages) to be used, as well as 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;

(iv) An explicit statement that suppliers or contractors may apply to become parties to the framework agreement at any time during the period of its operation by presenting indicative submissions, subject to any maximum limit on the number of suppliers or contractors and any declaration made pursuant to article 8 of this Law;

(e) Other terms and conditions of the open framework agreement, including all information required to be set out in the open framework agreement in accordance with article 61 of this Law;

(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 place where those laws and regulations may be found;

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

4. Suppliers or contractors may apply to become a party or parties to the framework agreement at any time during its operation by presenting indicative submissions to the procuring entity in compliance with the requirements of the invitation to become a party to the open framework agreement.

5. The procuring entity shall examine all indicative submissions received during the period of operation of the framework agreement within a maximum of ... working days [*the enacting State specifies the maximum period of time*], in accordance with the procedures set out in the invitation to become a party to the open framework agreement.

6. The framework agreement shall be concluded with all qualified suppliers or contractors that presented submissions unless their submissions have been rejected on the grounds specified in the invitation to become a party to the open framework agreement.

[7. The procuring entity may impose a maximum limit on the number of parties to the open framework agreement only to the extent that capacity limitations in its communications system so require, and shall select the suppliers or contractors to be parties to the open framework agreement in a non-discriminatory manner. The procuring entity shall include in the record required under article 25 of this Law a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum limit.]

8. The procuring entity shall promptly notify the suppliers or contractors whether they have become parties to the framework agreement and of the reasons for the rejection of their indicative submissions if they have not.

#### *Article 61*

##### *Requirements for open framework agreements*

1. An open framework agreement shall provide for second-stage competition for the award of a procurement contract under the agreement and shall include:

- (a) The duration of the framework agreement;
- (b) The description of the subject matter of the procurement and all other terms and conditions of the procurement known when the open framework agreement is established;
- (c) Any terms and conditions of the procurement that may be refined through second-stage competition;
- (d) The procedures and the anticipated frequency of second-stage competition;
- (e) Whether the award of procurement contracts under the framework agreement will be to the lowest-priced or the most advantageous submission;
- (f) The procedures and criteria to be applied during the second-stage competition, including the relative weight of the evaluation criteria and the manner in which they will be applied, in accordance with articles 10 and 11 of this Law. If the relative weights of the evaluation criteria may be varied during second-stage competition, the framework agreement shall specify the permissible range.

2. The procuring entity shall, during the entire period of operation of the open framework agreement, republish at least annually the invitation to become a party to the open framework agreement and shall in addition ensure unrestricted, direct and full access to the terms and conditions of the framework agreement and to any other necessary information relevant to its operation.

#### *Article 62*

##### *Second stage of a framework agreement procedure*

1. Any procurement contract under a framework agreement shall be awarded in accordance with the terms and conditions of the framework agreement and the provisions of this article.
2. A procurement contract under a framework agreement may be awarded only to a supplier or contractor that is a party to the framework agreement.
3. The provisions of article 22 of this Law, except for paragraph 2, shall apply to the acceptance of the successful submission under a framework agreement without second-stage competition.
4. In a closed framework agreement with second-stage competition and in an open framework agreement, the following procedures shall apply to the award of a procurement contract:

(a) The procuring entity shall issue a written invitation to present submissions, simultaneously to:

- (i) Each supplier or contractor party to the framework agreement; or
- (ii) Only to those suppliers or contractors parties to the framework agreement then capable of meeting the needs of that procuring entity in the subject matter of the procurement, provided that at the same time notice of the second-stage competition is given to all parties to the framework agreement so that they have the opportunity to participate in the second-stage competition;

(b) The invitation to present submissions shall include the following information:

- (i) A restatement of the existing terms and conditions of the framework agreement to be included in the anticipated procurement contract, a statement of the terms and conditions of the procurement that are to be subject to second-stage competition and further detail regarding those terms and conditions, where necessary;
- (ii) A restatement of the procedures and criteria for the award of the anticipated procurement contract, including their relative weight and the manner of their application;
- (iii) Instructions for preparing submissions;
- (iv) The manner, place and deadline for presenting submissions;
- (v) If suppliers or contractors are permitted to present submissions for only a portion of the subject matter of the procurement, a description of the portion or portions for which submissions may be presented;
- (vi) The manner in which the submission price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;
- (vii) Reference 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 place where those laws and regulations may be found;
- (viii) The name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the second-stage competition without the intervention of an intermediary;
- (ix) Notice of the right provided under article 64 of this Law to challenge or appeal decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefor;
- (x) Any formalities that will be required once a successful submission has been accepted for a procurement contract to enter into force, including, where

applicable, the execution of a written procurement contract pursuant to article 22 of this Law;

(xi) Any other requirements established by the procuring entity in conformity with this Law and the procurement regulations relating to the preparation and presentation of submissions and to other aspects of the second-stage competition;

(c) The procuring entity shall evaluate all submissions received and determine the successful submission in accordance with the evaluation criteria and the procedures set out in the invitation to present submissions;

(d) The procuring entity shall accept the successful submission in accordance with article 22 of this Law.

#### *Article 63*

##### *Changes during the operation of a framework agreement*

During the operation of a framework agreement, no change shall be allowed to the description of the subject matter of the procurement. Changes to other terms and conditions of the procurement, including to the criteria (and their relative weight and the manner of their application) and procedures for the award of the anticipated procurement contract, may occur only to the extent expressly permitted in the framework agreement.

## **Chapter VIII. Challenge proceedings<sup>4</sup>**

#### *Article 64*

##### *Right to challenge and appeal*

1. A supplier or contractor that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity with the provisions of this Law may challenge the decision or action concerned.

2. Challenge proceedings may be made by way of [an application for reconsideration to the procuring entity under article 66 of this Law, an application for review to the [*name of the independent body*] under article 67 of this Law or an application or appeal to the [*name of the court or courts*]].

[3. A supplier or contractor may appeal any decision taken in challenge proceedings under article 66 or 67 of this Law in the [*name of the court or courts*]].

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<sup>4</sup> Certain options are presented in this Chapter in square brackets. See the Guide to Enactment of the UNCITRAL Model Law on Public Procurement (A/CN.9/...) for guidance on those options.

## Article 65

### *Effect of a challenge*

1. The procuring entity shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned:

(a) Where it receives an application for reconsideration within the time limits specified in paragraph 2 of article 66;

(b) Where it receives notice of an application for review from the [name of the independent body] under paragraph 5 (b) of article 67; or

(c) Where it receives notice of an application or of an appeal from the [name of the court or courts].

2. The prohibition referred to in paragraph 1 shall lapse ... working days [the enacting State specifies the period] after the decision of the procuring entity, the [name of the independent body] or the [name of the court or courts] has been communicated to the applicant or appellant, as the case may be, to the procuring entity, where applicable, and to all other participants in the challenge proceedings.

3. (a) The procuring entity may at any time request the [name of the independent body] or the [name of the court or courts] to authorize it to enter into the procurement contract or framework agreement on the ground that urgent public interest considerations so justify;

(b) The [name of the independent body], upon consideration of such a request [, or of its own motion,] may authorize the procuring entity to enter into the procurement contract or framework agreement where it is satisfied that urgent public interest considerations so justify. The decision of the [name of the independent body] and the reasons therefor shall be made part of the record of the procurement proceedings, and shall promptly be communicated to the procuring entity, to the applicant, to all other participants in the challenge proceedings and to all other participants in the procurement proceedings.

## Article 66

### *Application for reconsideration before the procuring entity*

1. A supplier or contractor may apply to the procuring entity for a reconsideration of a decision or an action taken by the procuring entity in the procurement proceedings.

2. Applications for reconsideration shall be submitted to the procuring entity in writing within the following time periods:

(a) Applications for reconsideration of the terms of solicitation, pre-qualification or pre-selection or decisions or actions taken by the procuring entity in pre-qualification or pre-selection proceedings shall be submitted prior to the deadline for presenting submissions;

(b) Applications for reconsideration of other decisions or actions taken by the procuring entity in the procurement proceedings shall be submitted within the standstill period applied pursuant to paragraph 2 of article 22 of this Law, or, where



none has been applied, prior to the entry into force of the procurement contract or the framework agreement.

3. Promptly after receipt of the application, the procuring entity shall publish a notice of the application and shall, not later than three (3) working days after receipt of the application:

(a) Decide whether the application shall be entertained or dismissed and, if it is to be entertained, whether the procurement proceedings shall be suspended. The procuring entity may dismiss the application if it decides that the application is manifestly without merit, the application was not submitted within the deadlines set out in paragraph 2 of this article or the applicant is without standing. Such a dismissal constitutes a decision on the application;

(b) Notify all participants in the procurement proceedings to which the application relates about the submission of the application and its substance;

(c) Notify the applicant and all other participants in the procurement proceedings of its decision on whether the application is to be entertained or dismissed;

(i) If the application is to be entertained, the procuring entity shall in addition advise whether the procurement proceedings are suspended and, if so, the duration of the suspension;

(ii) If the application is to be dismissed or the procurement proceedings are not suspended, the procuring entity shall in addition advise the applicant of the reasons for its decision.

4. If the procuring entity does not give notice to the applicant as required in paragraphs 3 (c) and 8 of this article within the time-limit specified in paragraph 3 of this article, or if the applicant is dissatisfied with the decision so notified, the applicant may immediately thereafter commence proceedings [in the *[name of the independent body]* under article 67 of this Law or in the *[name of the court or courts]*]. Where such proceedings are commenced, the competence of the procuring entity to entertain the application ceases.

5. In taking its decision on an application that it has entertained, the procuring entity may overturn, correct, vary or uphold any decision or action taken in the procurement proceedings to which the application relates.

6. The decision of the procuring entity under paragraph 5 of this article shall be issued within ... working days [*the enacting State specifies the period*] after receipt of the application. The procuring entity shall immediately thereafter communicate the decision to the applicant, to all other participants in the challenge proceedings and to all other participants in the procurement proceedings.

7. If the procuring entity does not communicate its decision to the applicant in accordance with the requirements of paragraphs 6 and 8 of this article, the applicant is entitled immediately thereafter to commence proceedings [in the *[name of the independent body]* under article 67 of this Law or in the *[name of the court or courts]*]. Where such proceedings are commenced, the competence of the procuring entity to entertain the application ceases.

8. All decisions of the procuring entity under this article shall be in writing, shall state the action taken and the reasons therefor, and shall promptly be made part of the record of the procurement proceedings, together with the application received by the procuring entity under this article.

*Article 67*

*Application for review before an independent body*

1. A supplier or contractor may apply to the [*name of the independent body*] for review of a decision or an action taken by the procuring entity in the procurement proceedings, or of the failure of the procuring entity to issue a decision under article 66 of this Law within the time limits prescribed in that article.

2. Applications for review shall be submitted to the [*name of the independent body*] in writing within the following time periods:

(a) Applications for review of the terms of solicitation, pre-qualification or pre-selection or of decisions or actions taken by the procuring entity in pre-qualification or pre-selection proceedings shall be submitted prior to the deadline for presenting submissions;

(b) Applications for review of other decisions or actions taken by the procuring entity in the procurement proceedings shall be submitted:

(i) Within the standstill period applied pursuant to paragraph 2 of article 22 of this Law; or

(ii) Where no standstill period has been applied, within ... working days [*the enacting State specifies the period*] after the time when the applicant became aware of the circumstances giving rise to the application or when the applicant should have become aware of those circumstances, whichever is earlier, but not later than ... working days [*the enacting State specifies the period*] after the entry into force of the procurement contract or the framework agreement [or a decision to cancel the procurement];

(c) Notwithstanding subparagraph (b) (i) of this paragraph, a supplier or contractor may request the [*name of the independent body*] to entertain an application for review filed after the expiry of the standstill period, but not later than ... working days [*the enacting State specifies the period*] after the entry into force of the procurement contract or the framework agreement [or a decision to cancel the procurement], on the ground that the application raises significant public interest considerations. The [*name of the independent body*] may entertain the application where it is satisfied that significant public interest considerations so justify. The decision of the [*name of the independent body*] and the reasons therefor shall promptly be communicated to the supplier or contractor concerned;

(d) Applications for review of the failure of the procuring entity to issue a decision under article 66 of this Law within the time limits prescribed in that article shall be submitted within ... working days [*the enacting State specifies the period*] after the decision of the procuring entity should have been communicated to the applicant in accordance with the requirements of paragraphs 3, 6 and 8 of article 66 of this Law, as appropriate.

3. Following receipt of an application for review, the [*name of the independent body*] may, subject to the requirements of paragraph 4 of this article:

[(a)] Order the suspension of the procurement proceedings at any time before the entry into force of the procurement contract; [and

(b) Order the suspension of the performance of a procurement contract or the operation of a framework agreement that has entered into force;]

if and for as long as it finds such a suspension necessary to protect the interests of the applicant unless the [*name of the independent body*] decides that urgent public interest considerations require the procurement proceedings[, the procurement contract or the framework agreement, as applicable,] to proceed. The [*name of the independent body*] may also order that any suspension applied be extended or lifted, taking into account the aforementioned considerations.

4. The [*name of the independent body*] shall:

(a) Order the suspension of the procurement proceedings for a period of ten (10) working days where an application is received prior to the deadline for presenting submissions; and

(b) Order the suspension of the procurement proceedings [or the performance of a procurement contract or the operation of a framework agreement, as the case may be] where an application is received after the deadline for presenting submissions and where no standstill period has been applied;

unless the [*name of the independent body*] decides that urgent public interest considerations require the procurement proceedings[, the procurement contract or the framework agreement, as applicable,] to proceed.

5. Promptly upon receipt of the application, the [*name of the independent body*] shall:

(a) Suspend or decide not to suspend the procurement proceedings [or the performance of a procurement contract or the operation of a framework agreement, as the case may be] in accordance with paragraphs 3 and 4 of this article;

(b) Notify the procuring entity and all identified participants in the procurement proceedings to which the application relates of the application and its substance;

(c) Notify all identified participants in the procurement proceedings to which the application relates of its decision on suspension. Where the [*name of the independent body*] decides to suspend the procurement proceedings [or the performance of a procurement contract or the operation of a framework agreement, as the case may be], it shall in addition specify the period of the suspension. Where it decides not to suspend them, it shall provide the reasons for its decision to the applicant and to the procuring entity; and

(d) Publish a notice of the application.

6. The [*name of the independent body*] may dismiss the application and shall lift any suspension applied, where it decides that:

(a) The application is manifestly without merit or was not presented in compliance with the deadlines set out in paragraph 2 of this article; or

- (b) The applicant is without standing.

The [*name of the independent body*] shall promptly notify the applicant, the procuring entity and all other participants in the procurement proceedings of the dismissal and the reasons therefor and that any suspension in force is lifted. Such a dismissal constitutes a decision on the application.

7. The notices to the applicant, the procuring entity and other participants in the procurement proceedings under paragraphs 5 and 6 of this article shall be given no later than three (3) working days after receipt of the application.

8. Promptly upon receipt of a notice under paragraph 5 (b) of this article, the procuring entity shall provide the [*name of the independent body*] with effective access to all documents relating to the procurement proceedings in its possession, in a manner appropriate to the circumstances.

9. In taking its decision on an application that it has entertained, the [*name of the independent body*] may declare the legal rules or principles that govern the subject matter of the application, shall address any suspension in force and shall take one or more of the following actions, as appropriate:

(a) Prohibit the procuring entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Law;

(b) Require the procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Law to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Law;

[(c) Overturn in whole or in part an act or a decision of the procuring entity that is not in compliance with the provisions of this Law [other than any act or decision bringing the procurement contract or the framework agreement into force];

(d) Revise a decision by the procuring entity that is not in compliance with the provisions of this Law [other than any act or decision bringing the procurement contract or the framework agreement into force];

(e) Confirm a decision of the procuring entity;

(f) Overturn the award of a procurement contract or a framework agreement that has entered into force in a manner that is not in compliance with the provisions of this Law and, if notice of the award of the procurement contract or the framework agreement has been published, order the publication of notice of the overturning of the award;]

(g) Order that the procurement proceedings be terminated;

(h) Dismiss the application;

(i) Require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting an application as a result of an act or decision of, or procedure followed by, the procuring entity in the procurement proceedings that is not in compliance with the provisions of this Law, and for any loss or damages suffered[, which shall be limited to the costs of the preparation of the submission or the costs relating to the application, or both]; or

(j) Take such alternative action as is appropriate in the circumstances.

10. The decision of the [*name of the independent body*] under paragraph 9 of this article shall be issued within ... working days [*the enacting State specifies the period*] after receipt of the application. The [*name of the independent body*] shall immediately thereafter communicate the decision to the procuring entity, to the applicant, to all other participants in the application for review and to all other participants in the procurement proceedings.

11. All decisions of the [*name of the independent body*] under this article shall be in writing, shall state the action taken and the reasons therefor and shall promptly be made part of the record of the procurement proceedings, together with the application received by the [*name of the independent body*] under this article.

#### *Article 68*

##### *Rights of participants in challenge proceedings*

1. Any supplier or contractor participating in the procurement proceedings to which the application relates, as well as any governmental authority whose interests are or could be affected by the application, shall have the right to participate in challenge proceedings under articles 66 and 67 of this Law. A supplier or contractor duly notified of the proceedings that fails to participate in such proceedings is barred from subsequently challenging under articles 66 and 67 of this Law the decisions or actions that are the subject matter of the application.

2. The procuring entity shall have the right to participate in challenge proceedings under article 67 of this Law.

3. The participants in challenge proceedings under articles 66 and 67 of this Law shall have the right to be present, represented and accompanied at all hearings during the proceedings; the right to be heard; the right to present evidence, including witnesses; the right to request that any hearing take place in public; and the right to seek access to the record of the challenge proceedings subject to the provisions of article 69 of this Law.

#### *Article 69*

##### *Confidentiality in challenge proceedings*

No information shall be disclosed in challenge proceedings and no public hearing under articles 66 and 67 of this Law shall take place if so doing would impair the protection of essential security interests of the State, would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the suppliers or contractors or would impede fair competition.