



**United Nations Commission
on International Trade Law
Working Group I (Procurement)
Thirteenth session
New York, 7-11 April 2008**

**Possible revisions to the UNCITRAL Model Law on
Procurement of Goods, Construction and Services –
combined approach to drafting the materials for the use of
framework agreements and dynamic purchasing systems in
public procurement**

I. Introduction

1. At its twelfth session, the Working Group heard an introduction of a proposal in document A/CN.9/WG.I/WP.56, addressing framework agreements. It deferred detailed consideration of that document as well as further consideration of documents A/CN.9/WG.I/WP.45 and Add.1 and A/CN.9/WG.I/WP.52 and Add.1 on the same subject to its thirteenth session (A/CN.9/640, para. 13). In documents A/CN.9/WG.I/WP.52 and Add.1, two sets of drafting materials were presented: the first set addressed traditional framework agreements while the second set addressed separately dynamic purchasing systems. In document A/CN.9/WG.I/WP.56, on the other hand, it was suggested that one provision could address all types of framework agreements together.

2. At that session, the Working Group considered that the transparency and competition safeguards of the Model Law should apply to both the first and second stages of procurement involving framework agreements. Thus it agreed that although the first stage of such procurement might result in a binding contract between the procuring entity and suppliers or contractors, only at the second stage would the award of the procurement contract itself be made (A/CN.9/640, para. 93).¹

¹ The Working Group may wish to consider whether that approach could be accommodated within all legal systems.



3. Also at that session, views were exchanged on proposed general provisions for a framework agreement, and on whether the procuring entity should be permitted to purchase outside the framework agreement (A/CN.9/640, paras. 94-95).

4. In the light of the comments made, the Secretariat invited expert consultants to consider the approaches and the provisions in the documents previously presented to the Working Group (see para. 1 above). The comments from the experts received were to the effect that the two approaches proposed in the documents could be to some extent combined, so that the Model Law, where appropriate, would address common features applicable to all types of framework agreements (see para. 7 below) together, in order to avoid *inter alia* unnecessary repetitions, while addressing distinct features applicable to each type of framework agreement separately.

5. Section II of this paper sets drafting materials that reflect this combined approach. The Working Group may wish to consider whether this approach ensures that the provisions are relatively easy to follow.

6. Many questions of substance that apply to all drafting approaches are set out in A/CN.9/WG.I/WP.52 and Add.1. Therefore, the questions raised by the combined approach set out below should be read together with the comments in documents A/CN.9/WG.I/WP.52 and Add.1.

II. Drafting provisions to enable the use of framework agreements in public procurement under the Model Law

A. Types of framework agreements

7. The three types of framework agreement structures considered in this paper, and for which the Working Group may wish to make provision, are set out below. The Working Group may wish to ensure that the underlying terms and conditions of the framework agreement should be the same irrespective of the type of structure concerned:

(a) “Type 1” framework agreements, concluded with one or more suppliers or contractors (the first stage of the procurement), in which the specification for the procurement and all the terms and conditions of the procurement are set out in the framework agreement itself, purchase orders are issued under the framework agreement (the second stage of the procurement), and there is no competition at that stage;²

(b) “Type 2” framework agreements, concluded with more than one supplier or contractor, which set out the specification for the procurement, and the main terms of the procurement. They leave some terms of the procurement subject to further competition at the second stage of the procurement (but the evaluation criteria are established at the first stage of the procurement).

² See the fuller description provided in para. 6 (a) of A/CN.9/WG.I/WP.52.

Type 1 and 2 framework agreements are closed (i.e. no suppliers or contractors can become parties to the framework agreement after the first stage of the procurement).³

(c) “Type 3” framework agreements, concluded with more than one supplier or contractor, which include many of the features of dynamic purchasing systems under the EU Procurement Directives,⁴ and also include elements of the systems described in paragraphs 8-17 of A/CN.9/WG.I/WP.56. Essentially, Type 3 framework agreements are intended to provide for commonly used, off-the-shelf goods or straightforward, recurring services⁵ that are purchased on the basis of the lowest price,⁶ are always open to new suppliers or contractors, and have specifications and evaluation criteria established in advance that cannot be altered during the currency of the framework agreement.

8. The definition of “procuring entity” under article 2 (b) of the Model Law envisages one procuring entity per procurement, and thus the above provisions would imply one procuring entity acting alone. However, as framework agreements are commonly used to centralize purchases among individual procuring entities, the Working Group may wish to consider whether to enable procuring entities to procure together, to use another entity for the purpose, or to require one procuring entity to act as agent for a defined group of others (and thus to assume the responsibility for the procurement). If the Working Group considers that this option should be open to all procurement and not just procurement through framework agreements, it could include a further definition in article 2 (which envisages the voluntary addition of further definitions) to enable centralized purchasing, as set out in paragraph 11 of A/CN.9/WG.I/WP.52. On the other hand, if the Working Group considers that this flexibility should not be permitted other than in framework agreements, for example given the need in complex investment procurement to have one procuring entity with responsibility for the procurement, it may wish to include a provision in the framework agreements section. In addition, or in the alternative, guidance regarding centralized purchasing could be provided in the Guide to Enactment.

9. The above descriptions also envisage one framework agreement with the suppliers or contractors concerned. However, in some systems, separate agreements with each supplier or contractor are concluded. The Working Group may wish to consider whether this is a matter to be addressed in the text, or whether the Guide to Enactment could explain that the provisions do not preclude such contractual flexibility (the Model Law not addressing contract terms).

³ See the fuller description provided in para. 6 (a) of A/CN.9/WG.I/WP.52.

⁴ See the fuller description provided in para. 35 of A/CN.9/WG.I/WP.44/Add.1 and A/CN.9/WG.I/WP.52/Add.1.

⁵ It is recalled that these terms also include construction procurement.

⁶ The reference to “lowest price” here is to the definition of “lowest price” tender under article 34 (4) (b)(i) of the Model Law, to be contrasted with “lowest evaluated tender” under article 34 (4) (b)(ii). Thus the concept is that under this type of framework agreement, the procurement is awarded to the lowest responsive tender, and quality criteria are pass or fail.

B. Conditions for use of framework agreements

10. The Working Group may wish to consider whether conditions for use of framework agreements should be included in Chapter II of the Model Law, and whether some general provisions governing their use should be set out.

11. The conditions for use could encourage enacting States to indicate in their procurement law which type of framework agreements may be used under which conditions, such as in order to achieve security of supply, economies of scale or administrative efficiency (see draft article 22 *ter* in para. 15 below). The Working Group may wish to consider how to ensure that the flexibility that such conditions entail would not be abused, as these considerations would not apply equally to all types of framework agreements: for example, administrative efficiency could indicate the use of single-supplier Type 1 framework agreements, even if other circumstances would indicate that they would not be a suitable procurement technique. On the other hand, specifying different conditions for use for different types of framework agreements could be unnecessarily prescriptive.

12. Commentators have expressed the view that ensuring that competition is maximized irrespective of the type of framework agreement used is an issue of critical concern regarding framework agreements, and it has been suggested that an express directive to such effect could be included in the provisions. However, the Model Law does not currently provide an explicit requirement to maximise competition other than in its Preamble, and the Working Group may wish to consider the impact of including such a specific requirement in the provisions regulating framework agreements alone. The requirement in the Model Law to conduct tendering proceedings or their services equivalent, unless there is justification to do otherwise, is a practical expression of a requirement to maximise competition, and the Working Group may wish to consider whether to reflect this notion in the framework agreements provisions, by requiring that the first stage be open unless the conditions for use of other procurement methods apply. Further concerns may nonetheless arise with the use of other procurement methods generally permitted under the Model Law in the context of framework agreements. For example, request for quotations procedures might be considered to reduce even further competition and transparency by combining non-open solicitation with a closed framework agreement. The Working Group may wish to consider therefore whether some procurement methods should be considered inappropriate for use in procurement involving framework agreements.⁷

13. Related issues include the potential for the creation of “parallel” framework agreements and purchasing outside a framework agreement. The commercial benefits of framework agreements are considered to be enhanced where suppliers are convinced that they will receive awards under the framework, and lower their prices accordingly, and where the framework agreements cover categories of purchases and enable the procuring entity to combine its particular requirements as its needs arise. The conditions for use could therefore require a procuring entity to consider, and reflect in the record, the suitability of an existing framework agreement for each proposed procurement contract to be awarded, and the Guide to

⁷ See, for example, concerns raised as regards two-stage tendering and competitive negotiation methods in paragraph 33 of A/CN.9/WG.I/WP.52.

Enactment could address the need to use existing framework agreements, and to conduct a new procurement should purchases outside an existing framework be proposed.

14. The Working Group may also consider that the conditions for use should limit the duration of the framework agreement, for example by the use of a mandatory maximum duration.⁸

15. The following draft article combines provisions on the types of framework agreement and conditions for their use:

“Article 22 ter. Types of framework agreements and conditions for their use

(1) A procuring entity may enter into a framework agreement⁹ with one or more suppliers or contractors, in accordance with articles [51 octies to 51 seddecies], under the following conditions:¹⁰

(a) Where the procuring entity intends to procure the goods[, construction or services] concerned on a repeated basis during the term of the framework agreement; and

(b) Where the procuring entity considers that the use of a framework agreement will achieve security of supply, economies of scale or administrative efficiency [other benefits].

(2) A framework agreement shall be one of the following types:

(a) A closed framework agreement structure involving one or more suppliers or contractors without second stage competition;

(b) A closed framework agreement structure involving more than one suppliers with second stage competition;

(c) An open framework agreement structure, which shall operate electronically, involving more than one suppliers with second stage competition.¹¹

(3) A closed framework agreement is an agreement to which any supplier or contractor who is not initially a party to the framework agreement may not subsequently become a party.

⁸ For commentary regarding duration, see paras. 16 and 17 of A/CN.9/WG.I/WP.52.

⁹ This formulation is not intended to preclude the use of separate agreements with each supplier (see para. 9). However, the Working Group may consider that if a reference is made to “framework agreements” in this provision, the implication may be that parallel or competing frameworks are encouraged, and the Working Group may wish to avoid such an implication. Nonetheless, it is contemplated that the procuring entity can conclude separate agreements with each supplier or contractor.

¹⁰ This formulation, unlike that contained in the equivalent provisions in A/CN.9/WG.I/WP.52, does not provide for aggregate values or estimated values. However, the solicitation documents or their equivalent may provide for minimum, maximum or estimated values, and could allow the procuring entity to set different maxima depending on the nature and potential obsolescence of the items to be procured. See further paras. 12 and 13 of A/CN.9/WG.I/WP.52.

¹¹ The Working Group may wish to consider whether any other specific features of each type should be mentioned here (for example, that Type 3 framework agreements are intended to provide for commonly used, off-the-shelf goods or straightforward, recurring services that are purchased on the basis of the lowest price; see para. 7 (c)).

- (4) An open framework agreement is an agreement to which supplier(s) or contractor(s) in addition to the initial parties may subsequently become a party or parties.
- (5) Procurement through the mechanism of a framework agreement shall be conducted in two stages: a first stage to select the supplier(s) or contractor(s) to be the party or parties to the framework agreement in accordance with the procedures applicable to [specify relevant procurement methods under this Law], and a second stage to award procurement contracts under the framework agreement in accordance with the procedures set out in [Section/Chapter **].
- (6) A framework agreement shall set out the terms and conditions upon which supplier(s) or contractor(s) is/are to provide the goods[, construction or services] and the procedures for the award of procurement contracts under the framework agreement.
- (7) A framework agreement shall be concluded for a given duration, which is not to exceed [...] years [, save in exceptional cases, by reference to the goods, services or construction procured under the framework agreement, for no longer than [...] years].¹²
- (8) A framework agreement is not a procurement contract within the meaning of article 2 (g) of this Law.”¹³

C. Procedures for the use of framework agreements

16. The Working Group may wish to consider the following approach to drafting for the procedures to govern the use of framework agreement structures, so as to reflect the above conditions for use:

“Section [...]. Framework agreements

Article [51 octies]. Procedures for setting up framework agreements

- (1) Where the procuring entity intends to enter into a framework agreement, it shall:
 - (a) Subject to the provisions of article [...] below, and so as to select the supplier(s) and contractor(s) to be the party or parties to the framework agreement, choose a procurement method for solicitation of tenders, proposals,

¹² The Working Group may wish to consider whether framework agreements should be permitted to be set up for a period of more than, for example, four years with appropriate justification, or whether they may be extended thereafter, with appropriate justification, or both. A provision along the lines of “If the procuring entity wishes to [conclude a framework agreement in excess of the general prescribed maximum duration][extend the framework agreement beyond its initial duration], the procuring entity shall include in the record required under article 11 of this Law a statement of the grounds and circumstances on which it relied to justify [the extension of the duration of the framework agreement] [the longer duration of the framework agreement.]” would be required.

¹³ The Guide to Enactment would address the distinction between a framework agreement and a procurement contract, noting that whether the former is binding or not is a question of national law. See paragraph 2 above.

offers or quotations¹⁴ (collectively referred to as “submissions” in this section);

(b) Select the type of framework agreement to be concluded from among the types set out in article 22 ter.

(2) The procuring entity shall include in the record required under article 11 of this Law a statement of the grounds and circumstances upon which it relied to select the type of the framework agreement specified in article 22 ter.¹⁵

Article [51 novies]. Information to be specified when first soliciting participation in procurement involving framework agreements¹⁶

When first soliciting the participation of suppliers or contractors in the procurement involving framework agreements, the procuring entity shall specify all information required for the chosen procurement method under this Law, except to the extent that those provisions are derogated from in this article, and in addition the following information:

(a) A statement that the procurement will involve a framework agreement, of the type of framework agreement to be concluded and whether the framework agreement will take the form of an individual agreement with each supplier or contractor, or whether it will take the form of one agreement between all parties;

(b) The nature and desired places and times of delivery of the purchases envisaged under the framework agreement to the extent that they are known at this stage of the procurement, and otherwise an estimate thereof;¹⁷

(c) If suppliers or contractors are to be permitted to submit offers for only a portion of the goods[, construction or services] to be procured, a description of the portion or portions for which offers may be submitted;¹⁸

(d) Whether the framework agreement is to be concluded with one supplier or contractor or several and in the latter case the number, the minimum or maximum or the minimum and the maximum number of suppliers or contractors to be parties to the framework agreement;¹⁹

¹⁴ The formulation of this phrase will be conformed to the procurement methods that can be used, and the Working Group may wish to consider whether some methods should be excluded (see para. 12).

¹⁵ This requirement was included to address the risk of abuse in recourse to some types of framework agreement for unjustifiable reasons.

¹⁶ See, also, the commentary set out in paras. 18-23 of A/CN.9/WG.I/WP.52.

¹⁷ This provision is a reflection of article 25 (1) (b) of the Model Law, adapted to remove the reference to quantity. The Guide to Enactment text accompanying this article would discuss the use of estimated quantities, and maxima and minima.

¹⁸ This provision is simply a repetition of article 27 (h) of the Model Law, and is therefore not necessary regarding tendering proceedings. It is proposed so as to enable broader framework agreements to be concluded and the procuring entity to combine elements of its requirements at the second stage. See, further, para. 34 of A/CN.9/WG.I/WP.52.

¹⁹ An alternative would be to permit the procuring entity not to specify any number, maximum or minimum, but the Working Group may wish to consider whether any maximum should be set by reference to limited constraints, such as technological capacity especially relevant in the context of open electronic dynamic purchasing systems.

(e) The criteria to be used by the procuring entity in the selection of the supplier(s) or contractor(s) to be the party or parties to the framework agreement, including their relative weight and the manner in which they will be applied in the selection;

(f) If the procuring entity intends to enter into a framework agreement with more than one supplier or contractor, a statement that the suppliers or contractors that are parties to the framework agreement will be ranked according to the selection criteria specified;

(g) The terms and conditions of the framework agreement upon which supplier(s) or contractor(s) is/are to provide the goods, construction or services, including the duration of the framework agreement;

(h) Whether a written framework agreement will be required [and the manner of entry into force of the framework agreement];²⁰

(i) In the case of closed framework agreements, whether the selection of the supplier(s) or contractor(s) with which it will enter the framework agreement will be based on lowest price or lowest evaluated submission;

(j) The procedure for the award of procurement contracts under the framework agreement;

(k) If the procuring entity intends to enter into a framework agreement with second-stage competition, the criteria for selecting the supplier or contractor to be awarded the procurement contract, their relative weight, the manner in which they will be applied in the evaluation of the submissions, and whether the award of procurement contracts will be based on lowest price or lowest evaluated submission; and

(l) If an electronic reverse auction will take place to award the procurement contract under a framework agreement with second-stage competition, the information referred to in article [cross-reference to the relevant provisions on electronic reverse auctions].

Article [51 decies]. Additional information to be specified when first soliciting participation in procurement involving open framework agreements²¹

When first soliciting the participation of suppliers or contractors in the procurement involving open framework agreements, the procuring entity shall specify in addition to the information set out in the preceding article:

²⁰ A similar requirement is found in other provisions of the Model Law (see e.g., articles 27 (y) and 36). The final version of this paragraph will depend on the wording of articles 13 and 36 provisionally agreed to be redrafted to provide for consistency in regulating the award and entry into force of procurement contracts. The second part of this paragraph may not be needed if the Working Group decides to make general provisions to regulate these issues in the context of all procurement methods and techniques. The provisions should also be considered in the light of article 5 bis addressing forms and means of communications in procurement. The Guide to Enactment would address issues of contract formation, such as multiple framework agreements.

²¹ See, also, the commentary set out in paras. 11-15 of A/CN.9/WG.I/WP.52/Add.1.

(a) All necessary information concerning the electronic equipment to be used and the technical connection arrangements;

(b) The [website or other electronic] address at which the specifications, the terms and conditions of the procurement, notifications of forthcoming procurement contracts and other necessary information relevant to the operation of the framework agreement may be accessed;

(c) A statement that suppliers or contractors may provide submissions seeking to be admitted to the framework agreement at any time during the period of its operation, subject to the maximum number of suppliers or contractors, if any.

Article [51 undecies]. First stage of procurement involving framework agreements

(1) The first stage of procurement proceedings under closed framework agreements shall be conducted in accordance with the provisions of one of [identify relevant methods] of this Law.

(2) The first stage of procurement proceedings under open framework agreements shall be conducted in accordance with the provisions of Chapter III of this Law.

(3) The procuring entity shall select the supplier(s) or contractor(s) with which to enter into the framework agreement on the basis of the specified selection criteria, and shall promptly notify the selected supplier(s) or contractor(s) of their selection and, where relevant, their ranking.²²

(4) [The framework agreement, on the terms and conditions of the selected submission(s), comes into force as specified in accordance with the requirements of article [...] above].²³

(5) The procuring entity shall promptly publish notice of the award of the framework agreement, in any manner that has been specified for the publication of contract awards under article 14 of this Law. [The notice shall identify the supplier(s) or contractor(s) selected to be the party or parties to the framework agreement.]²⁴

Article [51 duodecies]. Additional provisions regarding the first stage of procurement involving open framework agreements

(1) The procuring entity shall, during the entire period of the operation of the open framework agreement, ensure unrestricted, direct and full access to the

²² The Working Group may wish to consider whether a cross-reference to the procuring entity's ability to reject all tenders under article 12 (and other relevant articles, including the proposed article 12 bis) should be included.

²³ The Working Group may wish to consider whether this is a matter to be referred to enacting States and discussed in the Guide to Enactment. See also the related comments in footnote 20.

²⁴ The requirement in square brackets would mean that the publication requirements for framework agreements are more stringent than for procurement contracts under article 14 of the Model Law. The Working Group may wish to consider whether the nature of framework agreements would justify such a requirement.

specifications and terms and conditions of the agreement and to any other necessary information relevant to its operation.

(2) Suppliers and contractors may present a submission to become a party to the open framework agreement at any time during its operation.²⁵ Such submissions shall include all information specified by the procuring entity when first soliciting participation in the procurement.²⁶

(3) The procuring entity shall evaluate all such submissions to the framework agreement received during the period of its operation [within a maximum of [...] days]²⁷ in accordance with the selection criteria set out when first soliciting participation in the framework agreement.

(4) Subject to any maximum number of suppliers or contractors to be parties to the open framework agreement, and the criteria and procedure for the selection of that number, in each case as specified when first soliciting participation in the procurement involving the framework agreement, the framework agreement shall be concluded with all suppliers or contractors satisfying the selection criteria and whose submissions comply with the specifications and any other additional requirements pertaining to the framework agreement.

(5) The procuring entity shall promptly notify the suppliers or contractors whether they are to be parties to the framework agreement or of the rejection of their tenders.

(6) Suppliers or contractors that are admitted to the framework agreement may improve their submissions at any time during the period of operation of the framework agreement, provided that they continue to comply with the specifications pertaining to the procurement.

Article [51 terdecies]. Second stage of procurement involving closed framework agreements without second-stage competition

(1) The procuring entity may award one or more procurement contracts under the framework agreement in accordance with the terms and conditions of the framework agreement²⁸ and the provisions of this article.

(2) No procurement contract under the framework agreement may be awarded to suppliers or contractors that were not originally party to the framework agreement.

(3) The terms of a procurement contract under the framework agreement may not materially amend or vary any term or condition of the framework agreement.

²⁵ The Working Group may wish to consider whether the procuring entity can specify a time before the end of the framework agreement after which no further submissions will be considered.

²⁶ The Working Group may wish to consider whether an indicative price should be required.

²⁷ The Working Group may wish to consider whether the timing requirement in square brackets should be included, or whether guidance provided in the Guide to Enactment will be sufficient.

²⁸ The Working Group may wish to consider whether in this and in all equivalent provisions, an express reference to specifications, in addition to the terms and conditions of the framework agreement, should be made.

(4) If the framework agreement is entered into with one supplier or contractor, the procuring entity shall award any procurement contract on the basis of the terms and conditions of the framework agreement to the supplier or contractor party to that agreement by the issue of a purchase order [in writing] to that supplier or contractor.

(5) If the framework agreement is entered into with more than one supplier or contractor, the procuring entity shall award any procurement contract on the basis of the terms and conditions of the framework agreement by the issue of a purchase order [in writing] to the highest-ranked supplier(s) or contractor(s) [with the resources at the time to fulfil] [capable of fulfilling] the contract.²⁹ The procuring entity shall notify in writing all other suppliers or contractors that are parties to the framework agreement of the name and address of the supplier(s) or contractor(s) to whom the purchase order has been issued.³⁰

Article [51 quaterdecies]. Second stage of procurement involving closed framework agreements with second-stage competition

(1) The procuring entity may award one or more procurement contracts under the framework agreement in accordance with the terms and conditions of the framework agreement, subject to the provisions of this article.

(2) No procurement contract under the framework agreement may be awarded to suppliers or contractors that were not originally party to the framework agreement.

(3) The terms of a procurement contracts under the framework agreement may not materially amend or vary any term or condition of the framework agreement.

(4) The procuring entity shall award any procurement contract on the basis of the terms and conditions of the framework agreement, and in accordance with the following procedures:

(a) The procuring entity shall invite in writing all suppliers or contractors that are parties to the framework agreement, or where relevant those parties [with the resources at the time to fulfil] [capable of fulfilling] the contract, to present their submissions for the supply of the items to be procured;³¹

²⁹ The text does not address contract terms, as such terms are part of procurement regulation extending beyond the scope of the current text of the Model Law. Nonetheless, the Working Group may wish to consider how to address the question of enforcement of a commitment on the part of the supplier to supply an amount stipulated in the framework agreement (which would be a common term in a Type 1 framework agreement). This question, which would be important so as to ensure that the framework is effective for the purpose of securing supplies in particular, could be addressed in the Guide to Enactment, but the Working Group may wish to consider whether such guidance would be sufficient.

³⁰ The Working Group may wish to consider whether the procuring entity should be obliged to provide to the next highest-ranking supplier under a Type 1 framework agreement a statement of the remaining quantity of items to be procured so as to ensure security of supply.

³¹ The Working Group may wish to consider whether in situations where not all suppliers or contractors that are parties to the framework agreement are invited, those not invited should be notified nevertheless of upcoming purchase orders under the framework agreement, in order to

(b) The invitation shall restate the terms and conditions of the framework agreement, and unless already specified in the framework agreement shall set out the terms and conditions of the procurement contract that were not specified in the terms and conditions of the framework agreement, and shall set out instructions for preparing submissions;

(c) The procuring entity shall fix the place for and a specific date and time as the deadline for presenting the submissions. The deadline shall afford suppliers or contractors sufficient time to prepare and present their submissions;

(d) The successful submission shall be determined in accordance with the criteria set out in the framework agreement;

(e) Where an electronic reverse auction is held, the procuring entity shall comply with requirements during the auction set out in article [cross-references to the relevant provisions]; and

(f) Without prejudice to the provisions of article [proper cross-reference to the provisions on award of contracts through electronic reverse auction] and subject to articles [12, 12 bis and other appropriate references] of this Law, the procuring entity shall accept the successful submission(s), and shall promptly notify in writing the successful supplier(s) or contractor(s) accordingly. The procuring entity shall also notify in writing all other suppliers and contractors that are parties to the framework agreement of the name and address of the supplier(s) or contractor(s) whose submission(s) was or were accepted and the contract price.

Article [51 quindecies]. Second stage of procurement involving open framework agreements

(1) The procuring entity may award one or more procurement contracts under the framework agreement in accordance with the terms and conditions of the framework agreement and the provisions of this article.

(2) The procuring entity shall publish a notice that it intends to award a procurement contract in accordance with the terms and conditions of the framework agreement at the [website or other electronic] address set out in [article 51 decies (b) above].

(3) Each potential procurement contract shall be the subject of an invitation to tender. The procuring entity shall invite all suppliers or contractors that are parties to the framework agreement to submit tenders for the supply of the items to be procured for each procurement contract it proposes to award. The invitation shall:

(a) Restate, [or formulate where necessary more precisely, information referred to in article [cross reference] of this Law], [or restate the specifications and delivery requirements for the items being procured and, if

ensure transparency, and to prevent favouritism on the part of the procuring entity. Unlike provisions in paragraph (f) of the same draft article, provisions to this effect in paragraph (a) would allow suppliers or contractors excluded from the second-stage competition to challenge the exclusion at an earlier stage, before the purchase order was dispatched.

necessary, provide greater detail in this respect than was given to suppliers or contractors when first soliciting their participation in the framework agreement];

(b) Restate or set out the terms and conditions of the procurement contract;

(c) Restate the procedure for the award of a procurement contract resulting from the invitation to tender; and

(d) Include instructions for preparing tenders.

(4) The procuring entity shall fix a specific date and time as the deadline for submitting tenders. The deadline shall afford suppliers or contractors sufficient time to prepare and submit their tenders.

(5) The procuring entity shall evaluate all tenders received and determine the successful tender in accordance with the evaluation criteria set out in the invitation to submit tenders under paragraph (3) (a) of this article.

(6) Subject to articles [12, 12 bis and other appropriate references] of this Law, the procuring entity shall accept the successful tender(s), and shall promptly notify the successful supplier(s) or contractor(s) that it has accepted their tender(s). The procuring entity shall also notify all other suppliers and contractors that submitted tenders of the name and address of the supplier(s) or contractor(s) whose tender(s) was or were accepted and the contract price.

Article [51 seddecies]. Award of the procurement contract under a framework agreement

(1) The procurement contract, on the terms and conditions of the framework agreement, comes into force when a purchase order as provided for in [articles ...] or the notice of acceptance to the successful supplier(s) or contractor(s) as provided for in [articles ...] is issued and dispatched to the supplier or contractor concerned.

(2) Where the price payable pursuant to a procurement contract concluded under the provisions of this section exceeds [the enacting State includes a minimum amount [or] the amount set out in the procurement regulations], the procuring entity shall promptly publish notice of the award of the procurement contract(s) in any manner that has been specified for the publication of contract awards under article 14 of this Law. The procuring entity shall also publish, in the same manner, [quarterly] notices of all procurement contracts issued under a framework agreement.”