EBRD CONFERENCE ON ABNORMALLY LOW TENDER PRICES UNDER WORKS CONTRACTS

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Alfonso Fidalgo, EFCA representative
Regional Director
Central America and Caribbean @ Typsa
ABNORMALLY LOW TENDERS FOR WORKS CONTRACTS

Reasons for their occurrence

Expected consequences

Ideas on how to prevent them

Comments resulting from personal experience

General comments not covering particular situations

Ideas valid for predominantly civil and architectural works (not industrial)
Principles

Civil works PUBLIC procurement

- Competitiveness based on clear procedures and rules
- Foster participation of bidders
- Defense of Client's interests (better price, shorter execution period)

BASIC PRINCIPLES

OBJECTIVES

- Direct negotiation based on clear and well defined works/products
- Selection based on confidence and past performance
- Quickness on reaching agreements upon a fair risk sharing

BUT

UNRESTRICTED COMPETITIVENESS

- Selection of non-realistic tenders (ALT)
- Lack of reaching a successful completion of the works (extra time, cost overrun)

LACK OF COMPETITION

- Abusive position from the bidder
- Absolute need to avail a wholly developed design and technical definition

WHERE ALTs ARE PRONE TO POP UP?

Sometimes

Seldom
Reasons behind ALTs

We live in an open market environment that is based on:

- Companies needing to make profit
- Contracting entities willing companies to make profit

Why then ALTs?

- Willingness to enter into a specific market
- Willingness to keep competitors apart
- Wrong assessment of costs and risks
- Need to prevent resources becoming idle
- Hidden strategy to modify the design

The reality is:

- Client will never become fully aware of the reasons behind
- Most ALT situations will bring about harmful consequences to the contract
- Advisability to prevent ALTs from coming up
Expected development of works contracts resulting from ALTs

**Contractor**

### Starting Attitude
- Attempt to criticize the design
- Attempt to criticize the basics of the procurement process
- Attempt to blame third parties on not reaching performance

### Contractual Demands
- Pursuance to enforce VOs acceptance
- Pursuance to put claims forward
- Threat of not executing the works

**Client / Owner**

### Affection to Final Result
- Delays in completion and commissioning
- Client's final expenditure exceeding the contract price
Expected development of works contracts resulting from ALTs

- **Contractor**
- **Engineer**
- **Client / Owner**

**Cost overrun mitigation**
- Attention to design adjustments
- Recommendations on contract application
- Penalties and performance bond execution
- Support to tackle with claims

*With no full knowledge of the technical background*  
*Under the pressure of time*
Most common works contracts evaluation procedures

Objectives pursued and principles
- Allow and guarantee free competition
- Well established procurement proceedings
- Logical aspiration of getting the best-valued offer

Stage 1: Verification of financial capacity and technical experience
Stage 2: Selection of a
- PROC. 1: Selection of the lowest price
- PROC. 2: Selection of the best valued proposal according to a combination of technical and economic scores
- PROC. 3: Selection of the mean price
- PROC. 4: Selection of the mean price within a set range

ODDS OF ALTs
- High
- Low
Ideas on how to prevent ALTs from occurring

- Getting closer to PRIVATE procurement proceedings
- Competitiveness based on clear procedures and rules
- Direct negotiation based on clear and well defined works/products
- Competitiveness based on clear procedures and rules and well defined works/products
- Thorough knowledge of the works to be contracted
- Cost estimate of the works well studied and analysed by the Client before tendering
- Preclusion of bids falling below or over a set range from the Client's cost estimate