



26 November 2009

The Department of Education
The Director: Logistical Services
Room 300 Sol Plaatjie House
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PRETORIA
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Metula.N@doe.gov.za

cc : Minister of Education
The Honourable Ms A Motshekga

Dear Sirs / Madam

TENDER EDO400

We refer to the National Department of Education's tender EDO400 for the development, printing and packaging of work books in all official languages for learners in Grades I - VI.

The members of the Publishers' Association of South Africa (PASA), on whose behalf we direct this letter to yourselves, are largely unable to respond to the aforesaid invitation to tender for the following reasons:

- 1 The request to tender, to the best of our knowledge, appears to have been published in only one newspaper, namely the Sowetan, on or about 19 November 2009 and in the Government Gazette of 13 November 2009.

- 2 The request to tender was not directed to PASA, nor to the LTSM Forum of PASA, with whom the Department meets from time to time to discuss relevant LTSM issues, nor was it brought to PASA's attention in any other manner prior to 24 November 2009, when the writer coincidentally established that a request for tender had been issued and for the first time did a search of the Unwembi Communications site and established that the abovementioned request for tender existed.

- 3 From the website aforementioned, the writer established that the issue date of the tender had been 13 November 2009 and that the closing date is 27 November 2009.

- 4 The published request for tender furthermore provides too brief a description of what the tender is intended to be for.

- 5 As soon as this was established, I informed all members of PASA of the request for tender.

- 6 Members themselves thereupon immediately made enquiries with Ms Metula of the Department of Education, Logistical Services (whose name appears on the

request for tender), to request the tender documents. One publisher was told that the documents were only available in hard copy and that they could collect the documents, but as it was so late now, did they really think that they could make the deadline?

7 On 25 November 2009 one of our members obtained the tender documents which provided certain further information in respect of the requested tender, but still insufficient information in order for our members to prepare and present a competitive, informed, accurate and cost effective tender. One of the reasons for this is that additional information relevant to preparing the bid, usually found on the Thuthong website, namely the Foundation for Learning lesson plans are not complete. Only the first terms' plans are given.

8 Most importantly, on review of the tender documents, and considering the extent of the development required in terms of workbooks, CD's and parents guides in 11 official languages, it became apparent to our members, that it would not be possible for any publisher to develop the material within the proposed development schedule. Furthermore, it is our members considered opinion that there is unlikely to be a printer in South Africa that would be able to cope with the printing volumes within the proposed delivery schedule.

It is apparent from the foregoing that the invitation to tender was not properly advertised and that prospective tenderers were afforded an insufficient and inadequate opportunity within which to present a proper tender. Furthermore the deliverables, and in particular the time frames within which they are required, are prohibitive and restrictive.

We understand that in terms of section 217 of the Constitution the Department is required to ensure that all procurement processes, including the present tender, are conducted in accordance with a system which is cost effective, competitive, transparent, fair and equitable. For the reasons set out hereinabove, this process clearly does not comply with section 217, nor with the system that the Department should have in place in order to give effect to section 217 of the Constitution.

In addition, our members have the right and legitimate expectation that the Department would follow the same procedures that the Department followed in the past in respect of the current procurement exercise. The Department, for reasons presently unknown to us, has abandoned the tried and tested and established procedures.

Our members are very interested in bidding in respect of the tender. They are, in the main, qualified to do so and furthermore much of the material that we anticipate will be required, has already been prepared by our members, which material can very readily be adapted in all probability in order to address those needs which we anticipate may be required under tender EDO400. At present, however, given the paucity of information and the lack of time for both the preparation of the bid documents, and thereafter the delivery of the tender requirements our members have not been able to fully explore their options and are required to simply speculate further in this regard.

As stated before, our members are very interested in bidding in respect of this tender. We, on behalf of our members, object to the manner in which the tender has been advertised

and its lack of publicity, the lack of information provided, the short deadline required to submit their bids and the restrictive delivery schedule.

Our members are furthermore concerned that the Department has adopted this approach in order to give preference to a currently unknown prospective bidder who, we suspect, may have already been given a head start in the process and will accordingly be unduly benefited at the expense of our members.

The list of issues referred to hereinabove is not intended to be exhaustive. It does, with respect, however, clearly indicate that the tender process followed by the Department up until this stage is fundamentally flawed.

We are advised that various legal remedies are available to us. We reserve all our rights to institute any necessary legal proceedings at this stage, or in the future, but are hopeful that litigation will not be necessary. In this regard we would encourage the Department to grant an appropriate extension to the deadline for the submission of tenders, an extension of the delivery time frame and to provide the necessary information to make it possible for tenderers to compete equally with each other in a fair and proper process in compliance with the constitutional imperatives and the applicable legislation.

Given the tender deadline which is set at 27 November 2009 at 11h00, and the fact that we have been unable to provide yourselves with this request any earlier, we must insist on a response by return.

Yours sincerely,

A handwritten signature in black ink on a light grey background. The signature reads "D.H. Schroeder." with a horizontal line underneath the name.

Dudley H. Schroeder
Executive Director
Publishers' Association of South Africa