

## Development paper Ban the SoE&A

### 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).