Moving Forward with E-Procurement

The World Bank—Governance Practice, Solutions and Innovations in Procurement—ECA Region:
UNCITRAL’s Model Law and e-procurement

Caroline Nicholas
UNCITRAL Secretariat
December 2016
UNCITRAL’s Model Law and e-procurement

The question

“[e-procurement] is emerging worldwide with the potential to reform processes, improve market access, and promote integrity in public procurement”

Is it delivering its potential?
UNCITRAL’s Model Law and e-procurement

- **Modernization**
  - Key elements
  - e-procurement
  - Professionalization of procurement function
    - Toolbox approach
    - Aggregation of purchases/economy of scale
    - Sustainable procurement
    - Oversight, monitoring, effective review

- **Harmonization**
  - International instruments, donors, countries
  - Capacity-building
  - Laws and practice

United Nations Commission on International Trade Law
UNCITRAL’s Model Law and e-procurement

Meeting the harmonization challenge

- Coordination
- Transparent debate
- Engagement of public and private sectors, civil society
- Resources
### UNCITRAL Procurement Glossary - Basic Comparator

A glossary primarily intended to be used as a basic reference tool which includes terminology contained in the UNCITRAL Model Law and other common synonyms in use.

<table>
<thead>
<tr>
<th>UNCITRAL Model Law Terms</th>
<th>Others in use or similar Terms</th>
<th>Description Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abnormally low submissions</td>
<td>Abnormally low tenders (EU)</td>
<td>Submissions with prices so low they raise performance concerns</td>
</tr>
<tr>
<td>Advance notice of the procurement</td>
<td>Contract notice (EU) or Prior information notice (EU), depending on the context</td>
<td>Advertisement prior to beginning of procurement</td>
</tr>
<tr>
<td>Challenge procedures - request for reconsideration, request for review</td>
<td>Remedies (EU)</td>
<td>Suppliers’ challenge to procurement decisions under Chapter VIII Model Law</td>
</tr>
<tr>
<td></td>
<td>Bid protest (US)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Challenge procedures (GPA)</td>
<td></td>
</tr>
<tr>
<td>Closed framework agreements</td>
<td>Framework agreements (EU)</td>
<td>Two-stage award procedures</td>
</tr>
<tr>
<td>Construction</td>
<td>Works (EU, World Bank)</td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>Specification (EU)</td>
<td>Contained in the document used to establish the requirements for the goods or services to be purchased.</td>
</tr>
<tr>
<td>Direct solicitation</td>
<td></td>
<td>Solicitation addressed directly to one or a restricted number of suppliers and contractors without initial prequalification, available in restricted tendering, request-for-proposals, request for quotations, competitive negotiations and single-source procurement</td>
</tr>
</tbody>
</table>
UNCITRAL’s Model Law and e-procurement

Key potential benefits (1)

better

• Transparency
• Participation
• Competition
• Objectivity
• Efficiency

*ie better value for money & better governance*
UNCITRAL’s Model Law and e-procurement

Main tools (1) – external transparency

- e-publication
  - Notices
  - Awards
  - Review decisions
- e-solicitation
- é-tendering
- e-purchasing
  - ERAs, framework agreements, e-catalogues
UNCITRAL’s Model Law and e-procurement

Main tools (2) – better procedures

• Standard documents
• Standard procedures
• Reducing transaction costs/speed

For procuring entities and suppliers alike
UNCITRAL’s Model Law and e-procurement

Key benefits (2) – internal transparency

• Requirement for a procurement record
• Exhaustive
• Maintain in real time/keep up to date;
• General rule of access
  • Timing considerations
• Parts to be kept confidential unless ordered for disclosure by competent authorities
UNCITRAL’s Model Law and e-procurement

The procurement record

• All major decisions to be explained
  • Procurement method
  • Qualification, award
  • Socio-economic criteria

better

• Oversight (external and internal)
• Measurement of performance/results
• Accountability and integrity
UNCITRAL’s Model Law and e-procurement

Some policy parameters

- Functional equivalence
- Technological neutrality
- Remove obstacles (e.g., sealed envelopes)

Meaning

- Do not overregulate e-procurement
- Carefully design your e-procurement system
- Build confidence in e-procurement systems
UNCITRAL’s Model Law and e-procurement

Implementation recommendations

Redesigning the procurement system

- Not a technological issue alone
- Costs of investment in new system
- System to fit needs
- Staged approach
UNCITRAL’s Model Law and e-procurement

Pitfalls, in Guide

• Means of communication
  – Procuring entity’s choice

• Higher standards for e-procurement
  – Special e-tendering requirements
  – Authenticity
  – Signatures confirmed by third parties

• Proprietary systems/specialist software
  – Restrict access?

• Outsourcing
  – Organisational conflicts of interest
UNCITRAL’s Model Law and e-procurement

Pitfalls, in practice

- Disproportionate identification measures
  - Low value procurement?
- National recognition of digital signatures
  - No mutual recognition
- Excessive reliance on technology
  - Safeguards in legal framework?
  - Capacity-building?
- Excessive “transparency”
  - Publishing sensitive information
  - Proliferation of sources
Procurement & Infrastructure Development

Model laws

- UNCITRAL Model Law on Public Procurement (2011)
  - Guide to Enactment (2012)
  - Guidance on Procurement Regulations (2013)
  - Glossary (2013)

Legislative guides and recommendations


Model provisions


Explanatory texts

UNCITRAL’s Model Law and e-procurement

For more information

http://www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html

caroline.nicholas@uncitral.org

THANK YOU