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

Note by the Secretariat

Addendum

This addendum sets out a proposal for the Guide text to accompany to accompany Chapter V of the UNCITRAL Model Law on Public Procurement, comprising commentary on request-for-proposals consecutive negotiations (article 50), commentary on competitive negotiations (article 51), on single-source procurement (article 52) and on related articles in Chapter II (articles 30, 34 and 35).



**GUIDE TO ENACTMENT
OF
THE UNCITRAL MODEL LAW ON PUBLIC
PROCUREMENT**

Part II. Article-by-article commentary

Chapter V: Procedures for two-stage tendering, request-for-proposals with dialogue, request-for-proposals with consecutive negotiations, competitive negotiations and single-source procurement (continued)

B. Procurement methods (continued)

3. Request-for-proposals with consecutive negotiations

General description and policy considerations

1. The conditions for use and procedures of this method resemble those of the request-for-proposals without negotiation referred to in article 29 (3) of the Model Law. The difference between this procurement method and request-for-proposals without negotiation is in the need to hold negotiations on the financial aspects of the proposals, reflecting that it is appropriate for the procurement of items or services that are designed for the procuring entity, rather than for the procurement of items or services of a fairly standard nature. The request-for-proposals with consecutive negotiations procedure is thus appropriate for use in the procurement of more complex subject matter where holding negotiations on commercial or financial aspects of proposals is indispensable — there may be so many variables in these aspects of proposals that they cannot be all foreseen and specified at the outset of the procurement and must be refined and agreed upon during negotiations. Examples of the use of this method in practice include advisory services such as legal and financial, design, environmental studies, engineering works, and the provision of office space for government officials.

2. All stages in this procurement method preceding the stage of negotiations are the same as in the request-for-proposals without negotiation: the procuring entity sets a threshold on the basis of the quality and technical aspects of the proposals, and then ranks those proposals that are rated at and above the threshold, ensuring that the suppliers or contractors with whom it will negotiate are capable of providing the required subject matter of the procurement. The procuring entity then holds negotiations on financial aspects of the proposals first with the supplier or contractor that was ranked highest; if negotiations with that supplier are terminated, the procuring entity holds negotiations with the next highest-ranked supplier and so on, to the extent necessary, until it concludes a procurement contract with one of them. These negotiations are aimed at ensuring that the procuring entity obtains fair and reasonable financial proposals. The format of consecutive, as opposed to concurrent or simultaneous, negotiations has proved to be the most appropriate in the context of this procurement method in the light of the scope of negotiations

covering exclusively financial or commercial aspects of the proposals. When the need exists to negotiate on other aspects of proposals, this procurement method may not be used.

3. Request-for-proposals with consecutive negotiations is not reserved exclusively for the procurement of services. This approach is in conformity with the UNCITRAL decision not to base the selection of procurement method on whether it is goods, works or services that are procured but rather in order to accommodate the circumstances of the given procurement and to maximize competition to the extent practicable (article 28(2)) [\[**hyperlink**\]](#) (for the relevant guidance, see Section [** of the commentary to Chapter II, Part I above \[**hyperlink**\]](#)). Enacting States should be aware, nevertheless, that some multilateral development banks recommend the use of the procurement method with features of the request-for-proposals with consecutive negotiations as provided for in the Model Law for the procurement of advisory services (i.e. those with an intellectual output). The method has traditionally been widely used in such type of procurement. Such banks may not authorize the use of this method in other circumstances, at least as regards projects financed by them.

Article 30(3). Conditions for use of request-for-proposals with consecutive negotiations [\[hyperlink**\]](#)**

4. Article 30(3) sets out conditions for use of request-for-proposals with consecutive negotiations. Like request-for-proposals without negotiations, this method has proved to be beneficial where quality and technical characteristics may be the main priority and where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of their quality and technical aspects, so that the procuring entity is not influenced by the financial aspects when it examines and evaluates quality and technical aspects of proposals. The words “needs to” in the provisions are intended to convey that there is an objective and demonstrable need for the procuring entity to follow this sequential examination and evaluation procedure. Thus, like request-for-proposals without negotiation, this procurement method is appropriate for use only where the examination and evaluation of quality and technical aspects of the proposals separately from consideration of financial aspects of proposals is possible and needed.

Article 35. Solicitation in request-for-proposals procurement methods, and its application to request-for-proposals with consecutive negotiations [\[hyperlink**\]](#)**

5. Article 35 regulates solicitation in request-for-proposals procurement methods; its application to request-for-proposals with consecutive negotiations raises identical issues to those discussed in the commentary to request-for-proposals with dialogue, in Section [** above \[**hyperlink**\]](#).

Article 50. Request-for-proposals with consecutive negotiations

6. Article 50 regulates the procedures request-for-proposals with consecutive negotiations. All stages in this procurement method preceding the stage of negotiations are the same as in request-for-proposals without negotiation. Paragraph (1) therefore makes reference to the applicable provisions of

article 47 [\[**hyperlink**\]](#). The guidance to those provisions therefore applies also to this article (see the commentary to that procurement method at [** above](#)) [\[**hyperlink**\]](#).

7. Paragraphs (2) to (6) regulate the distinct procedures of this procurement method. Paragraph (2) addresses issues of ranking and the invitation to consecutive negotiations. The ranking is set on the basis of the scores assigned to the quality and technical aspects of the proposals.

8. As noted in the commentary to request-for-proposals without negotiation above [\[**hyperlink**\]](#), it is important to delineate clearly what is caught by the terms “technical and quality aspects” and “financial aspects” of proposals. The reference in paragraph (2)(b) to “financial aspects” in this context includes all the commercial aspects of the proposals that cannot be set out in the terms of reference, as well as the final price; the financial aspects are intended to exclude any quality, technical and other aspects of proposals that have been considered as part of the examination and evaluation of the quality and technical characteristics of proposals. Practical examples of elements of proposals that might fall into one or other category are also provided in the commentary to request-for-proposals without negotiation.

9. Paragraphs (3) and (6) refer to the notion of “termination of negotiations”. This notion means the rejection of a supplier’s final financial proposal and the consequent exclusion of that supplier from further participation in the procurement proceedings. Thus, no procurement contract can be awarded to the supplier(s) with which the negotiations have been terminated as provided for in paragraphs (3) and (4).

10. UNCITRAL decided to include this feature of this procurement method in order to emphasize competition on the quality and technical aspects of proposals. When the procurement method is used in appropriate circumstances, this distinct feature of the procurement method may impose discipline on both suppliers and procuring entities to negotiate in good faith. The first-ranking supplier faces a risk that negotiations with the procuring entity may be terminated at any time, leading to the permanent exclusion of the supplier from the procurement proceedings. That supplier may also consider that negotiations with the lower-ranked suppliers are more likely to succeed since such suppliers will have an incentive to improve their position to win, and it is in the interest of the procuring entity to have the procurement contract in the end of the process. Thus the highest-ranked supplier will be under some pressure to negotiate while the procuring entity, facing the risk of rejecting the best technical proposal, will exercise restraint in putting an excessive focus on the financial aspects of proposals at the expense of quality and technical considerations. Fixing a period for the negotiations in the solicitation documents may be considered another effective discipline measure on both sides in negotiations.

11. Nevertheless, this feature may be considered inflexible. Only at the end of a process of negotiation with all suppliers may the procuring entity know which proposal in fact constitutes the best offer; that offer however may have been rejected as a result of the termination of negotiation with the supplier or contractor submitting it. In addition, the procedure does not necessarily ensure a strong bargaining position on the part of the procuring entity since the highest-ranked

supplier, knowing its preferred status, may have little incentive to negotiate, particularly as regards price, so that the pressure that a procuring entity may be able to exert in concurrent negotiations is not present. However, this method has been restricted to consecutive negotiations in order to avoid the risk of abuse that may arise in concurrent negotiations which are provided for only in the limited circumstances in which competitive negotiations are available under article 51 [\[**hyperlink**\]](#) (see, further, the commentary to that article [\[**hyperlink**\]](#)).

12. Whether the procuring entity is willing to compromise on quality and technical considerations by terminating negotiation with a better-ranked supplier and beginning negotiations with the next ranked supplier will very much depend on the circumstances of procurement, in particular the results of the examination and evaluation of the quality and technical aspects of proposals. The extent of the gap between the proposals of various suppliers may vary widely, and the procuring entity's strategies in negotiations must be adjusted accordingly. The procuring entity can always cancel the procurement if it faces unacceptable proposals.

4. Competitive negotiations

General description and policy considerations

13. Competitive negotiations constitute a procurement method that may be used only in the exceptional circumstances set out in subparagraphs (a) to (c): urgency, catastrophic events and the protection of essential security interests of the enacting State. As noted in the introduction to Chapter V procurement methods above [\[**hyperlink**\]](#), it is not to be considered as an alternative to any other method in the Model Law, including where the circumstances may indicate the use of two-stage tendering or request-for-proposals procurement methods, with one exception. The participation of more than one supplier means that, as is further explained in paragraphs [**](#) below, competitive negotiations are considered to offer more competition than single-source procurement and, in accordance with article 28(2) [\[**hyperlink**\]](#), should be used in preference to single-source procurement whenever possible.

14. The restrictions in the use of the method are necessary in the light of its very flexible procedures. Those procedures do not provide the same levels of transparency, integrity and objectivity in the process as are present in other competitive procurement methods, and the method is therefore at greater risk of abuse and corruption.

15. The unstructured nature of the procedures in competitive dialogue, as described in article 51 and explained in paragraphs [\[...\]](#) below mean managing the use of the method will be the key to ensuring its success in appropriate circumstances. The issues discussed regarding managerial techniques in the context of Chapter V proceedings (see to the commentary in the introduction to Chapter V and Sections [**](#) of [\[**procurement methods**\]](#) [\[**hyperlinks**\]](#)) will apply to competitive negotiations, particularly given the heightened integrity risks that this method involves. Issues of capacity, in particular, should be addressed as a general matter, particularly as this procurement method is most commonly used for urgent procurement.

Article 30(4). Conditions for use of competitive negotiations [hyperlink**]**

16. Article 30(4) sets out the conditions for use of competitive negotiations. Subparagraph (a) addresses situations of urgency not caused by the conduct of the procuring entity, and that do not arise out of foreseeable circumstances. Subparagraph (b) refers to urgency arising out of catastrophic events. Both situations imply that the use of open tendering proceedings or any other competitive method of procurement is impractical, because of the time involved in using those methods. The cases of urgency contemplated in both situations are intended to be truly exceptional, and not merely cases of convenience, and include the need for urgent medical or other supplies after a natural disaster or the need to replace an item of equipment in regular use that has malfunctioned. The method is not available if the urgency is due to a lack of procurement planning or other (in)action on the part of the procuring entity, and the extent of the procurement through this method must be directly derived from the urgency itself. In other words, if there is an urgent need for one item of equipment, and an anticipated need for several more of the same type, competitive negotiations can be used only for the item needed immediately.

17. Subparagraph (c) refers to the procurement for the protection of essential security interests of the State, as those interests are described in section ** of the general commentary above [**hyperlink**], where the procuring entity determines that the use of any other method of procurement is not appropriate.

18. The provisions in subparagraphs (a) to (c) are without prejudice to the general principle contained in article 28(2) [**hyperlink**], according to which the procuring entity must seek to maximize competition to the extent practicable when it selects and uses a procurement method, and must have regard to the circumstances of the procurement. It is therefore to be understood that where an alternative to competitive negotiation, such as restricted tendering or request-for-quotations, is available, the procuring entity must select that other method so as to ensure the greatest level of competition as is compatible with other circumstances of the procurement (such as the urgent need for the subject-matter concerned).

19. In conformity with the same principle, subparagraph (b) dealing with cases of urgency owing to a catastrophic event, and subparagraph (c) dealing with procurement for the protection of essential security interests of the State, prevent the procuring entity from using single-source procurement where competitive negotiations are available. In situations covered by these subparagraphs, the procuring entity is required first to consider the use of open tendering or any other competitive method of procurement. Where the procuring entity concludes that the use of other competitive methods is impractical, it must use competitive negotiations, not to single-source procurement, unless it concludes that there is extreme urgency or another distinct ground justifying the use of single-source procurement under paragraph (5) of this article (for example, the absence of a competitive base, exclusive rights involved, etc.). This is because competitive negotiations are inherently more competitive than single-source procurement and more rigorous safeguards are built in the provisions of the Model Law regulating procedures in competitive negotiations, making the latter more structured and transparent than single-source procurement. This method can therefore be considered the preferred alternative to single-source procurement in situations of urgency and for the protection of the essential security interests of the State.

20. Enacting States may consider that certain circumstances envisaged for the use of competitive negotiations are unlikely to arise in their current systems, and so conclude that not all the conditions require inclusion in their domestic law.

21. Enacting States may also wish to impose additional requirements for the use of competitive negotiations. Where it does so, the procurement regulations or rules and guidance issued by the public procurement agency or other similar body may require that the procuring entity take steps such as: establishing basic rules and procedures relating to the conduct of the negotiations in order to help ensure that they proceed in an efficient manner; preparing various documents to serve as the basis for the negotiations, including documents setting out the desired technical characteristics of the goods or construction to be procured, or a description of the nature of services to be procured, and the desired contractual terms and conditions; and requesting the suppliers or contractors with which it negotiates to itemize their prices so as to assist the procuring entity in comparing what is being offered by one supplier or contractor during the negotiations with offers from the other suppliers or contractors. (For more detailed guidance on such comparisons, including risk mitigation, see the discussion on evaluation in request-for-proposals with dialogue proceedings [\[**hyperlink**\]](#).)

Article 34(3), (5) and (6). Solicitation in competitive negotiations [\[hyperlink**\]](#)**

22. Article 34(3) [\[**hyperlink**\]](#) regulates solicitation in competitive negotiations, and is coupled with the requirement of article 34(5) for an advance notice of the procurement. (For general considerations relating to the exceptional nature of direct solicitation under the Model Law (and for an explanation of the term “open solicitation”, see the commentary to Part II of Chapter II [\[**hyperlink**\]](#).) The advance notice must specify, in particular, that competitive negotiations will be used and must also provide a summary of the principal terms and conditions of the procurement contract envisaged. This is an essential public oversight measure. On the basis of the information published, any aggrieved supplier or contractor may challenge the use of competitive negotiations where a more transparent and regulated procurement method is available. This safeguard is particularly important in the context of this procurement method and of single-source procurement, both of which are considered exceptional and justified for use only in the very limited cases provided for in article 29 of the Model Law.

23. The procuring entity will not be required to publish such a notice, but may still choose to do so, when competitive negotiations are used in situations of urgency due to catastrophic events (article 30(4)(b) [\[**hyperlink**\]](#)). This exemption is set out in paragraph (6) of this article. In the other cases of urgency referred to in article 30(4)(a) [\[**hyperlink**\]](#), providing an advance notice of the procurement is the default rule. This is also the default rule when competitive negotiations are used in procurement for the protection of essential security interests of the State referred to in article 30(4)(c) [\[**hyperlink**\]](#). The default rule is subject to any exemptions on the basis of confidentiality that may apply under the provisions of law of the enacting State. For example, procurement involving the protection of essential security interests of the State may also involve classified information; in such cases, the procuring entity may be authorized (by the procurement regulations or by other provisions of law of the enacting State) not to publish any public notice related to the procurement (for guidance on the provisions of the Model Law on

confidentiality and procurement involving classified information, see Section ****** of the general commentary, above ****hyperlink****).

24. Additional guidance on both the use of advance notices under article 34(5) and (6) and on the objective identification of suppliers to participate in the process is found in introduction to Chapter IV ****hyperlink****. The issues raised there are also relevant in the context of competitive negotiations.

Article 51. Competitive negotiations **hyperlink******

25. Article 51 ****hyperlink**** regulates the procedures for competitive negotiations. Safeguards have been included aimed at ensuring transparency and the equal treatment of participants in procurement by means of this procurement method.

26. The article is relatively short in the light of the flexible nature of the method itself. However, it would be wrong to state that procedures of this procurement method remain largely unregulated in the Model Law. This procurement method, as any other, is subject to the general provisions and rules set out in chapters I and II of the Model Law, the procurement regulations and any other bodies of applicable law. For example, under the Model Law, the procuring entity will be required to maintain a detailed record of the procurement proceedings, including details of negotiations with each participating supplier or contractor, and to provide access by suppliers or contractors to the record, as provided by article 25 ****hyperlink****. This requirement is an essential measure for this procurement method to ensure effective oversight, and to permit challenges by aggrieved suppliers.

27. To the extent that the procuring entity complies with all the applicable rules, and that the negotiations are conducted on a concurrent basis and so as to ensure equal treatment of the suppliers, the procuring entity may organize and conduct the negotiations as it sees fit. The rules that are set out in the present article are intended to confer this freedom upon the procuring entity, while attempting to foster competition in the proceedings and objectivity in the selection and evaluation process. In particular, since the main use of competitive negotiations in practice will be in procurement in situations of urgency, the procedures should allow for negotiations of very short duration. As to the distinction between the type of bargaining that is envisaged in this procurement method, as compared with the discussions and dialogue that take place under other Chapter V procurement methods, see the commentary in the introduction to Chapter V ****hyperlink****.

28. Paragraph (1) cross-refers to the relevant provisions of article 34 on solicitation in competitive negotiations, one of which requires providing an advance notice of the procurement, except in cases of urgency. (For the guidance on advance notices, see the commentary to Chapter II, Part II, above ****hyperlink****.)

29. Paragraph (2), regulating communication of information during negotiations, is subject to the rules on confidentiality contained in article 24 ****hyperlink**** of the Model Law. The provisions are similar to the provisions addressing request-for-proposals with dialogue contained in article 49(10). The guidance to article 49(10) is therefore relevant in the context of this paragraph (see paragraphs ... of the commentary to that procurement method, above ****hyperlink****).

30. Paragraph (3) provides that the procuring entity should, at the end of the negotiations, request suppliers or contractors to submit best and final offers (BAFOs), on the basis of which the successful offer is to be selected. BAFOs are defined as best and final with respect to all aspects of each supplier's proposal. Thus, no single set of terms and conditions of the procurement against which final submissions are evaluated is issued in this procurement method. BAFOs are to be presented by a date specified by the procuring entity in its request for BAFOs. To ensure that all participating suppliers are on an equal footing as regards receiving information about termination of negotiations and available time to prepare their BAFO, best practice involves issuing the request in writing and communicating it simultaneously to all participating suppliers. The provisions are similar to those of article 49(11) [\[**hyperlink**\]](#). The guidance to that provision [\[**hyperlink**\]](#) is therefore relevant in the context of this method.

31. UNCITRAL considers the BAFO stage essential since it provides for the equal treatment of participating suppliers. It puts an end to the negotiations and terminates the ability of the procuring entity to modify its requirements or the terms and conditions of the procurement; the terms and conditions offered by suppliers and contractors are also then set. In addition, requiring requests for BAFOs to be issued to all suppliers remaining in the negotiations, leaves an audit trail as regards all actual offers that were before the procuring entity and that it should have considered in making the selection in accordance with paragraph (5) of this article. Without that stage, excess discretion is given to the procuring entity to decide with which supplier or contractor to conclude the contract, with no transparency and verifiable traces in the process that would allow effective challenge.

32. Paragraph (4) prohibits negotiations after BAFOs were submitted, so as to conform the competitive negotiations procedure with equivalent stages in other procurement methods and to ensure the equal treatment of suppliers. It draws on similar provisions in article 48 (12). The guidance to article 48 (12) (see paragraphs ... above) is therefore relevant in the context of this paragraph. UNCITRAL considers it best practice to prevent the procuring entity from negotiating further after BAFOs have been presented, and to prevent multiple requests for "BAFOs": this stance is taken consistently throughout the Model Law where the BAFOs stage is envisaged.

5. Single-source procurement

General description and policy considerations

33. In view of the non-competitive character of single-source procurement, this method is considered under the Model Law the method of last resort after all other alternatives have been exhausted. The use of single-source procurement is therefore subject to the general principle contained in article 28(2) [\[**hyperlink**\]](#), according to which the procuring entity must seek to maximize competition to the extent practicable when it selects a procurement method. It is therefore understood that when an alternative to single-source procurement, such as restricted tendering, request-for-quotations or competitive negotiations, is appropriate, the procuring entity must select the procurement method that would ensure most competition in the circumstances of the given procurement. This is a particular concern in cases of urgency: the extent of urgency of the subject-matter of the procurement will dictate

whether competitive negotiations, which are preferable to single-source procurement as offering some competition, are feasible.

34. It is recognized that, except for situations of urgency catastrophe and where single-source procurement is used to promote a socio-economic policy (as to which, see, further paragraph ** below), the procuring entity may avoid the use of single-source procurement by using alternative methods or tools or through proper procurement planning. For example, in situations of extreme urgency due to a catastrophic event where negotiations with more than one supplier would be impractical (the second condition for use), the procuring entity may consider using procurement methods not involving negotiations, such as request-for-quotations for procurement of off-the-shelf items. A closed framework agreement without second-stage competition may also effectively address situations of extreme urgency, where it has been concluded in advance against a background of an identified and probable need occurring on a periodic basis or within a given time-frame (see, further, the commentary to framework agreements in section ** below [[**hyperlink**](#)]). With better procurement planning, framework agreements may also be a viable alternative to single-source procurement in situations referred to in subparagraph (c) (the need for additional supplies from the same source for reasons of standardization and compatibility).

Article 30(5). Conditions for use of single-source procurement [[hyperlink**](#)]**

35. Article 30(5) sets out the conditions for use of single-source procurement. The first, in subparagraph (a), refers to objectively justifiable reasons for to the use of single-source procurement: the existence of only one supplier or contractor capable of providing the subject matter, either because that supplier or contractor has exclusive rights with respect to the subject matter of the procurement or for other reasons that confirm the exclusivity. The rules concerning the description of the subject matter of the procurement contained in article 10 of the Model Law [[**hyperlink**](#)] prohibit the procuring entity from formulating the description of the subject matter of the procurement in a way that artificially limits the market concerned to a single source. Where the risk or practices of formulating such narrow descriptions exist, the use of functional descriptions (performance/output specifications) should be encouraged. The enacting State should in addition ensure, through appropriate authorities, the regular monitoring of the practice of its procurement entities with the use of single-source procurement on this ground, since its improper use may encourage monopolies and corruption, whether inadvertently or intentionally.

36. In these circumstances, enacting the requirement for an advance public notice of single-source procurement (contained in article 34(5) of the Model Law [[**hyperlink**](#)]) should be considered an essential safeguard: it tests the procuring entity's assumption that there is an exclusive supplier, and so enhances transparency and accountability in this aspect of procurement practice. Where additional suppliers emerge, provided that they are qualified, the justification for single-source procurement falls away, and another procurement method will be required. Another aspect of best practice, which the rules or guidance from the public procurement agency or similar body should emphasize, is encourage procuring entities to plan for future procurements and to acquire appropriate licences, so as to allow for competition in those future procurements and avoid the unnecessary use of

single-source procurement. This is particularly the case for the purchase of products protected by intellectual property rights, such as spare parts, which have traditionally been procured using single-source procurement.

37. The second condition, set out in subparagraph (b), referring to extreme urgency owing to a catastrophic event, overlap to some extent with the condition for use of the competitive negotiations in the case of urgency owing to a catastrophic event (paragraph (4)(b) of this article). The difference is in the level of urgency: to justify the use of single-source procurement, the urgency must be so extreme that holding negotiations with more than one supplier would be impractical. For example, following a catastrophic event, there may be immediate needs for clean water and medical supplies; a need for semi-permanent shelter may arise out of the same catastrophe but is perhaps not so urgent. As is the case in competitive negotiations, the need to link the extent of the procurement with the extreme urgency will limit the amount that can be procured using this method: the amount procured using emergency procedures should be strictly limited to the needs arising from that emergency situation.

38. Subparagraph (c) refers to the need for standardization or compatibility with existing goods, equipment, technology or services as the justification for the use of single-source procurement. This use must be truly exceptional: otherwise needs may be cited that are in reality due to poor procurement planning on the part of the procuring entity (see also the commentary in paragraph 1 above in this regard). Procurement in such situations should therefore also be limited both in size and in time.

39. Subparagraph (d) justifies the use of single-source procurement for the protection of essential security interests of the State. This provision addresses, in particular, procurement involving classified information where the procuring entity concludes that the information concerned will be insufficiently protected if any other method of procurement, including another exceptional method of procurement such as competitive negotiations, is used.

40. Subparagraph (e) has been included in order to permit the use of single-source procurement to implement a socio-economic policy of the government in the enacting State concerned. The term “socio-economic policy” is defined in article 2** [**hyperlink**](#), noting in particular that it is a declared policy goal of that government set out in other laws or the procurement regulations, rather than a policy that an individual procuring entity may wish to pursue. Articles 8-11 [**hyperlinks**](#) explain that such policies may be implemented through the use of domestic procurement (under article 8 [**hyperlink**](#)); qualification criteria (under article 9 [**hyperlink**](#)); descriptions and specifications (under article 10 [**hyperlink**](#)); and evaluation criteria (under article 11 [**hyperlink**](#)).

41. This subparagraph is drafted to provide safeguards to ensure that it does not give rise to more than a very exceptional use of single-source procurement: it is allowed only where no other supplier or contractor is able to implement that policy. It should be interpreted in very restrictive terms, not to allow the use of single-source procurement for any other considerations. The requirement for an advance public notice of the procurement (as explained in paragraph 1 above), and the additional requirement for an opportunity to comment, will allow the procuring entity’s assertion of the circumstances justifying this use of single-source

procurement to be tested. Although this stage is not regulated in detail in the Model Law, to make the opportunity to comment meaningful, the procuring entity will need to allow sufficient time to elapse between the notice and the start of the procurement proceedings. The procuring entity may receive comments from any member of the public and should be expected to provide explanations. The procurement regulations, or other rules and guidance from the public procurement agency or similar body should regulate further aspects of these provisions: in particular, whose comments should specifically be sought (for example, of local communities) and the purpose or the effect of comments, especially negative, if received. Additional guidance should be provided on other, less restrictive ways of implementing socio-economic policies, as outlined in the commentary referred to earlier in this paragraph.

42. As a general rule, the Model Law does not require approval by a designated organ for resort to the use of single-source procurement. This approach is in conformity with the decision of UNCITRAL not to require, also as a general rule, the procuring entity to seek an approval of another body for steps to be taken by the procuring entity (for more detailed guidance on this point, see Section ** of the general commentary above [**hyperlink**](#)). As an exceptional measure and to emphasize the highly exceptional use of single-source procurement under the conditions of subparagraph (e), however, enacting States may wish to provide for an ex ante approval mechanism. UNCITRAL acknowledges that this safeguard may be illusory: there can be elevated risks of corruption involving the approval chain where resort to single-source procurement is sought in improper cases. At the same time, there can be an unjustifiable waste of time and costs where permission for use of single-source procurement is sought for perfectly appropriate circumstances.

43. As in competitive negotiations, enacting States may consider that certain circumstances envisaged for the use of single-source are unlikely to arise in their current systems, and so conclude that not all the conditions require inclusion in their domestic law. Similarly, enacting States may wish to impose additional requirements for the use of single-source procurement, such as those discussed in the context of competitive negotiations above [**hyperlink**](#).

Article 34(4), (5) and (6). Solicitation in single-source procurement

[**hyperlink**](#)

44. Article 34(4) regulates solicitation in single-source procurement and is coupled with the requirement in article 34(5) of this article for an advance notice of the procurement. (For general considerations relating to the exceptional nature of the use of direct solicitation under the Model Law (and for an explanation of the term “open solicitation”, see the commentary to Part II of Chapter II [**hyperlink**](#).) The notice must specify in particular that single-source procurement will be used and must also provide a summary of the principal required terms and conditions of the envisaged procurement contract. This is an essential public oversight measure. On the basis of the information published, any aggrieved supplier or contractor may challenge the use of single-source procurement where a competitive method of procurement appropriate in the circumstances of the given procurement is available. This safeguard is particularly important in the context of this procurement method, which is considered exceptional and justified for use only in the very limited cases provided for in article 30(5) [**hyperlink**](#)).

45. The procuring entity will not be required to publish such a notice, but may still choose to do so, when single-source procurement is used in situations of extreme urgency owing to a catastrophic event (article 30(5)(b) [\[**hyperlink**\]](#)). This exemption is set out in paragraph (6) of this article. In the other cases justifying resort to single-source procurement, providing an advance notice of the procurement is the default rule, subject to any exemptions on the basis of confidentiality that may apply under the provisions of law of the enacting State. For example, procurement involving the protection of the essential security interests of the State may also involve classified information; in such cases, the procuring entity may be authorized (by the procurement regulations or by other provisions of law of the enacting State) not to publish any public notice related to the procurement. This situation may arise in particular when resort to single-source procurement is made in procurement for the protection of essential security interests of the State under article 30(5)(d). (For guidance on the provisions of the Model Law on confidentiality and procurement involving classified information, see Section [** of the general commentary above \[**hyperlink**\]](#))

46. Additional guidance on both the use of advance notices under article 34(5) and (6) and on the objective identification of suppliers to participate in the process is found in introduction to Chapter IV [\[**hyperlink**\]](#). The issues raised there are also relevant in the context of single-source procurement.

Article 52. Single-source procurement [\[hyperlink**\]](#)**

47. Article 52 sets out relatively simple procedures for single-source procurement procedures. The simplicity reflects the highly flexible nature of single-source procurement, which involves a sole supplier or contractor, thus making the procedure essentially a contract negotiation (and which therefore falls outside the general scope of the Model Law). Issues of competition and equal treatment of suppliers or contractors in the procurement proceedings, although important at the stage when the decision on the resort to this procurement method is made, do not arise during the procurement proceedings.

48. The provisions cross-refer to the requirement of an advance notice of the procurement and an exemption thereto in article 34 [\[**hyperlink**\]](#), other than in cases of urgency as set out in the commentary on solicitation in the preceding section. They also contain a requirement to engage in negotiations, unless to do so is not feasible in the light of extreme urgency. The requirement has been introduced so that procuring entity can negotiate and request, when feasible and appropriate, market data or costs clarifications, in order to avoid unreasonably priced proposals or quotations.

49. The provisions of chapter I are generally applicable to single-source procurement, including the obligation to cancel the procurement in situations described in article 21 [\[**hyperlink**\]](#). The issues discussed in the commentary to that article [\[**hyperlink**\]](#) are also relevant in the context of single-source procurement (for example, if the sole supplier must be excluded from further participation in the procurement proceedings on the ground of inducement, unfair competitive advantage or conflicts of interest). In addition, a number of provisions of the Model Law aimed at transparency in the procurement proceedings will be applicable, such as article 23 [\[**hyperlink**\]](#) on publication of notices of procurement contract awards, article 25 [\[**hyperlink**\]](#) on keeping the

comprehensive record of the procurement proceedings, including justifications for to the use of single-source procurement, in addition to the general requirement for an advance notice of the procurement. The procedures of single-source procurement should not therefore be regarded as largely unregulated in the Model Law because of the brevity of article 52. They must be implemented and used taking into account all applicable provisions of the Model Law, as well as those of procurement regulations and other applicable provisions of law of the enacting State.
