



General Assembly

Distr.: General
17 June 2011
English
Original: English/Spanish

**United Nations Commission
on International Trade Law**
Forty-fourth session
Vienna, 27 June-8 July 2011

Finalization and adoption of the UNCITRAL Model Law on Public Procurement

Compilation of comments by Governments and international organizations on the draft Model Law on Public Procurement

Contents

	<i>Page</i>
II. Comments received from Governments and international organizations	2
A. Comments received from Governments	2
El Salvador	2



II. Comments received from Governments and international organizations

A. Comments received from Governments

El Salvador

[Original: Spanish]

[Date: 2 June 2011]

1. We would highlight that the revised text of the Model Law takes a flexible and non-prescriptive approach so that States can adapt it to their local circumstances without jeopardizing the nature, principles and general rules of public procurement as set out in the preamble.
2. In El Salvador, public procurement is regulated by the infra-constitutional *Ley de Adquisiciones y Contrataciones de la Administración Pública* [Law on purchases and procurement by the public authorities] (LACAP), which is currently being amended. We note with satisfaction that both the revised Model Law and the LACAP are generally similar — in structure and in the procedures for ensuring that contractors are selected on the basis of objective, measurable or quantifiable evaluation criteria so that procurement is transparent, making good use of State funds.
3. In relation to the similarities between the two laws, one of the procurement methods proposed in the revised Model Law is “open tendering”, a method referred to in the LACAP as “tendering or bidding and tendering or bidding by invitation”. While not identical, the two methods show similarities in the procedures for the acceptance of tenders and selection of contractors, as both involve the solicitation of bidders who must meet certain requirements to be able to submit their proposals (tenders) and to be considered in the selection process. The evaluation criteria are defined in the “solicitation documents” or “solicitation or bidding conditions”, which are used to identify the winning bidder who is awarded the procurement. Under both procedures, the procuring entity is to keep a file fully documenting the procurement process.
4. The Model Law also provides for the procurement methods “request for quotations” and “request for proposals without negotiation” (article 28). We believe that these methods to some extent resemble the “unrestricted management” process contained in the LACAP, because, as with the process provided for in the Model Law, quotations are requested from the suppliers. These quotations must contain certain elements, including the prices and other specifications provided by the procuring authority, and a single quotation must be submitted without entering into negotiations. Unrestricted management aims to speed up purchases and procurement at a lower cost. This method of procurement is used to obtain goods and services to meet the everyday needs of institutions.
5. The methods “restricted tendering” and “single-source procurement” are provided for in the revised Model Law. This is similar to the “direct procurement” method provided for in the LACAP, which is intended to be used for the procurement of such work, services or supplies as cannot be obtained from any

other source, where industrial or intellectual property rights must be protected or where a high level of professional specialization is required. As a result, there is a limited number of suppliers or even a single supplier with an exclusive right to the subject matter of the contract.

6. El Salvador notes that the revised Model Law contains procurement methods that are not covered by its domestic legislation, such as two-stage tendering, request for proposals with dialogue, request for proposals with consecutive negotiations, competitive negotiations and electronic reverse auction. The use of these methods would represent an advance in international economic development.

7. We believe that the Model Law on public procurement and its incorporation into our national legislation would entail the following benefits: (1) the use of electronic procurement methods; (2) the inclusion of framework agreements in proposed amendments; (3) with regard to challenges and appeals, the possibility of making an application for reconsideration to the procuring entity, an application for review to an independent body or, finally, a challenge or appeal. These matters have not been regulated in the past but would enhance the transparency, speed and efficiency of public procurement.

8. El Salvador hopes that the revised Model Law will be approved by the Commission as it contains new elements that respond to the need for modernization in a globalized world, where economic and commercial development on an international scale has filtered through to States' contractual relations. Revisions to the LACAP are currently under discussion and awaiting approval, but this does not rule out the possibility that, in the future, these provisions will be reworked to fit in with the progress international economic development brings (as reflected in the Model Law). This would mean that we would have to incorporate new procurement methods into our legislation (such as those provided for in the revised Model Law), to facilitate and promote the participation of domestic and foreign bidders, which would also be conducive to better management of State funds.