

RESPONSE TO EUROPEAID'S DRAFT POSITION PAPER

PART I: OVERVIEW

Based on the outcome of our meetings in November 2010 and February 2011 it was clear that the Draft Position Paper (DPP) would focus on seeking fundamental reforms that would greatly improve the efficiency and effectiveness of the entire project cycle, to the benefit of all parties, and would remove the acknowledged weaknesses. However, as the title of the DPP clearly shows – “Assessment of experts on service contracts under EU external actions” – the focus of the Working Group’s (WG) deliberations was very narrow.

In addition, it has been an entirely “internal” exercise, involving only possible marginal changes to existing procedures from the perspective of the Working Group. There is no evidence that the experiences of other international donors were reviewed, despite the fact that most of them have the same regulatory goals as the Commission, but achieved in different ways.

In our contacts with EuropeAid representatives we were told that the proposals we had made, both in writing and in our two meetings with EuropeAid (11 November 2010 and 17 February 2011), were “on the table”. Clearly they were not. The substantive issues we raised have been ignored.

Thus, prior to the first meeting, we submitted a paper¹ to the then DG of EuropeAid, Mr. Koos Richelle, concerning possible ways to abolish or, at least, greatly improve the SoE&A requirement. Our main proposal was that tenders should first be evaluated on the basis of their technical merits, without any reference to named experts, and that only after a winner (or a shortlist of three contractors) had been selected would the tenderer(s) then assemble a team of experts who would have to meet the minimum standards required. At the meeting on 11 November Mr. Richelle and his colleagues explained that this could not be done under the existing EC regulations, but could be considered in the context of possible regulatory changes for the next Financial Framework in 2012².

Further to that meeting, we submitted another paper³ referring to the issues that had been raised during the meeting and making a range of proposals for reform. At the next meeting on 17 February we followed up by discussing these proposals. We were left under the clear impression that most, if not all of them, would be considered by the WG.

Here is the relevant extract from the newsletter of 22 February describing what was agreed; it should be noted that this newsletter was sent to EuropeAid and we did not receive any indication that we were mistaken:

“Short-term

In the short-term, changes must be allowable under current EC legislation and regulation. The possibilities for immediate change are therefore extremely limited. However, having given reason for shared concerns about the current disastrous practices, EuropeAid will do the following:

- Encourage Contracting Authorities (CAs) around the world to move towards Global Price contracts, rather than fee-based contracts. In this system, CVs are unimportant as the focus is on the outputs offered by contractors and the price, without evaluating the inputs (i.e. experts) and so (a) SoE&As would be unnecessary and (b) the same experts can be proposed by competing contractors. EuropeAid cannot compel CAs to do this but will strongly encourage all Commission services (e.g. EU Delegations) to move to this approach.
- EuropeAid will examine what measures it can take to ensure CAs adhere to their own deadlines for completing evaluations. We feel that EuropeAid has not been aware of how bad this problem is, but took our complaints very seriously and we look forward to action being taken. As with the point above, it will be much more difficult to get decentralized CAs (i.e. national bodies) to comply, but EuropeAid will see what they can do.

¹ See Annex 1.

² See Annex 2.

³ See Annex 3.

- EuropeAid will be introducing new procedures concerning notifications of tender results to try to ensure that the time before losers are notified can be shortened, thereby releasing experts in losing bids from their SoE&As sooner than is currently the practice.

Long-term

In June 2012 the EU will adopt the next Financial Framework, setting out the budget and rules for the following five years. In the run-up to this deadline just about anything can in principle be changed (e.g. moving to evaluating tenders on the basis of proposed methodologies without nominating experts, etc). In other words, what cannot legally be changed now, could be changed then. To this end, EuropeAid has established a Working Group comprising representatives of other Commission services in Brussels and the EUDs around the world.”

To summarise, in the SHORT-TERM the Commission undertook to:

- Encourage a move towards Global Price contracts;
- Try to ensure CAs adhere to their own deadlines for completing evaluations;
- Introduce new procedures concerning notifications of tender results to try to ensure that the time before losers are notified can be shortened.

In parallel, as preparation for the LONG-TERM, after global consultations, the Commission’s Working Group would prepare a draft position paper (DPP) on possible more fundamental reforms that could be adopted as part of the forthcoming new Financial Framework.

Here are the Working Group’s LONG-TERM recommendations, as set out in the DPP:

- **Encourage a move towards Global Price contracts;**
- **Try to ensure CAs adhere to their own deadlines for completing evaluations;**
- **Introduce new procedures concerning notifications of tender results to try to ensure that the time before losers are notified can be shortened.**

Thus, the Working Group’s LONG-TERM proposals are EXACTLY THE SAME as what the Commission undertook to do ANYWAY in the SHORT-TERM.

PART 2: COMMENTS ON THE SPECIFIC PROPOSALS IN THE DPP

Introductory remarks

Before commenting on the contents of the Draft Position Paper (DPP), we wish to raise some initial issues concerning the basis of the conclusions the Working Group reached. These are to do with the methodology of the consultation process and the nature of the evidence received. Thus:

- *How many tender evaluations are done on time?* This is an important benchmark for assessing the importance and urgency for taking remedial steps.
- *What is the average time currently needed for evaluations?* The same point as above.
- *How many experts are being replaced in the course of a project?* If it is a very small number (say, 5% or less) it seems a waste of effort to devote so much time to “solving this problem.” If the number is high, this is a clear symptom of a deeply flawed tendering and evaluation process. So, which is it?
- *How satisfied are the beneficiaries/clients with the current procedures?* There is no mention of the views of the beneficiaries. It is difficult to see how the DPP can be considered comprehensive if it does not include the views of the ultimate stakeholders.
- *Was any consideration given to the practical complaints and proposals submitted by ourselves and other stakeholders?* We see no evidence of this and would like to know why this is, apparently, the case.
- *In general, what basic data was used to substantiate the Working Group’s views?* There doesn’t seem to be any data at all – just a series of discussion points without any evidential basis to justify them.

Since we specifically asked for this data and did not receive it we assume this information was not collected. Thus, it is difficult to consider the DPP as a well-founded, evidence-based policy paper.

General comments on the DPP

1. Near the beginning of the position paper is this statement: "The evaluation of tenders for fee-based service contracts (and of the offers in the context of the Framework Contracts) in the field of EU external actions focuses to a large extent on the skills and professional competences of key experts proposed by Consultants. The proposed key experts are therefore an essential element for the assessment of the tenders and hence one of the main elements of competition between tenderers." Then, in the section on global price contracts, it says, "The SoE&A will not be used for the global price contract. Instead a profile could be included in the ToR which the tenderer will have to demonstrate in their offer that they meet and fulfil."

If this fundamental issue of evaluating experts can be done through tenderers demonstrating that they can meet the profiles of required experts within the framework of global price contracts, it is difficult to see why this principle cannot be extended to fee-based service contracts. In both cases the overall objective is to deliver a well-designed and implemented project. We have proposed before that evaluations should start with the technical proposal and only then review the suitability of the proposed experts. These statements in the position paper indicate that there is no reason why this could not be done.

2. In the introductory remarks the DPP states, "The proposed key experts are ... an essential element for the assessment of the tenders and hence one of the main elements of competition between tenderers. ... This explains why ... the same key expert cannot be proposed by two competing tenders in the same tender evaluation procedure (requirement of "exclusivity")."

We don't agree and consider this to be a case of flawed logic. It is analogous to saying in a goods tender that if one contractor proposes Microsoft Windows as the operating system for the PCs it is offering, no other tenderer can. If the Commission wants the best possible experts, then clearly the ones who are included in the largest number of competing offers are likely to be the best available. In most cases there are several experts rated highly so there will still be competition; on top of that the specific mixture and added value in the combination of experts in a proposal is an extra element of competition: not only the individuals count but also the team-value. Other donors have no problem in following this approach, which clearly is likely to ensure a higher standard of project team. We wonder why the Working Group did not consider this option.

Furthermore, every soccer coach, every HR specialist, every good manager and most of the organisational development literature agree that it all comes down to chemistry: an expert can be an excellent fit in one team and a failure in another, thus competitive ranking should look at the **team** as a whole, not just each individual in turn.

Comments on the five specific proposals

1. Extending the use of global price service contracts

In principle, the proposal to move towards more global price contracts is welcomed. It should improve the quality of the technical proposals and, of course, eliminate the need for SoE&As.

However, no quantitative target is specified. What proportion of projects will be changed from fee-based to global-price basis? Without knowing the answer to this question, it is impossible to judge whether this is a significant improvement or not.

Furthermore, with regard to global price contracts, the experience of some of the experts is that in-country contracting authorities still insist on timesheets and micro-management (Croatia and Romania are among the two worst offenders) even when there is no contractual justification for that: simply, they seem incapable of trusting their consultants to get on with the job. This is part of a broader problem concerning staffing of EUDs. Many local staff simply do not seem to

understand the rules, and vastly exceed their authority with impunity. This matter must be tackled from Brussels with strict guidance and, where necessary, training and coordination.

2. Shortening the evaluation period and accelerating the moment where all tenderers, successful or not, are informed of the outcome of the procedure

While welcoming this attitude, the majority of comments we received focused on a more fundamental question – why on earth does the Commission “need” 90 days to evaluate tenders? To quote just one contribution:

“I organised an evaluation of a \$100 million tender, which involved 42 bid options by eight contractors. The evaluation procedure had been set up and agreed with my client in advance. The evaluation, including evaluation committee meetings (dates booked well before the close of tender), the evaluation reports (preliminary and final) and approval took **two weeks**, including approval from a client on a different continent. So it is not impossible.”

Indeed, it is not impossible and we request EuropeAid to explain why it needs longer than anybody else to do something that does not actually take a great deal of time.

In addition, “requesting” CAs to be timely is inadequate. There should be sanctions if CAs are late, unless this is due to illness, death or force majeure – just like experts when mobilising for a project.

3. Requesting the submission of documentary proof with the tender to speed up the procedure and avoid risks of non-signature of contracts

This is primarily an issue for the contractors, so we have little to add except to repeat our earlier proposal that the documentary proof that experts are required to provide, should only have to be submitted once and then be recorded as valid on a central database.

It is also essential for EuropeAid to clarify precisely what documentary evidence experts are required to submit concerning previous employment. How far back in history should this go – five years, ten, forty? Referring to contractors, Article 2.4.11.1.1. General Principles in PRAG requires records going back only three years and recommends against asking for more. Why should it be different for experts?

Different EUDs apply varying interpretations and frequently seem to be unable to understand that in many cases it is impossible to provide such evidence due to the bankruptcy of employers, death, etc.

This is a messy area that often causes problems for bona fide experts. We request that EuropeAid develop sensible guidelines and ensures that EUDs understand and consistently apply them.

4. Change of key experts

This is welcome, but it is not clear what it means in practice. Furthermore, as drafted, this proposal would enable contractors falsely to declare experts available/unavailable and hence allow them to substitute cheaper (and less able) experts. Does EuropeAid propose safeguards to prevent this and what sanctions does it propose for contractors (and experts) who abuse this?

5. Ensuring the availability of evaluators (or replacements)

This is a simple matter of planning and organisation. CAs know when the closing dates for accepting tenders are so all they have to do is ensure that the members of the evaluation panel are not going on mission or holiday during the two weeks immediately after this date. As pointed out at point 2 above, this is all the time that is reasonably required and it is perfectly feasible to ensure that the appropriate people will be there on the required dates. Failure to be present (barring force majeure etc) is just incompetence and should be appropriately sanctioned.

Far more worrying – and unfortunately ignored in the DPP – is the fact that the evaluation committees in many EUDs are made up of personnel who are not able to carry out professional evaluations. As we have proposed before, evaluation committees should comprise relevantly

qualified and suitably experienced personnel, if necessary including independent specialists and/or trained evaluators from EuropeAid in Brussels.

We find it difficult to understand why the WG focused solely on the *availability* of evaluators rather than their *suitability*, which is more complex (though by no means impossible) to deal with. Furthermore, there is no review by the WG of the evaluation criteria applied in scoring experts – another matter that has caused profound disquiet among the global expert community.

We would be grateful if EuropeAid would explain the thinking behind the WG's opinions.

Conclusion

The proposals in the DPP unfortunately ignore the possibility of introducing real reforms that could improve the efficiency and effectiveness of the project cycle.