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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 a section in the Guide to accompany Chapter VII of the UNCITRAL Model Law on Public Procurement on framework agreements, comprising an introduction, and commentary on related provisions of Chapter II (article 32).



GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT

Part II. Article-by-article commentary

Chapter VII: Procedures for the use of framework agreements

A. Introduction

1. Executive Summary

1. Framework agreement procedures can be described as two-stage procurement methods, undertaken over a period of time, which involve:

(a) The solicitation of submissions against pre-determined terms and conditions;

(b) The assessment of suppliers' or contractors' qualifications and the examination of their submissions against those terms and conditions, and, commonly (see ** below), the evaluation of those submissions;

(c) Selected supplier(s) or contractor(s) and the procuring entity entering into a framework agreement on the basis of the submissions. The framework agreement sets out the terms and conditions of future purchases, and is concluded for a given duration (steps (a)-(c) are the "first stage" of the procurement); and

(d) Subsequent and/or periodic awards of procurement contracts with the supplier(s) or contractor(s) under the terms of the framework agreement, as particular requirements arise (which may involve the placement of purchase orders with a particular supplier or contractor or a further round of competition. This is the "second stage" of the procurement).

2. Framework agreement procedures are often used to procure subject-matter for which a procuring entity has a need over a period of time or at a time in the future, but does not know the exact quantities, nature or timing of its requirements. In essence, the framework agreement establishes the terms upon which purchases will be made (or establishes the main terms and a mechanism to be used to establish the remaining terms or refine the initially established terms: they may include the quantities to be delivered at any particular time, the time of deliveries, the overall quantity of the procurement and the price). Examples include commodity-type purchases, such as stationery, spare parts, information technology supplies and maintenance, and where there will normally be regular or repeat purchases for which quantities may vary and the market may be highly competitive. They are also suitable for the purchase of items from more than one source, such as electricity and for that of items for which the need is expected to arise in the future on an urgent or emergency basis, such as medicines (where a significant objective is to avoid the excessively high prices and poor quality that may result from the use of single-source procurement in urgent and emergency situations). These types of procurement may require security of supply, as may also be the case for specialised

items requiring a dedicated production line, for which framework agreements are also suitable tools.

3. There is a variety of terminology in practical use for the type of procedures described above, including supply arrangements, indefinite-delivery/indefinite-quantity contracts or task-order contracts, catalogue contracts and umbrella contracts. Some such procedures are very close to the UNCITRAL procedures; others have more significant differences. The extent to which the first stage of the procurement includes all the steps set out in paragraph 1(a)-(c) above also varies; where there is no examination of the qualifications and responsiveness, then the arrangement is better classified as a suppliers' list. Suppliers' lists are not provided for in the Model Law, as UNCITRAL considers that the very flexible provisions on framework agreements set out in Chapter VII of the Model Law allow for the benefits of suppliers' lists to be achieved, without running the elevated risks to transparency and competition that suppliers' lists are considered to raise.

2. Enactment: Policy considerations

4. The main policy objective in providing for framework agreements procedures is to allow for the potential benefits of framework agreement procedures to be attained. Those potential benefits can be summarized as follows:

(a) Administrative efficiency: Where the procedure is used for repeat procurements, it can be administratively efficient because of the effective aggregation of a series of procurement proceedings. Many steps that would otherwise be taken for each of a series of procurements are undertaken once: they include drafting terms and conditions, advertising, assessing suppliers' or contractors' qualifications, and examining, and in some forms of framework agreements evaluating, submissions. As a result, purchases can be made with lower transaction costs and shorter delivery times than would be the case were each purchase procured separately;

(b) Reducing the need for urgent procedures: The shorter times for completing procurement procedures once the initial steps described above have been undertaken can reduce the need for urgent procedures, which are often conducted in non-transparent ways and without effective competition;

(c) Better outcomes for smaller procurements: these procurements are considered at risk of abuse or failure to achieve value for money because they are often conducted in procedures lacking in transparency and competition;

(d) Better transparency in smaller procurements: The framework agreement procedure can amortize advertising and other costs as purchases are grouped for that purpose, so that they no longer fall below thresholds exempting them from transparency measures, for example as discussed in the commentary to articles 23 and 29 [\[**hyperlinks**\]](#); the grouping can also facilitate oversight, either by oversight agencies or by suppliers or contractors themselves;

(e) Enhancing SME participation: placing smaller orders within the framework agreement may allow smaller suppliers or contractors to participate;

(f) Ensuring security of supply through binding a supplier or contractor to supply future purchases;

(g) Achieving further costs savings: Centralized purchasing, which involves a central unit of one procuring entity or a specialized independent entity making purchases for a number of units, or one entity or consortium making purchases on behalf of several entities may reap economies of scale;

(h) Better supply chain management: the results can include reducing the costs of one-off bulk purchasing (which has been a characteristic of some central procurement) and consequential warehousing expenses;

(i) Process efficiencies: centralized purchasing can also promote better quality tender and other documents, higher uniformity and standardization across government, and better supplier understanding of procuring entities' needs can improve the quality of submissions. Centralized purchasing agencies, as discussed in Section ** of the general commentary above [[**hyperlink**](#)], can conduct the procurement on behalf of procuring entities, and their coordinating role can further enhance the benefits of centralized purchasing.

5. It will be clear from the above list that many benefits arise from the use of framework agreements for repeated purchases. This is the most common use of the tool, for which they are particularly appropriate but, as is further explained below, not the only use. As with all procurement methods under the Model Law, the framework agreement can be used in all procurement — whether of goods, construction, services or a combination thereof.

6. Enacting States should be aware of concerns about the use of framework agreement procedures, some of which are inherent in the technique, and some that arise from its inappropriate use. First, the administrative efficiency that supports the use of the technique may compromise other procurement objectives, such as value for money, if procuring entities use framework agreements where they are not in fact the appropriate tool for the procurement concerned, simply to achieve those administrative efficiencies. The result may be that the procuring entity's real needs are simply not met, or are not met with the appropriate quality or at the appropriate price. Secondly, there is evidence in practice of framework agreements leading to reduced competition and transparency, collusion, and contract awards based on relationships between procuring entities and suppliers or contractors, rather than on the competitive procedures mandated under the Model Law, reducing value for money. Thirdly, and particularly in the longer term, the scale of framework agreements can reduce overall participation and competition as suppliers that are not parties to the framework agreement leave the market. The suppliers or contractors that are parties to the framework agreement will be aware of each other's identities, and so ensuring competition once the framework agreement is in place can also be difficult in practice. As suppliers or contractors that are not parties to the framework agreement cannot participate in the award of procurement contracts, there is in fact restricted competition at the second stage of a framework agreement procedure. The negative consequences of restricted competition will be exacerbated where the effect of the framework agreement is to create a monopolistic or oligopolistic market. These matters require assessment before a decision is taken to use a framework agreement procedure, since addressing them once it is in operation is unlikely to be effective.

7. The approach to the provisions enabling the use of framework agreement procedures under the Model Law has therefore been designed to facilitate the

appropriate and beneficial use of the technique in repeat purchases and the other circumstances above (such as to provide in advance for urgent procurement and for security of supply), to discourage their inappropriate use, and to mitigate or minimize the risks raised in the preceding paragraph. The provisions consequently contain both controls over the use of framework agreements procedures, in the form of conditions for their use in article 32 [\[**hyperlink**\]](#), and mandatory procedures for conducting them in articles 58-63 [\[**hyperlinks**\]](#), in very broad terms, requiring the use of open tendering or an equivalent procedure unless another procurement method is justified.

8. Under the Model Law (see article 2(e) [\[**hyperlink**\]](#)), the framework agreement procedure can take one of three types [check for consistency]:

(a) A “closed” framework agreement procedure without second-stage competition, involving a framework agreement concluded with one or more suppliers or contractors, and in which all terms and conditions of the procurement are set out in the framework agreement. The submission at the first stage is final, and there is no further competition between the suppliers or contractors at the second stage of the procurement. The only difference of this type of framework agreement procedure as compared with traditional procurement procedures is that the item(s) is or are purchased in the future, often in batches over a period of time. These framework agreements are “closed” in that no new suppliers or contractors can become parties to the agreement after it has been concluded;

(b) A “closed” framework agreement procedure with second-stage competition, involving a framework agreement concluded with more than one supplier or contractor, and which sets out some of the main terms and conditions of the procurement. The submission at the first stage is “initial”, because although each such submission will be evaluated, a further competition among the suppliers or contractors that are parties to the framework agreement is required at the second stage. They submit a final submission at this second stage, on the basis of which procurement contract is awarded to the most advantageous submission, or lowest-priced submission, or equivalent, as identified at that point. These framework agreements are also “closed” in the sense described above, but can be concluded only with more than one supplier or contractor;

(c) An “open” framework agreement procedure, involving a framework agreement concluded with more than one supplier or contractor, and which again sets out some of the main terms and conditions of the procurement. The submission at the first stage is “indicative”, because it will not be evaluated but will be used to assess responsiveness, and a further competition among the suppliers or contractors is required at the second stage. An “indicative” submission is, to that extent, not binding. They submit a final submission at this second stage, on the basis of which procurement contract is awarded to the most advantageous submission, or lowest-priced submission, or equivalent, as identified at that point, as in closed framework agreements with second-stage competition. These framework agreements remain “open” to new suppliers or contractors, meaning that any supplier or contractor may become a party at any time during the operation of the agreement if it is qualified and its indicative submission is responsive. These agreements are required to operate electronically, as is explained in the commentary to article 60 [\[**hyperlink**\]](#) below.

9. These different types of framework agreement cater to different circumstances, meaning that the decision to engage in procurement using a framework agreement can be a relatively complex one, requiring decisions on the appropriate procurement method and the appropriate type of framework agreement. For example, open framework agreements are intended to provide for commonly used, off-the-shelf goods or straightforward, recurring services that are normally purchased on the basis of the lowest price. The commentary below explains the link between the procurement circumstances and the appropriate type of framework agreement, and other issues that may inform regulations, rules and guidance to assist in the implementation and use of framework agreements. In this regard, it should be noted that both stages of the framework agreement procedures are subject to the challenge and appeal mechanisms of chapter VIII of the Model Law [\[**hyperlink**\]](#).

10. The Model Law does not provide for a further type of framework agreement that is sometimes encountered in practice, and under which suppliers or contractors (or a single supplier or contractor) can unilaterally improve their offers (or its offer). The reason for excluding this type of framework agreement is that there would be no mechanism for preventing the entity from passing information to favoured suppliers or contractors to assist them in improving their relative position, or for monitoring improved offers. Consequently, such frameworks would be incompatible with the overall policy objectives of the Model Law.

3. Issues of implementation and use

11. The most significant issue of implementation and use is to promote the appropriate use of framework agreements, which involves issues considerably more complex than an assessment of whether the conditions for use are satisfied, as explained below. The technique is relatively new, and consequently the issues discussed may need to be updated as experience in their use is gained. Enacting States may also wish to monitor publications from the MDBs and other organizations and bodies on the use of framework agreements that are similar in type to those provided for in the Model Law.¹

12. Although the technique cannot be used unless the conditions for use are satisfied, discussed in detail in [\[**\] \[**hyperlink**\]](#), those conditions for use, as all conditions for use of procurement methods under the Model Law, describe where they are available (and by implication, where they are not available). The conditions for use of framework agreements in article 32 [\[**hyperlink**\]](#) are considerably more flexible than other conditions for use, as the commentary below indicates. Considerable elaboration in regulations, rules and guidance will be required in order to guide the procuring entity in reaching the optimal decision, recalling that it must be included and justified in the record of the procurement concerned (see article [** \[**hyperlink**\]](#)). The rules regulations or other guidance should explain the link between the main circumstances for which the Model Law encourages the use of framework agreements, and the conditions for use themselves; in this regard, enacting States should be aware that the capacity required to operate framework agreements effectively can be higher than for other procurement methods, and

¹ Note to the Working Group: a cross-reference will be inserted to any document published by the time the Guide is issued, e.g. World Bank Standard Bidding documents or similar publications.

training and other capacity-building measures will be key to ensuring successful use.

13. The first circumstance arises where the procuring entity's need is "expected" to arise on an "indefinite or repeated basis" (article 32(1)(a) [\[**hyperlink**\]](#)).² The regulations, rules or guidance should explain that these conditions need not be cumulative, though in practice they will commonly overlap. In this regard, the reference to an indefinite need, meaning that the time, quantity or even the procurement itself is or are not known, can allow the framework agreement to be used to ensure security of supply, as well as anticipated repeat procurements. The rules or guidance should also address the term "expectation", and how to assess the extent of likelihood of the anticipated need arising in an objective manner. The administrative costs of the two-stage procedure will be amortized over a greater number of purchases; i.e. the more the framework agreement is used in the case of repeat procedures. For indefinite purchases, those costs must be set against the likelihood of the need arising and the security that the framework agreement offers (for example, setting prices and other conditions in advance).

14. The second circumstance arises where the need for the subject-matter of the procurement "may arise on an urgent basis". The same considerations apply as for indefinite purchases noted immediately above.

15. Consequently, complex procurement for which the terms and conditions (including specifications) vary for each purchase, such as large investment or capital contracts, highly technical or specialized items, and more complex services procurement, would not be suitable for procurement through framework agreements: such projects will also not generally fall within either condition for use above.

16. The link between the type of framework agreement to be used and the circumstances of the given procurement should also feature in rules or guidance. The first issue is how to choose among the three types of framework agreements identified above, given the different ways in which competition operates in each type. Closed framework agreements, which involve the evaluation of initial submissions, involve significant competition at the first stage (and may or may not involve competition at the second stage). Open framework agreements, on the other hand, do not involve the evaluation of indicative submissions at the first stage — only qualifications and responsiveness are checked — so all the competition in those framework agreements takes place at the second stage.

17. How narrowly the procurement need can and should be defined at the first stage will dictate the extent of competition that is possible and appropriate at that stage. Where what is to be purchased can be precisely defined and will not vary during the life of the framework agreement, a framework agreement without second-stage competition, in which the winning supplier(s) or contractor(s) for all or some items is or are identified at the first stage, will maximize competition at the first stage and should produce the best offers. However, this approach is inflexible and requires precise planning: rigid standardization may be difficult or inappropriate, especially in the context of centralized purchasing where the needs of individual purchasing entities may vary, where refinement of the requirements may be appropriate so needs are expressed with lesser precision [i.e. at first stage], and

² Note to the Working Group: these terms may be discussed in the Glossary.

in uncertain markets (such as future emergency procurement). Where the procuring entity's needs may not vary, but the market is dynamic or volatile, second-stage competition will be appropriate unless the volatility is addressed in the framework agreement (such as through a price adjustment mechanism). The greater the extent of second-stage competition, the more administratively complex and lengthy the second-stage competition will be, and the less predictable the first-stage offers will be of the final result; this can make effective budgeting more difficult. Where there will be extensive second-stage competition, there may also be little benefit of engaging in rigorous competition at the first stage; assessing qualifications and responsiveness may be sufficient. The public procurement agency or similar body should therefore provide guidance on effective planning for both stages, and assessing the relative merits of standardization and accommodating different needs for individual procurements and across sectors of the overall government procurement market.

18. A second, and related issue, is the scope of the framework agreement. Where several requirements are bundled together under one framework agreement, the effect will be to provide flexibility for the procuring entity to finalize or refine its statement of needs when the needs themselves arise. The description of the procuring entity's or entities' needs in the initial solicitation will therefore be less precise or will be diverse as explained in the preceding paragraph, and so generally imply competition at the second stage (i.e. so that the relevant components from the bundle are identified for the procurement at issue), so the approaches suggested in that paragraph will also be relevant. More generally, however, is the risk that such bundling may restrict market access, particularly to SMEs, who may not be able to supply the full — and probably larger — scope of the framework agreement. In addition to the general concern that some suppliers may consequently leave or be driven out of the market concerned, a situation requiring monitoring as discussed in paragraphs ** below [\[**hyperlink**\]](#), the regulations or rules or guidance should encourage procuring entities to consider whether to allow for partial submissions in the solicitation documents, as discussed in the commentary to article ** above [\[**hyperlink**\]](#), particularly where SME promotion is a socio-economic policy of the government concerned. (For a discussion of socio-economic policies, see Section ** of the general commentary above [\[**hyperlink**\]](#).)

19. A third issue for consideration is the number of suppliers or contractors to be parties to the framework agreement. A single-supplier framework agreement has the potential to maximize aggregated purchase discounts given the likely extent of potential business for a supplier or contractor, particularly where the procuring entity's needs constitute a significant proportion of the entire market, and provided that there is sufficient certainty as to future purchase quantities (through binding commitments from the procuring entity, for example). This type of agreement can also enhance security of supply to the extent that the supplier concerned is likely to be able to fulfil the total need. Multi-supplier framework agreements, which are more common, are appropriate where it is not known at outset who will be the best supplier at the second stage, especially where the needs are expected to vary or to be refined at the second stage during the life of the framework agreement, and for volatile and dynamic markets for the reasons set out above. They also allow for centralised purchasing, and can also enhance security of supply where there are doubts about the capacity of a single supplier to meet all needs.

20. Fourthly, the guidance from the public procurement agency or similar body should address the use of centralized purchasing agencies. As discussed in the commentary in the introduction to Chapter VI on electronic reverse auctions above [[**hyperlink**](#)], the outsourcing of any aspect of procurement can raise organizational conflicts of interest and related issues: such centralized purchasing entities may have an interest in increasing their fee earnings by keeping prices high and promoting purchases that go beyond the needs of the procuring entity. In addition, and in the context of framework agreements, the agency may undertake planning for future procurement, in which case the quality of information from procuring entities will be critical, not least covering the anticipated needs from the perspectives discussed above: the needs of individual ministries or agencies may themselves not be identical, with the result that some obtain better value for money than others if those needs are standardized without sufficient analysis. Interaction with the likely users of a framework agreement before the procedure commences can allow for a better decision on the appropriate extent of standardization and accommodating varying needs.

21. Where enacting States consider that these issues may require capacity that needs to be developed, they may wish to introduce framework agreements in a phased manner. For example, framework agreements may be restricted initially to repeat procurement. In addition, the regulations, rules and/or supporting guidance should emphasize good procurement planning is vital to set up an effective framework agreement: framework agreements are not alternatives to procurement planning.

22. Enacting States are also encouraged to set up a monitoring mechanism to oversee the establishment and use of framework agreements, both to ensure that the relevant rules are followed, and to monitor whether the anticipated benefits in terms of administrative efficiency and value for money in fact materialize; this monitoring mechanism can also indicate where guidance and capacity-building are needed. As regards the establishment of a framework agreement, the terms of the framework agreement itself may limit commercial flexibility if guaranteed minimum quantities are set out as one of its terms, or if the framework agreement operates as an exclusive purchasing agreement, though this flexibility should be set against the better pricing from suppliers or contractors. Two ways of addressing this issue are (a) to use estimated (non-binding) quantities in the solicitation documents so that framework agreement can facilitate realistic offers based on a clear understanding of the extent of the procuring entity's needs, and so that the procuring entity will be able to purchase outside the framework agreement if market conditions change and (b) using binding quantities, which could be expressed as minima or maxima. There may be markets in which one solution appears to be better than the other; the monitoring mechanism can inform appropriate guidance, or can use examples from practice where the choice needs to be made by the procuring entity.

23. The centralized purchasing agency, or the public procurement agency or similar body, should also monitor the performance of individual procuring entities using the framework agreement and the performance of framework agreement in terms of prices as compared with market prices for single procurements, in case of increasing prices or other reductions in the quality of offers accordingly, which may arise from inappropriate or poor use of the framework agreement by one or two procuring entities also.

24. Once the framework agreement is set up, its potential benefits will be maximized to the extent that it is in fact used to satisfy the procuring entity's needs for the subject-matter of the procurement, rather than conducting new procurements for the subject-matter concerned; the credibility of procuring entity in this regard will also be important for future procurements. A further aspect of best practice is for procuring entities to assess on a regular basis whether a framework agreement continues to offer value for money and continues to allow access to the best that the market can offer at that time, and to consider the totality of the purchases under the framework agreement to assess whether their benefits exceed their costs. Where such optimal use is observed, suppliers and contractors should have greater confidence that they will receive orders to supply the procuring entity, and should give their best prices and quality offers accordingly. Ways of assessing whether the technical solution or product proposed remain the best that the market offers may include market research, publicising the scope of the framework agreement, etc. Where the framework agreement no longer offers good commercial terms to the procuring entity, a new procurement procedure (classical or a new framework agreement procedure) will be required.

25. A second main concern to be addressed in the use of framework agreements is to ensure transparency, competition and objectivity in the process. In addition to imposing conditions for use as discussed in paragraphs ** above, the Model Law does so by requiring that a procuring entity that wishes to use a closed framework agreement is required to follow one of the procurement methods of the Model Law to select the suppliers or contractors to be parties to the closed framework agreement (i.e. at the first stage). Thus all the safeguards applicable to the selected procurement method, including conditions for its use and solicitation methods, will apply. The equivalent safeguard for an open framework agreement is that it must be established following specifically-designed open procedures, mirroring those of open tendering to a large extent. Rules and guidance to procuring entities should stress these safeguards, and the matters discussed in the following paragraphs.

26. The provisions regulating the award of procurement contracts under framework agreements have been drafted to ensure sufficient transparency and competition where a second-stage competition is envisaged, based on the rules governing open tendering, as further explained in the commentary to article ** below [[**hyperlink**](#)]. The provisions of article 22 [[**hyperlink**](#)] governing the award of the procurement contract, including on the standstill period where there is second-stage competition, ensures transparency in decision-taking at the second stage. More generally, however, and given the risks to competition over the longer-term as discussed in paragraph ** above, the public procurement agency or similar body should monitor the effect of the framework agreement on competition in the market concerned, particularly where there is a risk of a monopolistic or oligopolistic market. As noted in respect of other procurement methods and in Section ** of the general commentary above, this monitoring can usefully be undertaken in conjunction with the competition authorities in the enacting State concerned. [[**hyperlinks**](#)]

27. Whereas an open framework agreement is required under the Model Law to be operated electronically, the procuring entity has flexibility in this regard as regards closed framework agreements. Enacting States may wish to emphasize the advantages of an online procedure in terms of increased efficiency and transparency

(for example, the terms and conditions can be publicized using a hyperlink; a paper-based invitation to the second-stage competition could be unwieldy and user-unfriendly. See further Section ** of the general commentary above [**hyperlink**]. Where the enacting State requires or encourages (or intends to encourage) that all framework agreements be operated electronically, the regulations or other rules may require that all of them be maintained in a central location, which further increases transparency and efficiency in their operation.

28. A third main control measure in the Model Law is designed to limit the potentially anti-competitive effect of framework agreements, both at the individual procurement procedure and the overall market level should suppliers leave the market as discussed in paragraphs ** above [**hyperlink**]. At the individual level, and as no supplier or contractor may be awarded a procurement contract under a framework agreement without being a party to the agreement, framework agreements have a potentially anti-competitive effect.

29. As regards closed framework agreements, ensuring full competition for the purchases envisaged on a periodic basis, by limiting their duration and requiring subsequent purchases to be re-opened for competition is generally considered to assist in limiting this anti-competitive potential. A maximum duration is also considered to assist in preventing attempted justifications of excessively long framework agreements. On the other hand, excessively restricting the duration can compromise the administrative efficiencies of framework agreements. UNCITRAL considers that there is no one appropriate maximum duration, because of differing administrative and commercial circumstances, and so the enacting State is invited to set the appropriate limit in the procurement regulations.

30. For this reason, under article 59(1)(a) [**hyperlink**] of the Model Law, the procuring entity is to set out the maximum duration of a closed framework agreement within the maximum established by the enacting State in the procurement regulations (i.e. no stated limit is set out in the Model Law itself). The regulations, or accompanying rules or guidance, should state that the maximum includes all possible extensions to the initially established duration for the framework agreement concerned. This aspect is a key one in avoiding abuse in extensions and exceptions to that initially established duration. Practical experience in those jurisdictions that operate closed framework agreements indicates that the potential benefits of the technique are generally likely to arise where they are sufficiently long-lasting to enable a series of procurements to be made, such as a period of 3-5 years. Thereafter, greater anti-competitive potential may arise, and the terms and conditions of the closed framework agreement may no longer reflect current market conditions. As some procurement markets may change more rapidly, especially where technological developments are likely, for example in ITC and telecommunications procurement, or the procuring entity's needs may not remain the same for a sustained period, the appropriate period for each procurement may be significantly shorter than the maximum. The regulations, rules or guidance should also discuss internal controls to address the award of procurement contracts at the end of a budget period or near the end of the duration of the framework agreement, again to avoid observed abuse in such awards.

31. Enacting States may also consider that different periods of time might be appropriate for different types of procurement, and that for some highly changeable items the appropriate period may be measured in months. Shorter durations within

the legal maximum contained in article 59 [\[**hyperlink**\]](#) can be set out in regulations; if this step is taken, clear guidance must be provided to procuring entities to ensure that they consult the appropriate source. Such guidance should also address any external limitations on the duration of framework agreements (such as State budgeting requirements). It should also encourage procuring entities themselves to assess on a periodic basis during the currency of a closed framework agreement whether its prices, and terms and conditions remain current and competitive, because they tend to remain fixed rather than varying with the market. In this regard, there is a risk that procuring entities may decide to procure through an existing framework agreement, even though its terms and conditions do not quite meet their needs or reflect the current market conditions, to avoid having to commence new procurement proceedings (and to draft new terms and conditions of the procurement, to issue a procurement notice, to ascertain the qualifications of suppliers or contractors, to conduct a full examination and evaluation of initial submissions and so on). As a result, procuring entities may fail to assess price and quality sufficiently when placing a particular purchase order. Experience also indicates that they will tend to overemphasize specifications over price; guidance should therefore discuss the need to ensure an appropriate balance. [remove repetition]

32. As regards open framework agreements, there is a lesser risk to competition because the framework agreement remains open to new joiners. The duration of the open framework agreement is therefore not subject to a statutory maximum; the duration is established at the discretion of the procuring entity (see article 61(1)(a) [\[**hyperlink**\]](#)). The safeguards applied are that the existence of the open framework agreement must be publicized and the provisions require the swift assessment of applications to join it (see articles 60(1) and 61(2), and 60(4) and (5) [\[**hyperlinks**\]](#)).

33. The framework agreement itself contains the terms and conditions of the envisaged procurement contracts (other than those to be established through the second-stage competition). The regulations or rules and guidance should emphasize that the agreement itself should be complete in recording all terms and conditions, the description of the subject matter of the procurement (including specifications), and the evaluation criteria, both to enhance participation and transparency, and because of the restrictions on changing the terms and conditions during the operation of the framework agreement (see also the commentary to articles 58 to 63 below [\[**hyperlink**\]](#)).

34. In summary, therefore, the effective use of framework agreements procedures will require the procuring entity or other operator of the agreement to consider the type of framework agreement that is appropriate by reference to the complexity of the subject-matter to be procured, its homogeneity or otherwise, and the manner in which competition is to be ensured. The Enacting State will wish to ensure that appropriate capacity-building is in place in order to allow for optimal decision-making.

B. Provisions on framework agreements procedures

Article 32. Conditions for use of a framework agreement procedure

35. The purpose of the article is to set out the conditions for use of a framework agreement procedure (paragraph (1)) and provide for the record and justification requirements in resort to the procedure (paragraph (2)). While taking account of the need to ensure appropriate use of framework agreements, UNCITRAL has taken care to avoid limiting their usefulness through overly restrictive conditions.

36. Paragraph (1) lists conditions for use of framework agreement procedures, regardless of whether the procedure will result in a closed or open framework agreement. The conditions are based on the notion that framework agreement procedures can offer benefits for procurement notably in terms of administrative efficiency where the procuring entity has needs that are expected to arise in the short to medium term, but where not all terms and conditions can be set at the outset of the procurement. (For a description of the benefits, see paragraphs ** above.) Paragraph (1) permits the use of framework agreement procedures to reflect two situations where these circumstances may arise: first, where the need is expected to be “indefinite”, meaning its extent, timing and/or quantity are unknown, or it is expected to be repeated, and, secondly, where the need is expected to arise on an urgent basis. The first set of circumstances may arise for repeat purchases of relatively standard items or services (office supplies, simple services such as janitorial services, maintenance contracts and so forth). The second set of circumstances may arise where a government agency is required to respond to natural disasters, pandemics, and other known risks; this condition will normally, but need not, be cumulative with the first condition. Security of supply is usually a concern in this type of situation but also may become in the first type of situation where indefinite need for repeat purchases will arise with respect to the items requiring specialist production. (See the general discussion of the types of procurement for which framework agreements are suitable in paragraphs ** of the Introduction to this Chapter, above [**hyperlink**]). Where the procedure will result in a closed framework agreement, the conditions for use applicable to the procurement method intended to be used for the award of the agreement are also to be satisfied. This is because, in accordance with article 58(1) of the Model Law [**hyperlink**], a closed framework agreement is to be awarded by means of open tendering proceedings unless the use of another procurement method is justified.

37. The conditions for the use of framework agreement procedures are considerably more flexible than the conditions for use of the procurement methods listed in article 27(1) [**hyperlink**]: they do not require the procuring entity to state definitively that the needs will arise indefinitely or on an urgent basis, but merely that the need is expected to arise. The inherent subjectivity of the conditions means that it is more difficult to enforce compliance with them than with the conditions for use of the procurement methods listed in article 27(1). Paragraphs ** of the Introduction to Chapter VII sets out measures that will enhance objectivity in taking such decisions, and so facilitate the monitoring of whether decisions are reasonable in the circumstances of a given framework agreement. In this manner, the conditions, when accompanied by appropriate regulations, rules and guidance will facilitate accountability and promote best practice.

38. As is noted above (paragraphs ...), the costs of establishing and operating framework agreement procedures, which involve two stages, will normally be higher than those for one single-stage procurement, and so whether framework agreement procedures are appropriate will depend on whether the potential benefits will exceed these higher costs. Where the need is expected to be repeated, the administrative costs of setting up and operating the framework agreement can be amortized over a series of repeat procurements; where the need is expected to arise urgently or indefinitely, the administrative costs are to be considered against the value-for-money benefits that the earlier setting of the terms and conditions of the procurement may bring by comparison with the procedures otherwise available. The procuring entity, therefore, will need to conduct a cost-benefit analysis based on probabilities before engaging in a framework agreement procedure. Paragraphs ** of the Introduction to this Chapter will assist enacting States in deciding on the appropriate guidance and training to ensure that the procuring entity has the necessary tools to do so. The above considerations are relevant particularly in the context of closed framework agreements.

39. In addition, the use of framework agreements should not be considered to be an alternative to effective procurement planning. In the context of a closed framework agreement in particular, unless realistic estimates for the ultimate procurement are determined and made known at the outset of a framework agreement procedure, potential suppliers will not be encouraged to submit their best prices at the first stage, meaning that a closed framework agreement may not yield the anticipated benefits, or that the administrative efficiency may be outweighed by price and/or quality concerns that compromise value for money.

40. A further reason for including conditions for use is to address the potential restriction on competition that the use of the technique, in particular a closed framework agreement, involves (see paragraphs ** above). The conditions are supported by the limited duration provided for closed framework agreements in article 59(1)(a) [**hyperlink**], and the defined duration required by article 61(1)(a) [**hyperlink**], which require the needs concerned to be reopened to full competition after the duration of the agreement expires.

41. The conditions for use should be read together with the definition of the term “procuring entity”, which allows for more than one purchaser to use the framework agreement. If enacting States wish centralized purchasing agencies to be able to act as agents for one or more procuring entities, so as to allow for the economies of scale that centralized purchasing can offer, they may wish to promulgate regulations or issue guidance to ensure that such arrangements can operate in a transparent and an effective fashion.

42. Paragraph (2) requires the procuring entity to justify the use of the framework agreement procedure in the procurement record; the intention is that the cost-benefit analysis referred to in the preceding paragraphs be included. In the case of the award of a closed framework agreement, the paragraph will be supplemented by article 28(3) of the Model Law [**hyperlink**] that requires the procuring entity to put on the record a statement of the reasons and circumstances upon which it relied to justify the use of the procurement method other than open tendering in the award of the agreement. Given the observed risks of overuse of framework agreements because of their perceived administrative efficiency (see paragraphs ** of the Introduction to this Chapter above [**hyperlink**]), and the broad conditions for

use, timely and appropriate oversight of the justification in the record will be important (also to facilitate any challenge to the use of the framework agreement procedure by suppliers and contractors). Effective oversight will involve the scrutiny of the extent of purchases made under the framework agreement to identify over- or under-use as described above (see paragraphs** of the Introduction to this Chapter above [*\[hyperlink**\]](#)).
