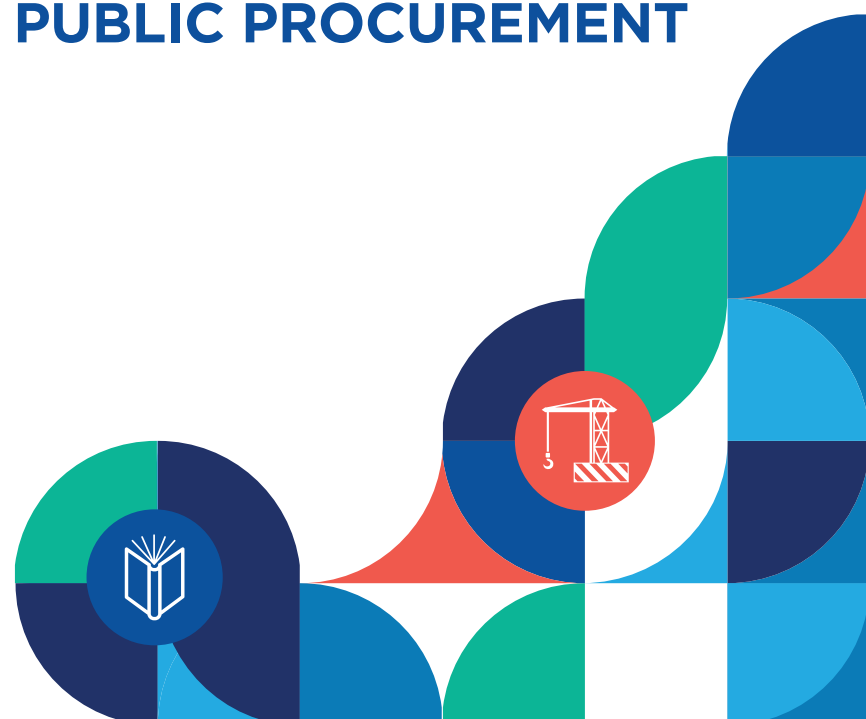




PROPOSAL FOR THE ADOPTION OF A MODEL LAW ON OFFSETS IN THE CONTEXT OF PUBLIC PROCUREMENT



INTRODUCTION

In public procurement, offsets have become an important and frequently used tool which is employed by the governments of buyer countries to support their national industries, as well as to improve their domestic infrastructure. Often the use of offsets relates to the development of strategic sectors of the industry, such as defence, energy, telecommunications and transport.

For example, offset contracts may aim at:

- acquiring new technologies that enable the country to limit its reliance on foreign suppliers;
- developing certain domestic industrial sectors;
- retaining or recovering a share of the economic activity created by the purchase.

Offsets constitute a significant economic activity that hitherto remains loosely regulated thus raising concerns regarding transparency, accountability and ultimately value for money.

The present proposal acknowledges the role played by offsets in international trade and aims to improve certain contextual elements of the environment in which they operate by enhancing transparency, legal certainty and accountability.

In this context, a standalone Community of Practice (CoP) dedicated to the compensatory measures in international government procurement contracts was created on the 29th October 2013 in the framework of the GFLJD (Global Forum on Law, Justice and Development). The GFLJD¹ is a permanent, global forum, with its Secretariat housed at the World Bank, which seeks to connect experts and stakeholders from around the world, and which provides a mechanism for continual and efficient knowledge exchange as well as for

¹ It seeks to: (1) promote a better understanding of the role of law and justice in the development process, through structured South-South and North-South dialogues amongst relevant stakeholders and a research agenda that will facilitate and support the co-generation of knowledge; (2) strengthen and better integrate legal and judicial institutions in the development process, by carrying out relevant capacity building initiatives; and (3) provide access to an open repository of knowledge. The GFLJD will set measurable, sustainable goals for itself in these areas, and evaluate its progress. The forum is organized thematically. Partners form and lead Thematic Working Groups (TWGs) based on their expertise, comparative strengths and areas of focus. Each TWG proposes its own agenda, group composition and operating guidelines.

the cogeneration of innovative solutions to development challenges based on efficiency, equity and justice.

After submitted a concept note on offsets practices as a major development challenge, the standalone CoP on compensatory measures in international government procurement contracts was created with the commitment to produce targeted knowledge products representing innovative legal solutions to the challenges identified.

The aim of the working group on the compensatory measures in the context of public procurement is to understand the phenomenon of compensatory measures in the context of globalization. Indeed, economic compensation could be an important form of international cooperation, development and regulation of globalization.

The purpose of the CoP on offsets issues is to develop fruitful and constructive dialogue amongst participants, explore different methodological trends and to propose a comprehensive draft proposal fro the adoption of a model instrument based UNCITRAL.



The Link Between the UNCITRAL Model Law on Public Procurement and Offsets

The purpose of the UNCITRAL Model Law on Public Procurement (2001) is twofold:

1. to serve as a model for states for the evaluation and modernization of their procurement laws and practices, and
2. to support the harmonization of procurement regulation internationally, to promote international trade.

The Model Law brings national defence and national security sectors into its general ambit. Pursuant to Article 1 of the Model Law, the Law applies to all public procurement. At the same time, the Model Law recognizes the special interests of states involved in defence and security procurement (e.g. the need to protect classified information and ensure security of supply). Consequently, when justified by national security interests, the Model Law allows states to deviate from the general provisions on transparency in the procurement procedures. In addition, when a state's national security is concerned, the state may, instead of open tendering, resort to alternative methods of procurement, characterized by their more 'restricted' nature.

Although offsets are not explicitly mentioned in the Model Law, it contains provisions relevant for offsets. Article 8 of the Model Law regulates the participation in procurement proceedings by suppliers or contractors. Pursuant to Article 8, suppliers or contractors shall be permitted to participate in procurement proceedings without regard to nationality, except where the procuring entity decides to limit participation in procurement proceedings on the basis of nationality on grounds specified in the procurement regulations or other provisions of law of this state. The procuring entity shall establish no requirement aimed at limiting the participation of suppliers or contractors in procurement proceedings, or that discriminates against or among suppliers or contractors or against categories thereof, except when authorized or required to do so by the procurement regulations or other provisions of law of the state.

These discriminations, authorized by the procurement regulation of a state, might be, for instance, the result of pursuing "socio-economic policies", defined by the Model Law as environmental, social, economic and other policies of the state authorized or required by the procurement regulations or other provisions of law of the state to be taken into account by the procuring entity in the procurement proceedings (Article 2(o)).

The procuring entity shall, however, when first soliciting the participation of suppliers or contractors in the procurement proceedings, declare whether the participation of suppliers or contractors in the procurement proceedings is limited and on what grounds, and include in the record of the procurement proceedings a statement of the reasons and circumstances on which it relied (Article 8).

Article 11 of the Model Law on rules concerning evaluation criteria and procedures provides that the evaluation criteria may include:

- a. Any criteria that the procurement regulations or other provisions of law of the state authorize or require to be taken into account;
- b. A margin of preference for the benefit of domestic suppliers or contractors or for domestically produced goods, or any other preference, if authorized or required by the procurement regulations or other provisions of law of the state. The margin of preference shall be calculated in accordance with the procurement regulations.

The evaluation criteria (and their relative weight) observed by the state shall be set out in the solicitation documents (Article 11(5)).

With regard to the socio-economic policies mentioned above and defined in Article 2(o) of the Model Law, Article 30(5) provides that a procuring entity may engage in single-source procurement when, following public notice and adequate opportunity to comment, procurement from a particular supplier or contractor is necessary in order to implement a socio-economic policy of the state, provided that procurement from no other supplier or contractor is capable of promoting that policy.

According to Article 52, a single-source procurement is a procedure preceding the solicitation of a proposal or price quotation from a single supplier or contractor.

In summary, the UNCITRAL Model Law on Public Procurement lays down systemic and procedural requirements for the use of offsets, as the evaluation criteria for offset conditions must be in compliance with the procurement legislation or regulations of the procuring state, and must be communicated to the participants at an early stage of the proceedings.

This is why the working group brings together several international partners and experts from ECCO (France), OECD (France), Institutions & Strategies (France) American Bar (USA), IHEJ (France), School of Law University of Nottingham (UK), Roger Joseph O'Donnell (USA), Nagoya University (Japan), Global Trade Group (USA), BIRD & BIRDS (Poland)- Judian International (Kenya) to propose a draft of model law focus on offsets issues.

There had 2 phases to this project:

- Phase 1: Carry out a cross analysis on offset practices (done, draft published on LDJ site).
- Phase 2: Draft a model law on offset based on the UNCITRAL Model law for public procurement (the actual texte below).

Since the beginning in October 29, 2013, the CoP has held thirthy two work sessions.

This CoP is under the leadership of the European Club for Countertrade and Offset (ECCO). The main role of the leader is to ensure that the project progresses adequately, facilitating the participation of the members of the CoP.

The working group is aware that this proposed drafting model law in a such area would require to be accompanied by a « guide to enactment » setting forth background and other explanatory information to assist government and legislators in using the text.² Such a guide would highlight the objectives of the model law, which should be fully consistent with the principles and objectives of the model law on public contracts.

² For instance, the Model Laws on International Credit Transfers and International Commercial Arbitration include short explanatory notes prepared by the secretariat of UNCITRAL for information purposes. The Model Laws on Electronic Commerce; Electronic Signatures; Cross-Border Insolvency; International Commercial Conciliation and Public Procurement include more extensive, official guides to enactment. These guides were considered by the Commission and generally adopted together with the text of each model law.

CONTENTS

INTRODUCTION 2

CHAPTER 1:
General Provisions 9

Article 1. Scope of application 9

Article 2. Definitions 9

Article 3. International obligations of [this State] relating to offset obligations [and intergovernmental agreements within [this State]]..... 11

Article 4. Procurement regulations 12

Article 5. Publication of legal texts 12

Article 6. Information on possible forthcoming public procurement with offsets 12

Article 7. Communications on procurement with offsets 12

Article 8. Participation of foreign suppliers 14

Article 9. Qualifications of suppliers and contractors 14

Article 10. Rules concerning description of the subject matter of the offset and the terms and conditions of the offset contract or framework agreement..... 15

Article 11. Rules concerning evaluation criteria and procedures..... 16

Article 12. Rules concerning the language of documents..... 17

Article 13. Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions 17

Article 14. Clarifications and modifications of solicitation documents..... 18

Article 15. Clarifications of qualifications information and of submissions 18

Article 16. Tender securities 19

Article 17. Cancellation of the procurement..... 20

Article 18. Exclusion of a supplier or contractor from the procurement proceedings on the grounds of inducements from the supplier or contractor, an unfair competitive advantage, conflicts of interest or other violation of national laws that concern the integrity of the procurement process.....	21
Article 19. Acceptance of the successful submission and entry into force of the procurement contract	22
Article 20. Public notice of the award of an offset agreement.....	22
Article 21. Confidentiality	23
Article 22. Documentary record of offset proceedings	24
Article 23. Code of conduct	25
CHAPTER II:	
Procedures for restricted tendering, requests for proposals without negotiation.....	26
Article 24. Request for proposals with dialogue procurement related.....	26
Article 25. Request for proposals with consecutive negotiations	30
Article 26. Competitive negotiations	31
Article 27. Single-source procurement	31
CHAPTER III:	
Challenge proceedings.....	32
Article 28. Right to challenge and appeal.....	32
Article 29. Effect of a challenge.....	32

CHAPTER 1:

General Provisions

Article 1. Scope of application

This Law applies to all offset contracts (direct, indirect, semi-direct) in the field of civil, defence, security procurement.

Article 2. Definitions

For the purposes of this Law:

(a) “Offset” means any condition or undertaking that encourages local development or improves a Party’s balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement.³

(b) “Offset agreement” means a counterpart of a main export sales contract in a technology sector where the government imposes on its foreign supplier an obligation to perform direct offset, or indirect offset, or semi-direct offset. The offset agreement sets the value as well as the schedule of the offset obligation to be met by the obligor in line with the proportions set in the applicable offset legislation.

The offsets agreement maybe signed before or after, the main contract comes into force.

(c) “Offset contract” is the contract that governs the relationship between the foreign supplier (obligor) and the domestic beneficiary.

(d) “Direct offsets” involved the transfert of value added attached to the prime contract that are directly related to the goods or services being sold in the contract, such as transfert of technology, localization, license, coproduction or local subcontracting.

(e) “Indirect offsets” are conditions (creation of Value Added) that are not linked to the subject matter of the prime contract.

(f) “Semi direct offsets” appear in the form of local co-production,

³ Definition based on Article II—Revised Agreement of Government Procurement (GPA)—applicable April 2014.

technology transfer, local investment, subcontracting not directly related to the product being sold but related to the sector of activity of the product.

(g) “Value added” refers to the contribution of the offset to the local development of the country.

(h) “Offset obligation” means the obligation that arise from the ‘offset agreement’.

(i) “Obligor” means the foreign supplier which enters into the offset agreement with the buyer.

(j) “Main contract” means the government or parastatal procurement contract for the acquisition of goods, services or any combination thereof by a procuring entity that justify the contextual basis of the offset agreement.

(k) “Government procurement” means the process by which a contracting entity acquires goods, services or any combination thereof from the public or private sector.

(l) “Offset Authorities” means an official public or private entitie in charge to manage offset agreement in a country on behalf of the Government.

(m) “Economic stabilization clause”: A clause that stipulates that the host state will not enact any legislation or take any administrative measures after the signature of the offset contract which have the effect of aggravating the costs of the offset project.

(o) “Currency” includes the monetary unit of account.

(p) “Direct solicitation” means solicitation addressed directly to one obligor or contractor or a restricted number of obligors/suppliers or contractors. This excludes solicitation addressed to a limited number of obligors/suppliers or contractors following pre-qualification or pre-selection proceedings.

(q) “Domestic procurement” means procurement limited to domestic suppliers or contractors.

(r) “Electronic reverse auction” means an online real-time purchasing technique utilized by the procuring entity or Offset Authorities to select the successful submission, which involves the presentation by obligors/suppliers or contractors of successively projects during a scheduled period of time.

(s) “Procuring entity” means:

Option I

- (i) Any governmental department, agency, organ or other unit, or any subdivision or multiplicity thereof, that engages in procurement, except ...; [and]

Option II

- (i) Any department, agency, organ or other unit, or any subdivision or multiplicity thereof, of the [Government] [other term used to refer to the national Government of the enacting State] that engages in procurement, except ...; [and]

(ii) *[The enacting State may insert in this subparagraph and, if necessary, in subsequent subparagraphs other entities or enterprises, or categories thereof, to be included in the definition of “procuring entity”];*

(t) “Solicitation” means a requirement coming from procuring entity or Offset Authorities;

(u) “Solicitation document” means a document issued by the procuring entity or Offset Authorities including any amendments thereto, that sets out the terms and conditions of the given procurement;

(v) “A submission (or submissions)” means, a proposal (or proposals), an offer (or offers), a quotation (or quotations) and a bid (or bids) referred to collectively or generically, including, where the context so requires, an initial or indicative submission (or submissions);

(w) “Supplier or contractor” means, any potential party or any party who will carry out the main contract or the offset contract;

(x) “Offset proposal” means a proposal furnished by an obligor to a procuring entity (direct offset) or Offset Authorities (semi-direct or indirect offset) by the terms of which the obligor commits to satisfy the offset requirements of the procuring entity or Offset Authorities and provides the information required by the procuring or Offset Authorities in accordance with applicable offset requirements; offset proposals may be included with the main contract submission or may be separately submitted, depending upon national requirements.

Generally, direct and sometimes semi-direct offsets are included in the main contract submission. Semi-direct and Indirect offsets are generally the subject of a separate submission.

Article 3. International obligations of [this State] relating to offset obligations [and intergovernmental agreements within [this State]]

This Law should be, as far as possible, in line with the obligation of this State under or arising out of any:

(a) Treaty or other form of agreement to which it is a party with one or more other States; [or]

(b) Agreement entered by this State with an intergovernmental international financing institution; [or]

(c) Agreement between the federal Government of [*name of federal State*] and any subdivision or subdivisions of [*name of federal State*] or between any two or more such subdivisions.

The requirements of the treaty or agreement shall prevail, but in all other respects the procurement shall be governed by this Law.

Article 4. Procurement regulations

The [*name of the organ or authority authorized to promulgate the procurement regulations*] is authorized and encouraged to promulgate offsets regulations to fulfill the objectives and to implement the provisions of this Law.

Article 5. Publication of legal texts

1. This Law, the offset regulations and other legal texts of general application in connection with offsets covered by this Law, and all amendments thereto, shall be promptly made accessible to the public.
2. Judicial decisions and administrative rulings with precedent value in connection with offsets covered by this Law shall be made available to the public.

Article 6. Information on possible forthcoming public procurement with offsets

Procuring entities or Offset Authorities are encouraged to publish information regarding prospective supply requirements where they expect obligors to undertake offset obligations and planned procurement activities for forthcoming months or years.

Information regarding a future procurement contract and the corresponding offset obligations are to be published in advance.

Publication under this article does not constitute a solicitation, does not oblige the procuring entity to issue a solicitation and does not confer any rights on suppliers or contractors.

Article 7. Communications on procurement with offsets

1. Offsets will fall under the remit of one or several relevant government agencies (e.g., Ministry / Department...) depending upon national law and practice. Such agency or agencies are those responsible for setting offset policies aligned to national economic objectives, for promulgation of offset rules, procedures and practices in accordance with national law, for the negotiation and approval of offset proposals, and for the administration of offset contracts. Collectively, these are referenced herein as the national Offset Authority (“OA”).
2. National rules vary with respect to offset process, requirements and necessary documentation.

In the case of direct offset, the contractor deals directly with the procuring entity.

For offset semi-direct and indirect projects, the process is as follows:

- Contractors receive notice of supply contract with offset requirement;
- Contractors identify and conceptualize project(s) to satisfy offset requirements;
- Contractors identify prospective offset partners and (where required) submit for approval;
- Offset Authorities reviews and provides concept approval for specific project(s);
- Offset Authorities reviews and provides approval for identified offset partners;
- Offset Authorities may conduct feasibility study for project(s);
- Offset Authorities may carry out due diligence for all parties;
- Offset Authorities may require drafting of business plan including financials or other documentation to establish business commitments to offset partners;
- Offset Authorities approves, where necessary, proposed offset partners and approves obligor's business plan or offset business proposal;
- Obligor and Offset Authority negotiate and conclude offset contract;
- Obligor performs offset contract subject to reporting and documentation requirements;
- Ongoing review and monitoring of project;
- Offset Authorities reviews proposed submissions for offset credit award;
- Obligor earns offset credit by performance of offset contract and discharges obligation upon full satisfaction.

In the case of direct offset, the contractor deals directly with the procuring entity.

3. Any document, notification, decision or other information generated in the course of an offset and communicated as required by this Law, shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.
4. The procuring entity and the Offset Authorities shall put in place measures to assure that competition-sensitive and proprietary information of each obligor is protected against dissemination to unauthorized persons or disclosure to any other obligor. Examples of competition-sensitive and proprietary information include offset project plans, supply partners and prospective investments, joint ventures and tie-ups, and other trade secrets. The integrity of the offset process depends upon the protection of such information.
5. The procuring entity, Offset Authorities and obligor or contractor shall have in place appropriate measures to secure the authenticity, integrity and confidentiality of information exchanged during the offset process.

Article 8. Participation of foreign suppliers

1. The application of offset requirements to government procurement programs is determined by national law and practice.
2. Foreign suppliers can be called by obligors or contractors. In this case, foreign suppliers shall be permitted to participate in offset proceedings without regard to nationality, except where the national law required otherwise.

Article 9. Qualifications of suppliers and contractors

1. This article applies to the ascertainment by the procuring entity or Offset Authorities for the qualifications of suppliers or contractors at any stage of the procurement proceedings.

Suppliers or contractors shall meet such of the following criteria as the procuring entity or Offset Authorities determines relevant and applicable, in the circumstances of the particular procurement, and as are disclosed by the laws, regulations or policies of the procuring entity, or stated in the solicitation or qualifying documents for the procurement:

- (a) That they have the necessary professional, technical and environmental qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the procurement contracts (main and offset);
- (b) That they meet ethical and other standards as established and applicable in this State (main and offset);
- (c) That they are acting through representatives or entities which have the legal capacity to enter into the procurement contracts (main and offset);
- (d) That they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended and they are not the subject of legal proceedings for any of the foregoing (main and offset);
- (e) That they have fulfilled, to the satisfaction of the procuring State, applicable obligations to pay taxes, social security contributions or other fees required by the procuring State (only applicable to the main);
- (f) That they have not, and their directors or officers have not, been convicted of any criminal offence related to their professional or business conduct, as concerns the performance of public contracts, compliance with public integrity laws, or in the making of false statements or misrepresentations as to their qualifications to enter into a public procurement contract, within a period of ... years [*the enacting State specifies the period of time*] preceding the commencement of the procurement proceedings, and that they have not been otherwise disqualified by the purchasing State from eligibility

to bid on, receive or perform public contracts, pursuant to administrative suspension or debarment proceedings, within a period of >>> years [*the enacting State species the period of time*] (main and offset).

2. Subject to the right of suppliers or contractors to protect their intellectual property, “trade secrets” or proprietary information, as may accompanied by non-disclosure commitments to the extent authorized by the law of the procuring State, the procuring entity or Offset Authorities may require suppliers or contractors participating in procurement proceedings to provide appropriate documentary evidence or other information to satisfy itself that the suppliers or contractors, and proposed lower tier subcontractors or other vendors, are qualified in accordance with the professional, technical, financial and other criteria such ethical and environmental criteria, required by the applicable national rules on government procurement.
3. Any requirement established pursuant to this article shall be set out, in the pre-qualification or pre-selection documents; a procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors other than those provided for in this Law (main and offset).
4. The qualifications of suppliers or contractors shall be evaluated in accordance with the disclosed national law qualification criteria and procedures set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents (only for the main).
5. Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with article 8 of this Law, the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of suppliers or contractors that discriminates against or among suppliers or contractors or against categories thereof, or that is not objectively justifiable.

Article 10. Rules concerning description of the subject matter of the offset and the terms and conditions of the offset contract or framework agreement

1. (a) The pre-qualification or pre-selection documents, if any, shall set out a description of the subject matter of the offset contract;
(b) The procuring entity shall set out in the solicitation documents the detailed description of the subject matter of the offset that it will use in the examination of submissions, including the minimum requirements that submissions must meet to be considered responsive and the manner in which those minimum requirements are to be applied.
2. Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with article 8 of this Law, no description

of the subject matter of a procurement that may restrict the participation of suppliers or contractors in or their access to the procurement proceedings, including any restriction based on nationality, shall be included or used in the pre-qualification or pre-selection documents, if any, or in the solicitation documents.

3. The description of the subject matter of the offset contract may include specifications, plans, drawings, designs, requirements, testing and test methods, packaging, marking or labelling or conformity certification, and symbols and terminology.
4. To the extent practicable, the description of the subject matter of the offset contract shall be objective, functional and generic. It shall set out the relevant technical, quality and performance characteristics of that subject matter. There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement and provided that words such as “or equivalent” are included.
5. Standardized features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the subject matter of the offset contract shall be used, where available, in formulating the description of the subject matter of the procurement to be included in the pre-qualification or pre-selection documents, if any, and in the solicitation documents; if any, and solicitation documents.

Article 11. Rules concerning evaluation criteria and procedures

1. Except for the criteria set out in paragraph 3 of this article, the evaluation criteria shall relate to the subject matter of the procurement.
2. The evaluation criteria relating to the subject matter of the offset procurement may include:
 - (a) Amount of added value created in % of the total imported amount of the contract
 - (b) The schedule for delivery of goods, completion of construction or provision of services.
 - (c) The environmental and social characteristics of the subject matter.
 - (d) Where relevant in procurement, the experience, reliability and professional and managerial competence of the supplier or contractor and of the personnel to be involved in providing the subject matter of the procurement.
 - (e) Number of direct and indirect local employment created
 - (f) Nature of investment if any,

(g) Nature of transfer of Technology if any (field, good will, etc)

(h) Sustainability of the projects

3. To the extent practicable, all criteria shall be objective, quantifiable and expressed in creation of economical value terms.
4. The Offset Authorities shall set out in the solicitation documents whether the successful submission will be ascertained on the basis of creation of economical value or other criteria;
5. In evaluating submissions and approving the successful submission, the Offset Authorities shall use only those criteria and procedures that have been set out in the solicitation documents and shall apply those criteria and procedures in the manner that has been disclosed in those solicitation documents. No criterion or procedure shall be used that has not been set out in accordance with this provision.

Article 12. Rules concerning the language of documents

1. The pre-qualification or pre-selection documents, if any, and the solicitation documents shall be formulated in English and national language.
2. Applications to pre-qualify or for pre-selection, if any, and submissions may be formulated and presented in English language and national language.

Article 13. Rules concerning the manner, place and deadline for presenting applications to pre-qualify or applications for pre-selection or for presenting submissions

1. The manner, place and deadline for presenting offset proposal shall be set out in the solicitation documents.
2. Deadlines for presenting offset proposal shall be expressed as a specific date and time and shall allow enough time for obligors or contractors to prepare and present their applications, taking into account the reasonable needs of the offset Authorities.
3. If the offset Authorities issues a clarification or modification of the solicitation documents, it shall notify the relevant parties at the earliest opportunity and in compliance with the principle of equal treatment if offset have to be agreed before the award of the main contract.
4. In case of force majeure, notice of any extension of the deadline shall be given promptly to each obligors or contractor to which the offset Authorities provided the solicitation documents.

5. If the procuring or offset Authorities convene a meeting of offset obligors, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all obligors to which the procuring or offset entity provided the solicitation documents, so as to enable those obligors to take the minutes into account in preparing their submissions.

Article 14. Clarifications and modifications of solicitation documents

1. An obligor or contractor may request a clarification of the solicitation documents that concern offset requirements from the procuring or offset Authorities. The procuring or offset Authorities shall respond to any request by an obligor or contractor for clarification that is received by the procuring or offsets Authorities within a reasonable time prior to any deadlines set for receipt of such inquiries or for presenting submissions. The procuring or offsets Authorities shall communicate all changes or clarifications of offset requirements to all obligors or contractors to which the procuring entity or Offset Authorities has provided the solicitation on offset requirement documents.
2. If the procuring or offsets Authorities convenes a meeting of obligors or contractors that concerns offset requirements, it shall prepare minutes of the meeting reflecting the presentation made by the offsets Authorities and containing the requests submitted at the meeting for change to or clarification of the offset requirements documents and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all obligors or contractors to which the procuring or offsets Authorities provided the offset requirements documents, so as to enable those obligors or contractors to take the minutes into account in preparing their offset submissions.

Article 15. Clarifications of qualifications information and of submissions

1. No substantive change on the offsets guidelines or as concern the qualification of potential offset partners will occur during the negotiations or award process that precedes the selection decision of the awardee for the supply contract, or during such period as applies to qualification, negotiation and execution of the corresponding offset agreement, unless the procuring or offsets Authorities informs all companies then participating of the change and affords each due opportunity to revise their proposals in recognition of such change(s).
2. All communications generated under this article shall be included in the record of the procurement proceedings.

Article 16. Tender securities

1. When the procuring or offsets Authorities requires obligors or contractors presenting submissions to provide a tender security:

(a) The requirement shall apply to all obligors or contractors;

(b) The solicitation or offset requirements documents may stipulate that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the procuring or offsets Authorities. In cases of domestic procurement, the solicitation documents may in addition stipulate that the tender security shall be issued by an issuer in this State if this necessary required by the law of this state;

(c) Prior to presenting a submission, a obligor or contractor may request the procuring or offsets Authorities to confirm the acceptability of a proposed issuer of a tender security or of a proposed confirmer, if required; the procuring entity or Offset Authorities shall respond promptly to such a request;

(d) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity or Offset Authorities from rejecting the tender security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or has otherwise ceased to be creditworthy;

(e) Requirements as concern a tender security that apply to satisfaction of offset requirements shall be disclosed to all obligors and contractors who may execute offset contracts with the procuring or offset Authorities and changes made for the benefit of any one or several obligors or contractors shall be made available or applicable to all other participants;

(f) The procuring or offsets Authorities shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Any requirement that refers directly or indirectly to the conduct of the supplier or contractor presenting the submission may relate only to:

- (i) Withdrawal or modification of the submission after the deadline for presenting submissions, or before the deadline if so stipulated in the solicitation documents;
- (ii) Failure to sign a procurement contract if so required by the solicitation documents; and
- (iii) Failure to provide a required security for the performance of the contract after the successful submission has been accepted or failure to comply with any other condition precedent to signing the procurement contract specified in the solicitation documents.

2. The procuring or offsets Authorities shall make no claim to the amount of the tender security and shall promptly return, or procure the return of, the security document after the earliest of the following events:
 - (a) The expiry of the tender security;
 - (b) The award to a different entity of the procurement or supply contract and the related offset contract; or
 - (c) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents, where no distinct or separate security is required for any accompanying offset contract;

Article 17. Cancellation of the procurement

1. The procuring entity or Offset Authorities may cancel the procurement at any time prior to the acceptance of the successful submission and, after the successful submission is accepted, under the circumstances referred to the article 20 of this Law. The procuring entity or offset Authorities shall not open or evaluate any tenders or proposals after taking a decision to cancel the procurement.
 - (a). In the ordinary course, the cancellation of procurement shall result in the corresponding cancellation, *in pari passu*, of the related offset proposal, and the offset proposal (together with all supporting documentation) shall be returned to the proposing obligor. In such event, the procuring entity or Offset Authorities shall keep all aspects of the offset proposal confidential in order to respect the trade secrets and proprietary business strategies of the obligor.
 - (b). Where procurement has been cancelled, prior to award and execution of a contract, the proposing obligor shall not be held to perform to the offset proposal that it submitted for the cancelled procurement.
 - (c). Notwithstanding the foregoing, with the consent of the obligor, the procuring entity or Offset Authorities may retain an offset proposal and applied to satisfy the offset requirements of a different procurement.
 - (d). Expenses incurred by an obligor in the preparation of an offset proposal shall not be reimbursable, except if the procuring entity or offset Authorities has indicated in the procurement documents and offset requirements that it intends to pay such expenses in the event of cancellation.
 - (e). In the event that a procuring entity or Offset Authorities makes a decision to cancel a procurement that is considered by a proposing obligor to have been made in bad faith or violation of the laws of the country conducting the procurement, the proposing obligor may seek reimbursement from national authority of the costs that it incurred in the preparation of the bid for the main supply contract and of the offset proposal.

(f). A material modification of requirements for a main contract shall not be treated as cancellation but shall be accompanied by notification to potential contracting parties and opportunity to make modifications to supply as well as offset contract proposals reflective of such modification.

Article 18. Exclusion of a supplier or contractor from the procurement proceedings on the grounds of inducements from the supplier or contractor, an unfair competitive advantage, conflicts of interest or other violation of national laws that concern the integrity of the procurement process.

1. Obligors shall conform to all national laws that concern integrity of procurement and ethical business conduct in the preparation of offset proposals and in all dealings with the procuring entity that concern the submission, requirements, review, evaluation, approval or credit for the offset proposal.
2. A procuring entity or Offset Authorities shall exclude an obligor or contractor from the procurement proceedings if, in connection with an offset proposal:
 - (a) The obligor or contractor offers, gives or agrees to give, directly or indirectly, to any current or former officer or employee of the procuring entity, Offset Authorities or other governmental authority a gratuity in any form, an offer of employment or any other thing of service or value, so as to influence an act or decision of, or procedure followed by, the procuring entity in connection with the official processing of the offset proposal; or
 - (b) The obligor or contractor has obtained an unfair competitive advantage or a benefitted from a conflict of interest in violation of the law of the procuring State.
3. Subject to the laws of the procuring State, where the procuring entity intends to take action under this Article against a obligor or contractor, arising from misconduct associated with an offset proposal, the obligor or contractor shall be informed of the allegations that concern it, be afforded access to the evidence that may support such allegations, and provided an opportunity to respond or defend itself.
4. Any decision of the procuring entity to exclude an obligor or contractor from the procurement proceedings under this article and the reasons therefore shall be included in the record of the procurement proceedings and promptly communicated to the obligor or contractor concerned. If and to the extent afforded by the national laws of the procuring State, the affected obligor or contractor shall have rights to seek judicial redress in courts of competent jurisdiction.

Article 19. Acceptance of the successful submission and entry into force of the procurement contract

1. The procuring entity shall accept the successful submission unless:
 - (a) The obligor or contractor presenting the successful submission is disqualified in accordance with article 9 of this Law;
 - (b) The procurement is cancelled in accordance with paragraph 1 of article 18 of this Law; or
 - (c) The obligor or contractor presenting the successful submission is excluded from the procurement proceedings on the grounds specified in article 19 of this Law.
2. The procuring entity shall promptly notify each obligor or contractor that presented submissions of its decision to accept the successful submission at the end of the standstill period. The notice shall contain, at a minimum, the following information:
 - (a) The name and address of the obligor or contractor presenting the successful submission;
 - (b) The total amount of creation of local economical value
 - (c) The duration of the standstill period as set out in the solicitation documents and in accordance with the requirements of the procurement regulations. The standstill period shall run from the date of the dispatch of the notice under this paragraph to all obligors or contractors that presented submissions.

Article 20. Public notice of the award of an offset agreement

1. Upon the entry into force of an offset agreement, the procuring entity or Offset Authorities shall promptly publish notice of the offset agreement, specifying the name of the obligor/supplier (or suppliers) or contractor (or contractors) entering into the offset agreement, identifying the contract to which the offset agreement is related, and describing the general terms of the offset commitment, subject to the requirements or limitations of the law of the purchasing State.
2. The procuring entity or offset Authorities are encouraged to publish periodic notices of cumulative offset commitments, from time to time, but at least once a year.
3. The offset regulations shall provide for the manner of publication of the notices required under this article.

Article 21. Confidentiality

1. In its communications with obligors/suppliers or contractors or with any person, the procuring entity shall not disclose any identified proprietary or business confidential information (including intellectual property) provided by obligors/suppliers or contractors except where (i) disclosure is required

by national law or regulation, (ii) where disclosure is required by order of a court of the purchasing State, or (iii) failure to disclose the information would be harmful to the national security interests of the purchasing State. It is the responsibility of each obligor/supplier or contractor to clearly identify information which it asserts is proprietary or confidential or which constitutes its intellectual property.

The State shall respect the legitimate commercial interests of the obligors/suppliers or contractors and avoid any disclosure as would reasonably be expected to impede fair competition and shall provide such notice as is permitted under national law to the potentially affected obligor/supplier or contractor prior to making any disclosure of proprietary or competition-sensitive information (including intellectual property).

2. Subject to the foregoing paragraph 1 of this Article, and other than when providing or publishing information pursuant to paragraphs 2 and 10 of Article 20 and to Articles 21, 23 and 30 of this Law, the procuring entity or Offset Authorities shall treat as confidential the following examples of offset-related submissions by potential obligors/suppliers or contractors: (i) applications to pre-qualify domestic offset partners (including subcontractors); (ii) substantiation of the credentials of proposed offset partners (or subcontractors); (iii) plans of performance of offset requirements; (iv), negotiated teaming, joint venture, tie-up or other agreements, contracts or subcontracts; (v) proposed workshare or contracting assignments; (vi), matters that concern transfer or licensing of technology; and (vii) potential investments in commercial entities domiciled in the purchasing State. The enumerated items may be considered by the procuring State in its determination of what information is proprietary and competition-sensitive information which the procuring State shall not disclose to any competing obligors/suppliers or contractors or to any other third-party person not authorized to have access to this type of information.
3. All discussions, communications, negotiations or dialogue between the procuring entity or offset Authorities and a obligor or contractor, for purposes of concluding an offset agreement, shall be confidential and kept by all parties in strictest confidence unless: (i) disclosure is required by national law or regulation, (ii) disclosure is required by order of a court of the purchasing State, or (iii) failure to disclose the information would be harmful to the national security interests of the purchasing State. No party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to these discussions, communications, negotiations or dialogue without the consent of the other party. Unless the procuring entity imposes rules or requirements to the contrary, there shall be a presumption that a obligor or contractor may disclose such matters to agents, prospective offset business partners or other supporting third parties where the respective private parties have

entered into a Non-Disclosure Agreement intended to assure the continuing confidentiality of such information.

4. Subject to the requirements in paragraph 1 of this Article, in procurement involving sensitive but unclassified defence technical information, or classified information, the procuring entity or Offset Authorities may:
 - (a) Limit access to such information for purposes of proposing or performing an offset agreement unless the procuring entity is satisfied that applicable laws, regulations and policies regarding the security of such information are satisfied by the obligors or contractors; and
 - (b) Demand that obligors or contractors assure that their offset partners and subcontractors comply with such security requirements.

Article 22. Documentary record of offset proceedings

1. The procuring or offset Authorities entity shall maintain a record of the offset agreement proceedings which, subject to national law and regulation, includes the following information:
 - (a) A brief description of the subject matter of the related supply contract and of the contemplated offset agreement;
 - (b) The names and addresses of obligors or contractors that made offset submissions;
 - (c) The name and address of any offset partner or proposed offset supplier included in the offset plan as submitted for consideration or action by the requiring activity of the State;
 - (d) A statement of the reasons and circumstances relied upon by the procuring entity for its decision(s) as concern the suitability of offset proposals, the eligibility or qualifications of proposed offset partners, and as regards the satisfaction of requirements and terms and conditions of any offset agreement;
 - (e) The requirements, conditions, term, value and and other principal terms and conditions of the offset agreement, where authorized and offered to the obligor or contractor;
 - (f) A summary of the communications between the obligor or contractor and the requiring activity with respect to the offset agreement and any understandings reached that concern the performance of such agreement;
 - (g) The reasons and circumstances for any non-disclosure of information where the requiring activity invoked paragraph 1 of Article 22 of this law; and
 - (h) Other information required to be included in the record of the offset agreement action in accordance with the provisions of this Law or other

procurement law or regulation of the purchasing State.

2. The documentary record described in paragraph 1 of this Article shall be treated as “Confidential” in accordance with Article 22.
3. The procuring entity or offset Authorities shall record, file and preserve all documents and communications relating to the offset proceedings, according to procurement laws and regulations of the State.

Article 23. Code of conduct

For the solicitation, negotiation, execution and administration of offset agreements, a documented code of conduct for officers or employees of procuring entities or Offset Authorities shall be established. The code of conduct shall address, inter alia, (i) the prevention of conflicts of interest in procurement and as concerns the offset agreement; and (ii) where appropriate, measures to employ with respect to the assignment and qualification of State personnel responsible for offset agreements, such as declarations of interest, financial disclosures (where required) screening procedures and training measures. The code of conduct so implemented shall be promptly made accessible to the public and to prospective obligors and contractors and shall be systematically maintained.

CHAPTER II:

Procedures for restricted tendering, requests for proposals without negotiation

Article 24. Request for proposals with dialogue procurement related

1. As provided by national law or regulation, procuring or offsets Authorities may employ methods of dialogue (here defined to be dialogue, discussions, competitive negotiations and post-selection negotiations) with obligors or contractors who seek award of a supply contract with related offset obligations.
 - (a) Approvals for dialogue and documented constraints upon what may be negotiated shall precede the use of any negotiation authority. Records shall be kept of the use of negotiation authority;
 - (b) Potential obligors and contractors shall be informed, prior to the due date for supply or offset contract proposals, what subjects may be the subject of dialogue, if any, and the procuring or offset Authorities shall reasonably inform potential suppliers and contractors of how and at what point in the process it shall exercise dialogue authority;
 - (c) In use of dialogue authority, purchasing or offset Authorities shall be guided by a principal that all forms of dialogue are to reduce risks and improve success by both parties to a contract and that the authority to conduct dialogue shall not be mis-used in such a fashion as to frustrate or circumvent competition; and
 - (d) Communications exchanged during each form of dialogue shall be kept in strictest confidence and the procuring or offset Authorities shall not use for the benefit of one competitor information that it learned during any dialogue with another competitor.
2. When a procuring or offset Authorities contemplates the use of any of the above-referenced methods of dialogue, for the offset contract, it shall promptly inform potentially interested obligors or contractors of:
 - (a) The name and address of the procuring or offset Authorities;

- (b) A description of the subject matter of the procurement and the nature of the corresponding offset requirement;
 - (c) How, under what authority, and by what means the procuring or offset Authorities intends to utilize a dialogue process, and how it will determine which parties will be asked to participate in any form of dialogue (and which form(s));
 - (d) The subject areas for dialogue (such as, for example, statement of work, eligible offset partners, credit for offsets already achieved, application of multipliers; measurement of earned offset credits; and
 - (e) When and to the extent known, the desired or required time and location for the form(s) of dialogue, and subject matter(s) to be addressed.
3. Where multiple proposals are under consideration for the supply contract and associated offset contract, a procuring or offset Authorities may determine to limit the number of obligors or contractors with whom it is willing to engage in a dialogue process; there shall be no appeal by any party excluded from such dialogue unless and to the extent authorized by the national law of the purchasing entity.
4. A procuring or offset Authorities may elect to evaluate the offset proposals of obligors or companies it deems eligible to satisfy the offset requirement and whom it determines, in its sole judgment, to be in the “competitive range” suitable for inclusion in a dialogue process. At its election, the procuring or offset Authorities may establish selection criteria that it uses to determine the responsibility of each offset offeror and each offset partner proposed by an offeror and evaluate and score the relative merits of offset proposals. With respect to such selection criteria, the proposing or offset Authorities may:
- (a) elect to share those criteria with the obligors or companies to be invited to participate in an evaluation and dialogue process;
 - (b) be guided by the principle of consistency in the use of established selection criteria;
 - (c) consider whether to inform obligors and contractors of the results of evaluation; and
 - (d) consider whether to prepare an offset selection report that documents, for use internal to the procuring or offset Authorities, how selection criteria were employed and what resulted in the application of these criteria to the offset proposals under consideration.
5. A procuring or offset Authorities may engage in proceedings to pre-qualify a contractor or obligor, or prospective offset partners identified by such contractors or obligors, in order to facilitate determinations as to eligibility for future offset requirements and to expedite the process of offset proposal solicitation, evaluation, dialogue and award.

(a) Where an invitation is made to participate in pre-qualification proceedings, the procuring or offset authority shall disclose and inform to all prospective offset suppliers its requirements and the procedures and methods it shall employ for pre-qualification.

(b) When pre-qualification procedures and requirements are made available to prospective offset contractors, and potential offset partners, the procuring or offset Authorities shall endeavor in good faith to apply fairly the procedures and requirements to each supplier, contractor or prospective offset partner.

(c) Procuring or offset Authorities are encouraged to inform obligors, contractors and prospective offset partners of any identified deficiency capable of correction.

(d) Unless disclosed in advance to prospective participants, procuring or offset Authorities shall not charge any fee to obligors, contractors or prospective offset partners for the pre-qualification process and, should a fee be charged, it shall be limited only to amounts reasonably reflecting the costs to the procuring or offset Authorities.

6. When a procuring or offset Authority makes a request for offset proposals, it shall consider the extent to which it can provide to all potential or prospective offerors (and offset partners, if applicable), the following categories of information to aid in the preparation of responsive proposals:

(a) Instructions for preparing and presenting proposals;

(b) If obligors or contractors are permitted to present proposals for only a portion of the subject matter of the offset requirement, a description of the portion or portions for which proposals may be presented;

(c) The currency or currencies in which the offset proposal is to be formulated and expressed, the currency that will be used for the purpose of evaluating proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution and prevailing on a specified date will be used;

(d) The manner in which the offset proposal composition and value is to be formulated and expressed, including a statement as to whether the value is to cover elements other than the price paid to offset partners for work they are to perform as subcontractors or vendors to the offset prime contractor;

(e) How proposals should express value-added and eligibility for multipliers or other special consideration as may be required by the procurement or offset authority;

(f) The means by which, pursuant to article ___ of this Law, suppliers or contractors may seek clarification of the request for offset proposals and a statement as to whether the procuring or offset Authorities intends to

convene a meeting of obligors or contractors at this stage;

(g) Any element of the description of the subject matter of the offset procurement or term or condition of the offset contract that will not be the subject of dialogue during the procedure;

(h) Whether the procuring entity intends to limit the number of obligors or contractors that it will invite to participate in any dialogue process, and if so, the criteria and procedure, in conformity with the provisions of this Law, that will be followed in selecting participants;

(i) The criteria and procedure for evaluating the offset proposals and proposed offset partners in accordance with article ___ of this Law;

(j) References to this Law, the procurement regulations and other laws and regulations directly pertinent to the offset proceedings, including those applicable to offset requirements involving industrial participation objectives or access to or use of classified information, and the place where those laws and regulations may be found;

(k) The name, functional title and address of one or more officers or employees of the procuring or offset Authorities who are authorized to communicate directly with and to receive communications directly from obligors or contractors in connection with the offset proceedings without the intervention of an intermediary;

(l) Notice of the right provided under article ___ of this Law to challenge or appeal decisions or actions taken by the procuring or offset entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period (in the event of any such appeal) and, if none will apply, a statement to that effect and the reasons therefor;

(m) Any formalities that will be required, once the successful offset proposal has been accepted, for an offset contract to enter into force, including, where applicable, the execution of a related, written procurement contract, and execution of an offset contract, and approval by another authority pursuant to article ___ of this Law, and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval;

(n) Any other requirements that may be established by the procuring or offset entity in conformity with this Law and the procurement laws and regulations relating to the preparation and presentation of proposals and to the offset proceedings.

7. (a) The procuring or offset entity shall examine all proposals received against the established minimum requirements for the offset requirement and shall reject each proposal that fails to meet these minimum requirements on the ground that it is non-responsive;

(b) Where a maximum limit on the number of obligors or contractors that can be invited to participate in a dialogue process has been established and

the number of responsive proposals exceeds that limit, the procuring entity shall select the maximum number of responsive proposals in accordance with the criteria and procedure specified in the request for proposals;

(c) A notice of rejection and the reasons for the rejection shall be promptly dispatched to each respective obligor or contractor whose offset proposal was rejected.

8. Any requirements, guidelines, documents, clarifications or other information generated during a dialogue process that is communicated by the procuring or offset Authorities to an obligor or contractor shall be communicated at the same time and on an equal basis to all other participating obligors or contractors eligible for the same dialogue process, unless such information is specific or exclusive to that obligor or contractor or such communication would be in breach of the confidentiality provisions of article 22 of this Law. [overlaps with earlier content]
9. An acceptable offset proposal shall be one that meets the needs of the procuring or offset Authorities as determined in accordance with the criteria and procedure for evaluating offset proposals set out in the Request for Proposals.

Article 25. Request for proposals with consecutive negotiations

1. Proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive.
2. If it becomes apparent to the procuring entity or Offset Authorities that the negotiations with the obligor or contractor invited pursuant to paragraph 1 of this article will not result in an offset contract, the procuring entity or Offset Authorities shall inform that obligor or contractor that it is terminating the negotiations.
3. The procuring entity or Offset Authorities shall then invite for negotiations the obligor or contractor that attained the second-best ranking; if the negotiations with that obligor or contractor do not result in an offset contract, the procuring entity or Offset Authorities shall invite the other obligors or contractors still participating in the procurement proceedings for negotiations on the basis of their ranking until it arrives at an offset contract or rejects all remaining proposals.
4. During the course of the negotiations, the procuring entity shall not modify the subject matter of the procurement; any qualification, examination or evaluation criterion, including any established minimum requirements; any element of the description of the subject matter of the procurement; or term or condition of the offset contract.

5. The procuring entity or Offset Authorities may not reopen negotiations with any obligor or contractor with which it has terminated negotiations.

Article 26. Competitive negotiations

1. Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that is communicated by the procuring entity or Offset Authorities to a obligor or contractor before or during the negotiations shall be communicated at the same time and on an equal basis to all other obligors or contractors engaging in negotiations with the procuring entity relative to the offset contract, unless such information is specific or exclusive to that obligor or contractor or such communication would be in breach of the confidentiality provisions of article 22 of this Law.
2. Following completion of negotiations, the procuring entity or Offset Authorities shall request all obligors or contractors remaining in the proceedings to present, by a specified date, a best and final offer with respect to all aspects of their proposals.
3. No negotiations shall take place between the procuring entity or Offset Authorities and obligors or contractors with respect to their best and final offers.
4. The successful offer shall be the offer that best meets the needs of the procuring entity or Offset Authorities.

Article 27. Single-source procurement

Paragraphs 1 to 9 of article 24 of this Law shall apply to the procedure preceding the solicitation of an offset proposal from a single obligor or contractor. The procuring entity or Offset Authorities shall engage in negotiations with the obligor or contractor from which a proposal or price quotation is solicited unless such negotiations are not feasible in the circumstances of the procurement concerned.

CHAPTER III:

Challenge proceedings

Article 28. Right to challenge and appeal

1. An obligor or contractor that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity with the provisions of this Law may challenge the decision or action concerned.
2. Challenge proceedings may be made by way of an application for reconsideration to the procuring entity, an application for review to the [name of the independent body] under article 28 of this Law or an application or appeal to the [name of the court or courts].
3. A obligor or contractor may appeal any decision taken in challenge proceedings [name of the court or courts]

Article 29. Effect of a challenge

1. The procuring entity shall not take any step that would bring into force an offset contract or framework agreement in the offset proceedings concerned:
 - (a) Where it receives an application for reconsideration within the time limits specified in paragraph 2 of article 28;
 - (b) Where it receives notice of an application for review from the [name of the independent body] under paragraph 3 (b) of article 30; or
 - (c) Where it receives notice of an application or of an appeal from the [name of the court or courts].
2. The prohibition referred to in paragraph 1 shall lapse ... working days [the enacting State specifies the period] after the decision of the procuring entity, the [name of the independent body] or the [name of the court or courts] has been communicated to the applicant or appellant, as the case may be, to the procuring entity, where applicable, and to all other participants in the challenge proceedings.

3. (a) The procuring entity or offset Authorities may at any time request the [name of the independent body] or the [name of the court or courts] to authorize it to enter into the offset contract or framework agreement on the ground that urgent public interest considerations so justify;

(b) The [name of the independent body], upon consideration of such a request [, or of its own motion,] may authorize the procuring entity or offset Authorities to enter into the offset contract or framework agreement where it is satisfied that urgent public interest considerations so justify. The decision of the [name of the independent body] and the reasons therefor shall be made part of the record of the procurement proceedings, and shall promptly be communicated to the procuring entity, to the applicant, to all other participants in the challenge proceedings and to all other participants in the offset pro

