

Ban the SoE&A!

CONTENTS:

A big thanks	1
Developments new SoE&A	2
More thanks	4
How this started	4
Consultants United!	4

INITIATORS:



Stephen Dewar



Bill Fraser



Michael Gericke



David Hepburn



Tamer Kirac



Henry Leerentveld

WEBSITE

www.bansoae.portal4project.net/

EMAIL

ban_soea@henry-leerentveld.eu

CHIEF EDITOR

Stephen Dewar

Support us

If you were not able yet to contribute to the costs of this action...

Follow this link
DONATE!

Thank you!

635 PEOPLE FROM 63 COUNTRIES – KEEP SIGNING UP!

The seventh newsletter is here!

First contributions came in...

When I was a child my Mother taught me to write “thank-you letters” the day after Christmas to anybody who had been so kind as to give me a present.

At that age I thought this was a burden, but now I think it was civilized. It is right to tell people that you appreciate their thoughtfulness and generosity.

Thus, I want to use this newsletter, on behalf of the Gang of Six, to write some thank-you letters now.

Donor list

We are extremely grateful to those of you who have supported our campaign with financial contributions.

Without this help we could only have been a talking shop. Effective action needs money as well as good ideas.

We are happy therefore to list below the people (excluding the six originators) who have donated money to our shared cause.

We recognise that it takes a considerable degree of trust to give your money to a bunch of strangers you’ve never met – so an even bigger thanks for that!

As we said in an earlier newsletter, we will circulate accounts to all the financial contributors in March, by which time we hope this campaign will be finished one way or the other.

We also want to thank those of you who have promised us financial support when you are back in a country with a functioning banking system so you can actually make a donation, and also those of you who are out of work at present (often due to the old SoE&A system) but have promised a contribution the moment you can afford it.

At the time of writing this, we have collected net (i.e. after deduction of bank commissions and Paypal charges – in total €192) €7,737 from a total of 71 donors – something over €100 per donor on average.

I wrote to all the donors to ask if we could thank them publicly.

The list on page 4 includes only those donors who gave us written permission to use their names.

The number of donors who prefer to remain anonymous is given at the bottom of the list.

Developments new SoE&A

After we were able to announce the end of the AVAILABILITY part of the SoE&A, we had a number of queries from experts around the world asking for clarification on how and when the new system would be operational.

Accordingly, we passed on these questions to the Commission, (politely!) requesting a speedy response. As yet, we have not had one, but we will circulate the answers as soon as we get them.

Here is our letter:

Ban the SoE&A!

Henry Leerentveld
Carolina van Nassastraat 305
2595 SV The Hague
The Netherlands

EuropeAid Co-operation Office,
European Commission
Head of Unit G7
B - 1049 Brussels,
Belgium

The Hague, 29 November 2010

Subject: Questions on the new SoE&A.

Dear Mr,

In the last weeks we have gathered comments and questions about the new (interim) SoE&A.

The general impression of consultants is that the SoE&A is an expression of your good will and an improvement for some situations.

Therefore Mr Dewar and I would like to compliment you with what we see as the first step towards balanced procedures and better project performance.

We have rubricated the various questions and where possible given our interpretation. We would like to share this with you and try to come to a shared interpretation.

Therefore, please find the open questions and our interpretation below.

We would like to ask you for your comments; we would appreciate a swift reaction...

The questions are as follows:

Applies on KE and FWC only?

Is it correct to assume that the new SoE&A applies, as did the old one, to KEs in long-term projects and for FWC assignments, but not to STE and non-KE positions?

We assume that the SoE&A still only applies to KE and FWC

Timing of change to new Statement.

On what date did the new SoE&A replace the old one?

From that date, to which projects does the new SoE&A apply – projects currently in the tendering phase, at the stage of requests for EOIs, not yet open, or what?

(We have had several messages from experts saying that they had been told by contractors that the old statement still applies for projects where contractors have already been invited to tender.)

We assume that the new SoE&A came into effect on 7 November and that its regulation applies to all projects that have not been evaluated, i.e. that experts who are already committed to a particular tender under the previous system are now free to participate in others.

Practical procedures.

At what stage should an expert inform other contractors and contracting authorities that he/she is no longer available, after he/she has been offered an assignment – the moment he/she is informed of the offer or only when he/she has a signed contract with the contractor?

We assume that the consultant should inform other contractor(s) immediately after his/her contract is signed.

When an expert has signed a Statement for a project proposal, what should he/she do if he/she signs another one later for an overlapping project? Is there a standard procedure for updating the earlier SoE&A(s) and adding the details of subsequent commitments? Should he/she fill in and sign a new version of the SoE&A or simply inform the earlier contractor(s) by fax or email?

We suggest that simply informing the earlier contractor(s) by email/fax should be sufficient.

Who should make this information available to the contracting authority – the expert or the contractor?

We suggest that the contracting authority will not be informed about any expert's other possible commitments, in order to prevent the possibility that the CA will be materially influenced by this in evaluating the bids. This information should remain with the contractors until after the contract is signed.

When should the expert provide this updated information (making an additional commitment) – only after receiving written confirmation that he/she will be proposed for the new position or when the first approach is made?

We suggest that the expert informs the contractor after his/her candidacy has become contractually formalised.

Is an expert required to inform the contractor(s) and contracting authority(ies) if included in a proposal for a non-EU/EDF-funded project (e.g. USAID, ADB, etc)?

Is there a maximum number of bids an expert can participate in?

(Some highly specialised experts get many offers, though the majority would be unlikely to have more than two, or possibly three, at any one time).

Evaluation scores

Several experts have written to say they fear that contracting authorities will reduce the points awarded to experts at the time of evaluation if they are seen to have signed up for several different project tenders. Is there any truth in this?

See our suggestion at 3c

Contracting authority guidelines.

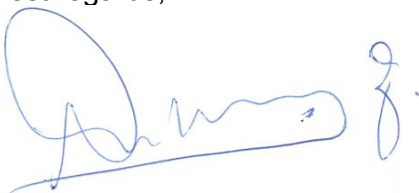
Do all EU contracting authorities have a copy of detailed guidelines for applying the new procedure? If so, is it possible to receive a copy for distribution to our candidate-members?

Does the new SoE&A indeed apply to all service contracts, including FWC?

(We have some indications that contractors are of the opinion that the new SoE&A does not apply to FWC).

As you can imagine we would advise that it is applicable to FWCs also.

Best regards,



Henry Leerentveld

A VERY BIG THANK YOU TO...

Pedro Almeida
Nikiforos Bakalis
Anthony Bell
Dirk Blink
Colm Bonner
Gareth Bray
Anne Marie Brun
David Caffrey
Mario Casadio
Joep Cuijpers
Oliver Deasy
Lluís Domingo
Geert Edelenbosch
Lars Effors
Anton van Engelen
Karla Van Eynde
Jutta Franz
Monika Gabanyi
Carolyn Gates
Graziano Giovanniello
Luc Grandjean
Ascanio Graziosi
Kees Hammink
Frans Hartman
Maaïke van Hoeflaken
Gerrit Holtland
Gareth Lloyd Jones
Gert-Jan van Kamp
Fred van Leeuwen
Michel Lefebvre
Volker Mauerhofer
Daniele Mazzanti
Tim JL McKee
J G McCormack
Claus Nue Møller
Richard Moody
Alexander M. Mueller
NEDWORC
Ingo Neu
Stephen Pattle
Alain Peyré
Janet Raynor
Lorent Romain
Malcom Ross
Benno Savioli
Carsten Schmidt
Peter Slits
Gert Soer
Cornelis Sonneveld
Arnoud Steeman
James Toal
David Truong
Willem van der Veer
Olaf Verheijen
Elio Voci
Jan de Voogd
Kathy Walsh
Vincent Williams
... and to the nine
anonymous donors!

Special thanks to...

We obtained an excellent, detailed, 15-page legal opinion, free of charge, from Joe Dalby, Barrister in Dublin and London. If you would like to check out his credentials, please go [here](#), where you will see he is well qualified to advise us.

His opinion gave us the confidence to believe we had legal right on our side in the run-up to the meeting in Brussels with the Commission on 12th November.

You will remember that although we all feel strongly that the old SoE&A system was certainly unfair, none of us could be certain that it was actually illegal. Joe's arguments were authoritative and very helpful in this complex area. Thanks Joe!

We also want to thank Professor Dr. Aukje van Hoek (University of Amsterdam) and Janneke Kohlen, a lawyer at Bird & Bird, the international law firm, for their indispensable legal advice.

Fortunately, all our legal advisers seemed to agree with each other!

And special thanks go also to Steen Bruun-Nielsen, who was the first person to alert us to the important Liniakis decision at the European Court of Justice (see Newsletter 3).



We could not have spread the message around the world without an efficient, user-friendly Internet facility. Our grateful appreciation, therefore, goes to Coert van der Burg for two invaluable (and free!) services. First, Coert set up in 2008 and "owns" the discussion group on LinkedIn where Henry launched this initiative over four months ago ([click here to see](#)) and join this group if you have not done so already).

Second, Coert made his company's services freely available to us in establishing and maintaining our [own website](#).

He has never charged us for this, even though his [company](#) devoted time and resources (paid staff time) to doing what we asked.

A big thank you to Coert!

Let's not forget...

We started with one person, Henry, who said "enough is enough". I wrote to Henry saying I agree – how can I help? - so then there were two. Immediately after that Bill, David, Michael and Tamer joined in, so then we were six (plus Coert who might, but does not necessarily, share all our views). And now we are 635.

If the momentum had stopped with one, two ... six or seven of us, nothing would have happened. But Henry and I met the Commission knowing we had over 600 experts behind us – and that's what made the difference. So thank you to all of you for supporting this campaign and making it possible to achieve change. You gave us the confidence and, we are sure, the strength of numbers to be taken seriously.

THANK YOU ALL – which leads on naturally to the next topic:

Consultants United!

We are seeing what can be done when we act collectively.

As many of you have said on LinkedIn or in writing directly to us, the next stage is to set up a professional association to represent our interests.

In principle, this should not be too difficult as there seems to be a general agreement on what such an association should do. Nonetheless, there are some difficult matters that have to be addressed and so we propose to send out another newsletter shortly, which will be devoted entirely to this issue.

As with the SoE&A campaign, we want this to be a fully participative process. We will circulate the main views that we have received and ask for your comments.