



2nd Round Colombia Question & Answer Sheet
15th April, 2013

Question	Q & A
Question 1	<p>Dear Procurement officer,</p> <p>I am interested in participating in the bid with several other companies and while I have been reviewing the Request for Proposal, I have two questions as follows:</p> <p>Question No. 1. Pertaining to the Teacher Training component, on the Technical Requirements 5.2 Conceptual design of the Component, on the last section, evaluation works are stated. I have looked into the role and responsibilities and the requirements for the human resources but I cannot find any comments or requirements for the above-mentioned evaluation on the training program by 2 Korean evaluation experts 3 times. Are these evaluation works (3 times) still required and I have to include this item on the proposal and price quotation but I don't need to provide CVs for these experts as they will be the experts involved in the teacher training? In addition, in case the requirements are listed or written on the RFP other than the R&R and Human Resource Requirement, should I include those on the proposal and price quotation? Please advise.</p> <p>Question No. 2. Pertaining to your first round clarification, I have trouble understanding your clarification on the bid security, especially on the part that says "Accordingly, it is not acceptable a guarantee issued by a bank located in Korea and counter guaranteed by a Colombian bank, on the contrary, in such case the guarantee has to be issued by the correspondent bank in Colombia." Please clarify in detail what is the difference between "a guarantee issued by a bank located in Korea and counter guaranteed by a Colombian bank" and "guarantee has to be issued by the correspondent bank in Colombia"?</p>

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Do you mean that as long as I get a bid security issued from a Colombian bank, it is acceptable? As far as I know, the normal process is for me to get a bank guarantee issued by a bank located in Korea, to ask for counter guarantee such bank guarantee by a bank in Colombia, and to ask the bank in Colombia to issue the bid security.

If possible, please post your answer prior to your scheduled date of clarification as these answers may change our decision to participate in the bid.

=> Answer :

1) Yes, as you mentioned, evaluation works done by 2 Korean experts 3 times during the Leader Teacher training shall be included in your proposal and in your price proposal. No CV is required for these experts as long as they come from the teacher training experts (ICT Teacher training program experts and ISST experts). Integrity is the key for this evaluation and it is strongly recommended that these evaluation experts come from the pool of the teacher training experts. The bidder is expected to provide the mobilization and rollout plan of the evaluation experts and related works.

Same rule applies throughout the bidding documents. Please read carefully all the requirements on the bidding documents. If there are any requirements or jobs to be performed shown on the bidding documents (conceptual design, general/technical/functional requirements, role and responsibilities and human resource requirements), you are expected to propose accordingly. CVs are required for only those listed on the human resource requirement section and price for each and every work to be performed shall be included and listed on the price proposal. Omission of the price may result in your providing such works free of charge.

2) The MoE considers that the clause ITB 17.2 (b) is clear and keeps it as it is: "ITB 17.2 (b) if the institution issuing the bid security is located outside the Purchaser's Country, the security shall be issued through a correspondent financial institution located in Colombia to make it enforceable".

Regardless the correspondent relationship among the Korean and the Colombian banks, and the way they agree in order to guarantee or

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	<p>counter guarantee their negotiation regarding the bid security issuing for the Korean company, it is important to take into account that the bid security shall be issued by the Colombian bank.</p> <p>The aforesaid, in order to assure that the bid security, as well as other securities required on this bidding process, are enforceable or collectable in Colombia upon first demand before the Colombian bank.</p>
Question 2	<p>To whom it may have concerns,</p> <p>I would inquire about the possibility that EBS (Educational Broadcasting System in Korea) is able to form a consortium to bid “ICT Education Capability Building in Colombia Project.”</p> <p>According to Resolution number 17231, KT is a proponent of the bid that is advised by CINTEL, which consequently lead a flagrant violation in the application of the constitutional and legal principles governing State Contracting in Colombia.</p> <p>We know that EBS is currently engaged in the project of Knowledge Sharing Program for Ministry of Education in Columbia. If EBS participates in our proposal consortium, we worry that this may be interpreted as EBS possesses inside information and configures a "Conflict of Interest" like the CINTEL case.</p> <p>In this context, I would like to be advised on your opinion on the eligibility of EBS consortium. Your reply will be highly appreciated.</p> <p>Faithfully,</p> <p>Jeon, Seongmin IP Convergence Association Koread</p> <p>=> Answer :</p> <p>Educational Broadcasting System in Korea (EBS) may constitute a consortium and participate in the bid process as its participation and engagement in the project of Knowledge Sharing Program for the Ministry of Education is not related to the “ICT Education Capability</p>

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	<p>Building Project” in Colombia, therefore there are no legal restrictions for EBS to participate and neither a prohibition in the RFP.</p> <p>The decision adopted by the Ministry of Education by Resolution 17231 December 2012, considering both KT and LG CNS proposals as ineligible is exclusively related to the bidding process already declare void. For this particular case, neither Colombian Law nor the Terms of Reference or RFP, for the reasons argued by the Ministry of Education, define or derive any prohibition for both (KT and LG CNS) companies to participate in the bidding process announced on 12 March 2013.</p>
Question 3	<p>We respectfully ask you the following questions:</p> <ol style="list-style-type: none">Section VI. Technical Requirements In the Technical Requirements, MOE has elaborated that it is recommended hiring Korean experts for some positions. In case the Supplier finds well qualified candidates for certain positions, is it possible to procure or recruit those candidates for the position regardless of their nationalities?Section II. Bid Data Sheet (page 82) & 1st Clarification Regarding the statements in the Bid Data Sheet and the 1st clarification; II. Bid Data Sheet(page 82) <i>“The Bidder must deliver evidence that all the proposed personnel has given its consent to participate in the [ICT Education Capability Building in Colombia] project The Purchaser will reserve the right to verify the evidence. In case the consent was not given, the proposal shall be rejected.”</i> 1st Clarification <i>“The bidder is asked to provide the CVs for all the proposed Korean experts. Regarding the Colombian experts, However, in case the bidder has a local subcontractor (Colombian company), the bidder may provide the subcontractor’s information and the list of all the human resources who will be utilized for the project, along with the CVs of the key personnel (5 Master Engineers for Lab School installation, 2 System engineer of each RIC H/W and S/W)”</i> <p>If the Subcontracted local company guarantees or vouches for their candidates with the confirmation of the representative of the company, what else should we include on the list (such as candidates’ e-mail address, contact information, etc.)?</p>



3. Bank Guarantee

We have contacted reputable Colombian banks for the issuance of a bank guarantee and we were informed that they may not be able to issue such bank guarantee exactly in the form provided in the Bidding Documents. The banks informed us that they will issue a bank guarantee pursuant to relevant Colombian law while stipulating same terms and conditions (same bid security amount, condition for payment, period of validity, condition for termination, etc.). Under such circumstance, we would like to inquire two questions concerning the bank guarantee.

- 1) A bank guarantee issued in Spanish by a reputable Colombian bank, supported with English translation and notarization, would this be considered as a valid bank guarantee?
- 2) We were informed that in Colombia, just like other countries in Latin America, URDG 758 is not commonly used and that companies in Colombia use bank guarantees adjusted to ISP98 or UCP600.

Would a bank guarantee pursuant to Colombian law and ISP98 or UCP600 be acceptable as long as it governs same terms and conditions as specified in the Bidding Documents?

4. Teacher Training

Q: Discrepancies in number of experts/specialists for teacher training

Discrepancies in the number of experts/specialists for teacher training are found in the Bidding Documents as follows:

A) Local Currency Portion (Section V. Special Conditions of Contract_p175)

ICT Teacher Training	ISST Research Training
Manual experts 5	ISST experts 3
Manual assistant 12	Assistant 6
Teachers 10	Teachers 3

B) Human Resource Requirement (Section VI. Technical Requirements p146)

ICT Teacher Training	ISST Research Training
Experts 5	Experts 3
Specialist 12	Specialist 6



Teachers 10	Teachers 3
C) Human Resource Requirement (Section VI. Technical Requirements p140)	
ICT Teacher Training	ISST Research Training
Experts 5	Experts 6
Specialist 12	Specialist 3

Whereas A and B states '3 experts' and '6 specialist', C is stating on the contrary.
Which of the two is correct?
Do "specialist" and "assistant" refer to the same person?

5. **Human Resource Requirement**

According to the A. Background Information described on page 8 in Technical Requirements, it says that "The bachelor diploma is often referred to in English as the baccalaureate or secondary school diploma."

Referring to "Sample School Curriculum with Hourly Distribution" on page 10, we understand the bachelor diploma/degree means as upper Secondary(Grades 10-11) which is High School in Korea(Grades 10-12).

We would like to ask you if it is correct to hire people with upper secondary's diploma, whose requirement is to have a bachelor degree.

* Sample School Curriculum with Hourly Distribution (page.10)



SUBJECT AREA	PRESCHOOL (TRANSITION GRADE ONLY)	ELEMENTARY (GRADES 1–5)	LOWER SECONDARY (GRADES 6–9)	UPPER SECONDARY (GRADES 10–11)
Mathematics and geometry	4			
Mathematics		6(1)* 5(2–5)	4	4
Geometry (1st semester); Statistics and probabilities (2nd semester)		2	2	2
Writing	6			

=> Answer :

1. Please refer to the Section III. Eligible Countries of the bidding documents. As it is stipulated, All the Works, Goods and Related Services to be supplied under the Contract and financed by Export-Import Bank of Korea shall be procured from the Eligible Source Countries. However, All the Goods and Related Services to be financed out of the proceeds of the Loan shall be procured from the Eligible Source Countries, provided that a part of Goods and Services may, with the prior consent of the Export-Import Bank of Korea, be procured from the countries other than the Eligible Source Countries up to 14.2% of the total Loan Amount.

Services that are designed to be provided by Korean experts may be provided by qualified experts with other nationalities than Eligible Source Countries as long as this particular percentage of 14.2% of the total Loan Amount is met. You are required to specify this on your price proposal.

All the bidders shall acknowledge that the 3rd Country portion of the goods and services can't exceed 14.2% of the total Loan Amount according to Section III. Eligible Countries, article 2. Section C. The portion shall be explicitly noted on the price proposal. Failure to do so or not to meet the portion limit of 14.2 percent may result in the disqualification from the bid.



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2. For all the experts regardless of their nationalities, their personal contact number (mobile number preferred) and email address are required. The Purchaser may perform compliance checks by calling such experts randomly to verify all the information provided are authentic and has the consent of such experts.

3. 1) Yes, a bank guarantee issued in Spanish by a reputable Colombian bank, supported with English translation and notarization, would be considered as a valid bank guarantee.

3.2) It is acceptable to use bank guarantees adjusted to ISP98 or UCP600.

4. Clause A) and B) are consistent. Please note that the list provided by MOE is a recommendation list for experts and the Supplier may contract with other experts or specialists. The term “expert” and “specialist or assistant” have been used to differentiate those from higher educational background. Experts are those with better educational background and professional experience compared to specialists or assistants. Experts will lead the team while specialists help experts perform the jobs specified on the bidding documents. Sometimes the term “expert” refers to both experts and specialists defined above when the total number of experts and specialists are mentioned (e.g. Provide space for 17 Colombian experts and 4 Korean experts for 10 months (ICT teacher training)).

Regarding the Clause C)(Section VI. Technical Requirements p143, MOE Role & Responsibility), “Provide a list of qualified human resources of minimum 9 potential experts for the Supplier to select **3 Colombian experts and 6 specialists** for ISST Research Team according with the requirements of 5.9.” is correct expression.

So, it should be amended from **6 Colombian pedagogical experts and 3 pedagogical specialists** to **3 Colombian experts and 6 pedagogical specialists**.

In summary, 3 Colombian Experts and 6 Colombian Specialist, total 9 Colombians are needed for ISST Research Team.

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	<p>Please also note that the teachers on the list will be recruited by each research team (ICT Training and ISST). The cost related to hiring and maintaining such teachers shall be reflected on the price proposal.</p> <p>5. On page 8 to 10 of the technical requirements, when it is used the words Bachelor or baccalaureate degree, it refers to upper Secondary (Grades 10-11) in Colombia which is similar to High School in Korea (Grades 10-12). However, when in the RFP, it is required for an expert or specialist to have a bachelor degree, it means that he/she should have a university degree.</p>
Question 4	<p>1. Certificate of related field experience in Teacher Training</p> <p>We have subcontracted a company and the company has some experiences in Teacher Training. We would like to ask you if it is possible to present the related field experience in Teacher Training of our subcontractor?</p> <p>=> Answer:</p> <p>Yes, as long as the company is proposed as your Subcontractor and listed on the Appendix 3. List of Approved Subcontractors on the Sample Form, you may present the experience of such company and it will be evaluated accordingly. However, please note that for the ITB 6.1 a) Qualification criteria and BDS 6.1 a), the experience and / or resources of any Subcontractor will not contribute to the Bidder's qualifications; only those of a Joint Venture partner will be considered.</p>
Question 5	<p>To Whom It May Concern:</p> <p>We are an IT service provider registered in Korea interested in participating "ICT Education Capability Building in Colombia" Project ("Project"). We have visited your website to check your notifications and found out that the Ministry had announced a Resolution dated 28 December that rejects KT's proposal on the ground that it has signed MoU with CINTEL which bears contractual liability and responsibility with the Ministry.</p> <p>We hereby submit this letter requesting the Ministry's answers to our questions which are described in detail below. Our questions are all</p>

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related to “Project” bidding documents of which have been issued by the Ministry as second time on 12 March 2013. We, as one of the potential bidder, are expecting to receive your answers to our inquiries in this letter from the person in the Ministry whose duty is to evaluate bids for the Project.

As the Ministry has pointed out many times in the Resolution, it is paramount principle that the Ministry must follow the legal process which has promulgated in the laws regarding the government contracts.

In the Resolution found and determined by the Ministry are:

That, “The Korean company KT submitted its proposal” and “in November 19, 2012, KT signed a Memorandum of Understanding with the Colombian company CINTEL, in which among others agree to jointly develop ICT projects.”;

That, “CINTEL signed with the Ministry of Education the contract number 792 of 2011 which aims to provide professional services for administrative and financial management of the Executing Unit of the ICT Education Capability Building Project” and “CINTEL advised the Ministry during the preparation of the RFP for the bidding of the ICT Education Capability Building Project ... and should also advise the Ministry in the process of evaluation of proposals.”;

That, “as appointed CINTEL is a contracting firm that signed a contract with the Ministry and that had within its contractual duties, the obligation to advise the Ministry of Education in elaboration process of the terms for the bid, to which the Korean company KT is tendering.”;

That, “Hence the fact that CINTEL possessed inside information regarding the process and the signing of the Memorandum of Understanding, with the bidding process already open and just two weeks before the proposals were received, could figure a Conflict of Interest.”;

That, “this situation in that they are involved, both KT and CINTEL, because the first is a proponent of the bid that is advised by the second, could be a flagrant violation in the application of the constitutional and legal principles governing the State Contracting in

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Colombia.”;

That, “both the conflict of interest and the violation of the principles governing the State Contracting are situations that do not require to prove the intention or negligence of those who participate in a bid, but simply the existence of the fact is the violation of the norm.”; and

That, “the Ministry proceeded to withdraw CINTEL from the evaluation room and is going to initiate the corresponding legal actions against CINTEL.”

Since CINTEL’s violation of the laws of Colombia and the principles which protects the minimum safeguard for fair competitiveness of the bidding process, we as a potential bidder for the Project, request whether the Ministry has taken steps to sanction CINTEL for their violation of the laws of Colombia. As the Ministry pointed in the Resolution, CINTEL’s acts unequivocally breaches the safeguard which the Ministry found flagrant violation of the laws.

We think that the Ministry shall be taking further steps to restore such legal safeguard for fair competitiveness and transparency of the bidding process by taking legal actions against CINTEL. The article 8 of law 80 of 1993 specifically requires some type of action, disqualifying a bidder in certain circumstances. The Ministry has announced in the Resolution that it will act in accordance with the laws to initiate the “corresponding legal actions against CINTEL.”

Therefore, we submit our request for answers to the following questions:

First, we request the information regarding the status of any administrative action against CINTEL.

Second, if there has been no administrative action so far against CINTEL, please explain and inform us on the Ministry’s plan and schedule to take such action against CINTEL.

Third, we request the information whether the Ministry has terminated the contractual relationship with CINTEL due to CINTEL’s violation of law. If the Ministry has not, please inform us of the Ministry’s plan of future action to terminate the contractual relationship



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with CINTEL.

Forth, please inform us the Ministry's future plan on any administrative action against KT which is, according to the Resolution, found implicated in the violation with CINTEL.

Our purpose of this inquiring letter is just to make sure the second bidding process for the Project is processed fully in accordance with the laws of Colombia, preserving the principles of the State Contracting principles.

Please provide the Ministry's answers at your convenience time, but before the official due date for submitting the bid for the Project has passed.

Thank you for your answer.

=> Answers to questions 1, 2 and 3:

In accordance with Article 86 of Law 1474 of 2011, the Ministry of Education is conducting the hearing that orders the regulation in question, against CINTEL, for alleged breach of contract 792 of 2011. Also at this hearing it is complying with the due process as a fundamental right defined in Article 29 and 209 of the Political Constitution, and Article 3 of the Code of Administrative Procedure and Administrative Disputes.

"Art 29. – The Due process applies to all kinds of legal and administrative proceedings.

No one may be judged except under laws that predate the act which he/she is charged, in the presence of a competent court and in compliance with the fullness of the proper forms of each judgment.

In criminal cases, the permissive or favorable law, it will be applied in preference to restrictive or unfavorable, even if the law is later.

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All persons are presumed innocent until proved guilty according to law. Anyone who is accused has the right to a defense and the assistance of a lawyer chosen by him/her, or a lawyer assigned, during the investigation and trial, to a fair public trial without undue delay, to present evidence and to argue the evidence presented against him/her, to challenge the conviction, and not to be sued twice for the same offense.

It is null and void, the evidence obtained in violation of due process. "

Article 86. The Imposition of fines, penalties and non-compliance declarations. Entities subject to General Contracting Public Administration Statute may declare a non-compliance, quantifying the damage thereof; to impose fines and sanctions agreed in the contract, and to enforce the penalty clause. For this purpose the Entities will observe the following procedures:

- a) Evidenced a possible breach of obligations by the contractor, the public entity shall require the contractor to an audience to discuss what happened. In the citation, it will mention the detail of the facts that support it, accompanying the report of auditing or monitoring that relies on the action and shall state the rules or clauses possibly breached and possible consequences due to the contractor acting. In the same interview it will be established, date and time for the completion of the hearing, which may take place as soon as possible, given the nature of the contract and the schedule set for the fulfillment of contractual obligations. In the event that the performance guarantee consists of insurance policy, the guarantor will be asked to be present in the audience, in the same way;
- b) In the course of the hearing, the head of the entity or its delegate, will present the facts that rise to the action, and shall state any rules or clauses possibly breached and the possible derived consequences for the contractor acting. Then it will be granted the use of the word to the legal representative of the contractor or his representative, and the guarantor, to submit their releases, in which development he can give the explanations of the case, providing evidence and argue those made by the entity;
- c) Made the foregoing, the entity shall decide on the imposition of fines, penalties or the declaration of noncompliance by a resolution that embodies what happened in the audience; this resolution shall be notified in such public act. Against the uttered



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decision proceeds only the request for reconsideration that will be presented, sustained and decided at the same hearing. The decision on the request for reconsideration shall be notified at the same hearing;

- d) At any time during the course of the hearing, the head of the entity or his delegate, may suspend the hearing when requested or when according to his own criteria it is necessary for getting off or taking evidence that he thinks is appropriate and relevant, or when for any other duly supported reasons, it is necessary for the proper conduct of the administrative proceedings. In any case, the decision shall specify date and time to continue the hearing.
The entity may terminate the process at any time, if by any means it is aware of the cessation of the non-compliance situation.

By virtue of the foregoing, as part of the development of the hearing (audience) some proofs have been requested and also a challenge was presented, which is being given the respective procedure, and once these procedures finish, the resolution will be issued.

Therefore, and given that the hearing in question has not finished yet, the Ministry of Education has not taken any punitive decision or administrative actions against CINTEL so far.

Answer to question 4:

The answer to this question has been already published and can be found on the following link:

<http://www.colombiaaprende.edu.co/html/micrositios/1752/w3-article-319865.html>

The answer is:

“The decision adopted by the Ministry of Education by Resolution 17231 December 2012, considering both KT and L G CNS proposals as ineligible, is exclusively related to the bidding process already declared void. Neither the Colombian Law nor the RFP document, for the reasons argued by the Ministry of Education, define or derive any prohibition

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	<p>for both companies to participate in the bidding process announced on 12 March 2013. Therefore, both companies can present proposals in this new bidding process. Equal opportunities are guaranteed to all participating bidders and the evaluation of the proposals will be done objectively as guided by the EXIM Bank of Korea.”</p>
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