

## **ANNEX 1: INITIAL PROPOSALS FOR POSSIBLE WAY FORWARD**

Although our primary concern is with the SoE&A system, our proposed solution would also improve other features of the project cycle including, in our view, better project design and implementation, faster time from project identification to implementation, cost savings for the Commission and greater real competition between contractors in the tendering process.

A key element of our proposal is to eliminate the preparation of terms of reference (ToR) for projects by the Commission. Nearly all the necessary information about the nature of a project, including its context, justification, main components and required outputs, together with the total budget, is contained in the project fiche<sup>1</sup>. We propose that, once a project fiche is formally approved, it should be adopted as the project ToR and should be issued to the contractors who are invited to tender. This approach would have the following benefits:

- It would shorten the project preparation stage by one to three months;
- It would save the Commission the cost of retaining one or more external consultants to prepare the ToR and all related overhead costs;
- It would provide greater scope to contractors to propose more innovative approaches to project implementation and avoid the excessively detailed prescriptions frequently contained in ToRs;
- This would thereby lead to better project design; and
- The inception period could be used more productively than at present and enable the experts and the beneficiary to have the flexibility to agree core aspects of the work plans, which are responsive to actual needs and conditions, rather than tweaking some details.

It follows from this that considerably greater weight than at present would now be given to the Organisation & Methodology in the evaluation of proposals. Indeed, we propose that the evaluation process would have two stages. In the first stage the technical proposals would be evaluated. This would be based 70% on the quality of the proposal itself and 30% on predetermined qualification criteria of the contractors/consortia. These proposals would also specify the number and characteristics of the Key Experts they would use, but would not at this stage name any specific individuals. This approach would be both a challenge and an opportunity for contractors.

At present, ToR are so detailed and prescriptive that tenderers are largely confined to simply rewriting them. For example, when a set of ToR specify that "Three two-day training seminars will be delivered, each attended by 22 municipal officials," there is nothing a contractor can do except to confirm that this will indeed be done. In practice, some contractors might believe that seconding key officials to work in a twinned body in an EU country would be a better way of achieving the required results or, perhaps, a combination of study tours and less training. However, these possibilities are ruled out at proposal stage (although there is the possibility of making some changes during the inception stage). In consequence, most technical proposals look fairly similar as they are repeating back the elements specified in the ToR. In turn, therefore, the best way of differentiating between them is by assessing the abilities of the proposed KEs.

By using the fiches instead of the ToR, good contractors will be able to demonstrate real expertise in proposing what, in their view, is the best way to achieve the objectives, making it easier to differentiate between good and poor proposals. This would enable the evaluation panel to focus much more critically on project design, which, because of the current weighting system, is given less importance at present than it should be.

The best three tenderers would be placed on a final short list and be given two weeks to recruit the key experts and submit their names and CVs. The final evaluation would be held not longer than a further two weeks after receiving the details of the KEs. The scores received in

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<sup>1</sup> The only important items missing from the fiche are the amounts to be set aside from the budget for external auditing of contractors' invoices/accounts and for incidental expenditure. These can easily be inserted by the Commission. Other matters, such as reporting and obligations on contractors and beneficiaries, etc, are standard.

the previous stage would count for half the technical weighting in the second stage and the ratings of the KEs would account for the other half. At that stage the best proposal would be carried forward to the financial evaluation. If the price is satisfactory that contractor wins. If not, the financial proposal of the second-best contractor would be opened.

Under this system it would also be permitted for individual experts to agree to participate in more than one proposal for the project. Since the “hard work” of technical evaluation would already have been done, it would be in the interests of all parties (Commission, beneficiary and contractor) to be able to select the best possible experts to implement the project. Since there would be considerable variation in the proposed O&Ms, it would be very unlikely that all three contractors would propose identical teams of KEs. But even if they did, this would reflect a consensus view that these really are the best available people, in which case it would be most logical to use them, and there is still the stage 1 evaluation to differentiate between the remaining three tenderers.

Consequently, during the final four weeks of the process, selected experts would be required to sign Statements of Availability, but *not* of Exclusivity. Thus, they would have to commit themselves to being available for the project and not to take up other work that would prevent them from being so, but would be free to associate with any or all of the final short-listed contractors.

The benefits for all parties are as follows:

**The Commission:**

- Quicker project cycle;
- Higher quality of technical proposals;
- Greater beneficiary satisfaction (more flexible inception period);
- Cost savings freeing up budget resources for activities instead of overhead costs;
- Eliminate “cowboy”/bodyshop contractors with little relevant experience or expertise;
- Higher standard of experts.

**The beneficiary:**

- Projects more responsive to actual needs;
- Greater ownership (especially through inception stage involvement);
- Higher standard of experts.
- More budget available for activities instead of overhead costs

**The contractors:**

- Freedom to demonstrate superior expertise;
- Greater transparency in competition;
- Ability to recruit the best experts, not just the ones who have not been signed up already by competitors;
- Lower overheads in process of preparing proposals (cost of recruiting experts months in advance)<sup>2</sup>;
- Closer relationship with beneficiary.

**The experts:**

- Chances of being in winning proposal not less than one in three (possibly two or even three in three), compared with one in seven;
- Period of commitment without work and income not to exceed a maximum of one month, compared with three to six months;

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<sup>2</sup> This refers to staff time trying to identify and recruit experts, which can be a lengthy process when up to seven contractors are chasing a limited number of suitable experts.

- Eliminates incentive to cheat over SoE&As.

*If abolishing the intermediate stage of preparing ToR is considered unacceptable, or too radical a change at this stage, it would still be possible to implement the remainder of the proposed changes with nearly all the benefits listed above.*

**ANNEX 2: EXTRACT FROM LETTER FROM EUROPEAID:**

After the November 11 meeting we sent several follow-up letters requesting a response to our proposals. It was clear from EuropeAid's response that our proposals were under serious consideration:

9<sup>th</sup> December 2010

"We are working on the issue but as you can imagine your far-reaching proposals raise lots of questions which deserve in-depth discussions. The usual end-of-the-year rush is not the ideal time for such reflexions but you should get shortly a reply with our preliminary views."

## **ANNEX: OUR PROPOSALS SUBMITTED TO EUROPEAID ON 29 NOVEMBER 2010**

### **“SUMMARY OF MAIN PROBLEMS & DIRECTIONS FOR SOLUTIONS**

Following our meeting of last Friday, for your convenience we felt it might be helpful to you and your colleagues to provide a short overview of the main issues that have been raised by the global community of independent experts with whom we have been dealing. We have categorised these issues as follows:

- The main complaints about the current SoE&A practice:
  - In general;
  - For framework contracts;
  - Gender aspects;
  - Other specific points.

Since we wish to be constructive, we also offer some suggestions on:

- “Quick wins” to improve current practices;
- Further possibilities for innovation.

#### **Main complaints**

##### **General**

- Tendering procedures are too lengthy
  - The maximum of 90 days has become a minimum;
  - There are too often extensions and too many delays – 180 days is not exceptional;
- The odds of winning are low for consultants (1 in 6, 7 or 8 typically);
- There is abuse by contractors, using the SoE&A in the pre-selection phase to prevent experts signing up with competing contractors;
- There is abuse by consultants, signing more than one SoE&A;
- The SoE&A practice is disproportionate (in the legal as well as literal sense) as it:
  - Puts the entire burden of availability on consultants;
  - Applies sanctions against **ALL** consultants (and consortia), even if only one proposed expert violates the SoE&A procedure;
- Due to the exclusivity part, the SoE&A does not in practice lead to selection of the best teams;
- An excessive emphasis on inputs (e.g. demanding in-country presence of KEs for, typically, at least 95% of the time) ignores the possibility that outputs can often be delivered more effectively and efficiently if there was greater flexibility. A good contractor proposal and a good team of experts should be allowed the freedom to decide the best way of achieving optimum project outputs.
- Selection processes of experts are not transparent; it is impossible to know why an expert has not been selected: only the score (resulting from a “secret” comparison with other unknown experts in other bids) is communicated.

##### **Framework contracts**

- Decisions about bids are too often postponed.
- Scheduling of projects is very unreliable. Experts are required to be constantly available over extended periods, without any definite dates for when they will actually be required and there are frequent delays and deferrals in starting dates and mission dates.
- Planning is input-driven, without (enough) consideration about which elements of a project can be done in home-office days and which need to be done on-site (e.g. drafting an EU best practice regulation/law is better done in the home country with access to relevant reference materials than in the developing country without these resources);
- Under current standard practice, there is no logical relationship between the number of working days in a project and the number of days demanded for availability (example: 21 days over three months, prohibiting experts from taking on other work for the 40 or so non-working days).

##### **Gender aspects**

In particular the following aspects hinder the participation of women (and men with parental responsibilities) in our industry:

- The lack of flexibility between home-office activities and working days on-site (affects LT, STE and FWC)
- Not enough consideration for part-time possibilities (both LT and FWC)
- Hampering project planning (mostly FWC)
- And the imbalance between the number of working days and the number of days of availability.

(We have requested one of the nearly 100 women consultants who are supporting our cause to prepare a briefing paper on gender issues).

#### **Other specific issues**

In response to our call for examples about SoE&A practices causing problems, we also heard that there is one Delegation/CA insisting on SoE&A's for Short Term Experts (Kosovo). We feel that this would need some urgent attention as it is not required under EC regulations and is causing significant problems for contractors and experts working there. We can provide additional information on this if required.

#### **Solutions**

In resolving these problems we should distinguish between "quick wins" and more fundamental innovations. Quick wins should be achievable within a planned, reasonable timeframe, whereas the more fundamental aspects obviously require a deeper discussion and understanding.

#### **Quick wins**

- Shorten the procedures in which experts are involved, for instance in a "two step approach": the first step concentrates on the quality of the technical proposal and leads to a selection of 3 consortia to present their teams. Team selection, should take not more than 21 days (including interviews);
- Indeed, the practice of interviewing experts is rarely followed, despite being recommended by the Commission – an approach we fully support. A shortlist approach (as above) makes this far more practicable, compared with the present situation where Delegation officials are unlikely to have the time to interview, say, four proposed Key Experts from each of seven or eight competing contractors. ;
- Limit the number of bids in which experts are involved; related to the previous suggestion, but not necessarily the same, is to limit the number of bids in which experts are involved. It could mean that after the EOI phase only 3 consortia are invited for bidding
- Compensate proposed experts after a reasonable period has elapsed; for example, if the time exceeds six weeks for LT contracts and two weeks for FWC, experts should be financially compensated for their availability. This would motivate CAs to organise evaluations more efficiently. This proposal is relevant, whatever other changes may be made;
- Change the sanction procedures so that:
  - One SoE&A-violating expert cannot any longer lead to the whole contract being declared null and void – only the offending expert should be sanctioned and the contractor should be allowed to propose an alternative expert of equivalent qualifications within a reasonable time period; sanctions for offending experts should vary with the severity of the abuse, but could include suspension from participation in bids and projects for a specified future period.
  - A contractor committing abuse in this sense would be suspended for, say, 2 years, again to be varied in accordance with the severity of the offence;
- Create more output-driven consideration in the availability of experts, with more part time consideration and more reliable planning/scheduling as a result.
- Impose sanctions on the CA if it is not able to meet its own time schedule and compensate financially the affected experts;
- Explain the selection of bids/experts in a more transparent way; explain how the score for each expert was calculated;
- Create a point of contact (preferably an appeal procedure) within AIDCO Brussels for complaints about procedures
- Start a pilot project with direct contracting of individual experts by the CA for FWC assignments requiring only one expert's services.

#### **Further innovation**

- Focus much more on desired outputs, rather than inputs, which would be reflected in:

- The strategy and the Organisation & Methodology of a technical proposal;
- The team profile (to be reflected in the O&M) rather than solely the individuals (as many projects require overlapping skills, quite apart from the issue of personal “chemistry”);
- The expert profiles in the ToR and the O&M – focus on project-related required competencies;
- Create a Register of Approved Experts; if specific selection of key experts (still) would be necessary; this Register would be based on:
  - CV checking > competencies based; CVs are primarily assessed on the basis of “box-ticking” against quantitative criteria (e.g. X years prior experience in country/discipline/etc as specified in the ToR) rather than on the qualitative basis of how well (or badly) the experts performed.
  - Personal assessment;
  - Systemised performance evaluation among teams, clients & beneficiaries;
- Update the selection process and introduce:
  - Assessment of individuals (under various headings to minimise personal considerations and to provide balanced overview of professional and personal suitability);
  - Assess Team chemistry/performance using standardised team evaluation tools and methodology. (Could become part of Monitoring procedures). Highly rated teams could be awarded “bonus points” that could be used as part of the evaluation process. Conversely, poorly performing teams would be marked down;
  - Create a Register of Qualified Contractors, including performance ratings (very difficult, given constantly changing membership of consortia for different projects, but worth considering, say, for lead contractors).”