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## United Nations Commission on International Trade Law

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

#### Note by the Secretariat

1. The Working Group completed its work on the revision of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (the “Model Law”)<sup>1</sup> at its nineteenth session (Vienna, 1-5 November 2010). At its twentieth session (New York, 14-18 March 2011), it began work on proposals for a revised Guide to Enactment. The Working Group noted its intention of submitting a working draft of the revised Guide emanating from the work of its twentieth session to the Commission, so as to assist the latter with its consideration of the draft revised Model Law at its forty-fourth session, in 2011 (A/CN.9/713, para. 138).

2. At its twentieth session, the Working Group had before it a working draft commentary to some sections of Part I (General remarks) of the Guide and to provisions of the Model Law on procurement methods in chapters IV and V (and related sections of chapter II) and on challenges and appeals in chapter VIII (A/CN.9/WG.I/WP.77 and addenda 1 to 9). The Working Group considered most of the text contained in those documents, but deferred the consideration of some elements of A/CN.9/WG.I/WP.77/Add.1 and those in A/CN.9/WG.I/WP.77/Add.2. The conclusions of the Working Group are reflected in the report of that session (A/CN.9/718).

3. The addenda (1 to 9) to this note set out a working draft commentary for the remaining provisions of the Model Law (chapters I, III, VI and VII and the

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<sup>1</sup> For the text of the Model Law, see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I (also published in the *Yearbook of the United Nations Commission on International Trade Law*, vol. XXV: 1994) (United Nations publication, Sales No. E.95.V.20), part three, annex I. The Model Law is available in electronic form at the UNCITRAL website: [www.uncitral.org/pdf/english/texts/procurem/ml-procurement/ml-procure.pdf](http://www.uncitral.org/pdf/english/texts/procurem/ml-procurement/ml-procure.pdf).



remaining provisions of chapter II). Together with the contents of document A/CN.9/WG.I/WP.77 and the addenda 1 to 9, they thus provide a working draft commentary to all provisions of the revised Model Law.

4. The working draft was prepared in accordance with the following guidelines of the Working Group: (a) to produce an initial draft of the general introductory part of the revised Guide, which would ultimately be used by legislators in deciding whether the revised Model Law should be enacted in their jurisdictions; (b) in preparing that general part, to highlight changes that had been made to the Model Law and reasons therefor; (c) to issue a draft text for the revised Guide on a group of articles or a chapter at or about the same time, to facilitate the discussions on the form and structure of the revised Guide; (d) to ensure that the text of the revised Guide was user-friendly and easily understandable by parliamentarians who were not procurement experts; (e) to address sensitive policy issues, such as best value for money, with caution; and (f) to minimize to the extent possible repetitions between the general part of the revised Guide and article-by-article commentary; where they were unavoidable, consistency should be ensured. It was agreed that the relative emphasis of the general part and article-by-article commentary of the revised Guide should be carefully considered (A/CN.9/713, para. 140). Additional guidance was provided to the Secretariat at the Working Group's twentieth session (see, in particular, A/CN.9/718, paras. 17-19).

5. The approach to drafting two parts of the Guide reflects the understanding that: (i) the purpose of the general part of the Guide is to explain the main policy considerations arising when enacting national legislation on public procurement, and the recommendations made by the Working Group, so as to put the article-by-article remarks that will follow the general part of the Guide into context; while (ii) the main purpose of the article-by-article commentary of the Guide is to guide not only legislators in enacting the provisions of the revised Model Law into national legislation but also regulators and procuring entities in implementing the provisions of the revised Model Law.

6. The guidance to the provisions regulating the methods and techniques of procurement is presented by procurement method and technique. This is because the relevant provisions are found in several places of the Model Law. The guidance consolidates the related provisions of chapters II and IV to VII. This manner of presenting guidance is thus different from the presentation of the article-by-article commentary that was a feature of the 1994 text, and is also followed in the commentary to other provisions of the revised Model Law. This new approach has been followed both for ease of reference and to allow legislators and other policymakers to consider how to enact the provisions on various methods and techniques of procurement to suit local circumstances (in the light of both the conditions for use and procedures for each method).

7. The working draft is submitted to the Commission to assist it with its consideration of the draft revised Model Law. It is not expected that the Commission will provide detailed comments on the working draft Guide itself. Also, additional sections and parts may be needed in the final Guide. In particular, it is expected that the Guide will be accompanied by annexes setting out practical materials, such as a glossary of terms used in the Model Law (equating them to alternatives in current use where appropriate), timetables and flow-charts, to assist practitioners in particular. At its twentieth session, the Working Group also

considered that a separate section may need to be added to the Guide describing the revisions made to the 1994 Model Law to assist users of that text in updating their legislation (A/CN.9/718, para. 50).

8. For ease of reference, the table below indicates the location of all current proposals for the Guide and their relation to the provisions of the Model Law.

<b>Proposals for the Guide</b>	<b>Document</b>	<b>Reference to the consideration in the Working Group</b>
PART I. GENERAL REMARKS	A/CN.9/WG.I/WP.77/Add.1-3  A/CN.9/731/Add.6, part A, and Add.8, part A	A/CN.9/718, paras. 21-27 and 116-136  -----
<b>PART II. ARTICLE-BY-ARTICLE COMMENTARY</b>		
Preamble	A/CN.9/731/Add.1	
<b>Chapter I. GENERAL PROVISIONS</b>		
Articles 1 to 7	A/CN.9/731/Add.1	-----
Articles 7 (continued) to 15	A/CN.9/731/Add.2	-----
Articles 16 to 22	A/CN.9/731/Add.3	-----
Articles 23 to 25	A/CN.9/731/Add.4	-----
<b>Chapter II. METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE. SOLICITATION AND NOTICES OF THE PROCUREMENT</b>		
Articles 26-27 (for articles 28 to 34, see below under guidance to alternative procurement methods and techniques)	A/CN.9/731/Add.4	-----
<b>Chapter III. OPEN TENDERING</b>		
Articles 35-43	A/CN.9/731/Add.5	-----

Proposals for the Guide	Document	Reference to the consideration in the Working Group
GUIDANCE TO ALTERNATIVE PROCUREMENT METHODS AND TECHNIQUES (the related provisions of chapters II, IV to VII)		
Restricted tendering (chapter II, articles 28(1) and 33 (1), (5) and (6), and chapter IV, article 44)	A/CN.9/WG.I/WP.77/Add.5, part A	A/CN.9/718, paras. 50-58
Request for quotations (chapter II, articles 28(2) and 33 (2), and chapter IV, article 45)	A/CN.9/WG.I/WP.77/Add.5, part B	A/CN.9/718, paras. 59-62
Request for proposals without negotiation (chapter II, articles 28 (3) and 34, and chapter IV, article 46)	A/CN.9/WG.I/WP.77/Add.6, part A	A/CN.9/718, paras. 63-77
Two-stage tendering (chapter II, articles 29 (1) and 32, and chapter V, article 47)	A/CN.9/WG.I/WP.77/Add.7	A/CN.9/718, paras. 82-96
Request for proposals with dialogue (chapter II, articles 29 (2) and 34, and chapter V, article 48)	A/CN.9/WG.I/WP.77/Add.8	A/CN.9/718, paras. 97-102
Request for proposals with consecutive negotiations (chapter II, articles 29 (3) and 34, and chapter V, article 49)	A/CN.9/WG.I/WP.77/Add.6, part B	A/CN.9/718, paras. 78-81
Competitive negotiations (chapter II, articles 29 (4) and 33 (3), (5) and (6), and chapter V, article 50)	A/CN.9/WG.I/WP.77/Add.9, part A	A/CN.9/718, paras. 103-106
Single-source procurement (chapter II, articles 29 (5) and 33 (4), (5) and (6), and chapter V, article 51)	A/CN.9/WG.I/WP.77/Add.9, part B	A/CN.9/718, paras. 107-115

<b>Proposals for the Guide</b>	<b>Document</b>	<b>Reference to the consideration in the Working Group</b>
Electronic reverse auctions (chapter II, articles 30 and 32, and chapter VI (articles 52-56))	A/CN.9/731/Add.6 and 7	-----
Framework agreement procedures (chapter II, article 31, and chapter VII (articles 57-62))	A/CN.9/731/Add.8 and 9	-----
CHAPTER VIII. CHALLENGES AND APPEALS		
Articles 63-69	A/CN.9/WGI/WP.77/Add.4	A/CN.9/718, paras. 28-49