



Office of the General Manager

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Information Technology Services Department
6/F, Guardian House,
32 Oi Kwan Road,
Wan Chai,
Hong Kong
(Attention: Mr. Kenneth C K Yeung)

Dear Sir,

Consultation on the ITPSA in the Government of HKSAR

We are writing to respond to your recent consultation document and provide our views on how to improve the efficiency and quality of services procured and delivered through the ITPSA and how to facilitate the development of the local IT industry

IBM recognizes the success the Government has achieved in transforming the procurement of IT professional services from a single vendor into twelve contractors, providing more flexibility, as well as increasing the number of choices, for the Government departments in securing support in implementing their IT solutions.

Whilst recognizing this success, we are conscious of and share some industry concerns about the practical operation of the ITPSA, and in particular the tendency to focus on lowest cost, with little attention paid to differences in the quality of services and teams being offered. This can drive the industry towards low cost, low quality commoditization, which would be counterproductive for both the Government as a customer, and the industry. These and other points are explained in the enclosed document.

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Thank you for the opportunity to comment on and contribute to this important consultation exercise.

For further information, please feel free to contact Ms. Natalie Chew, Public Sector Executive of IBM Hong Kong, at 2825-7043, or Ms. Jojo Cheung, External Relations Manager of IBM Hong Kong, at 2825-7675.

We hope our views and suggestions will be useful for your future use.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Cheung', written over a horizontal line.

Timothy Cheung



IBM RESPONSE TO CONSULTATION ON THE ITPSA

Context and objectives

The IT industry is what we believe very important to Hong Kong's economy. Government is a very significant purchaser of IT services within the Hong Kong market, and the ITPSA has become a very significant element in the Government's procurement of IT services. In evaluating the success of ITPSA and possible improvement, we would argue that it is important to have regard to its impact on the IT industry as well as its effectiveness as a procurement process from Government's client perspective.

Contractors and assignments included in ITPSA

We are conscious of the concerns from smaller IT industry players (referred to as Small and Medium Enterprises or SMEs) that the approach followed under ITPSA limits their ability to compete for Government IT assignments, except as subcontractors to larger organizations that have the breadth and capacity to get onto the panel lists under the current approach. On the other hand, there is a risk that if the panel lists are simply expanded to include a large number of SMEs bidders, there may be uneven competition and high bid costs for a large number of panelists. Government would often find itself comparing very different bids from very different organizations. Such an approach would also pit the SMEs in direct competition with the larger players – potentially undermining many partnering arrangements which currently exist and which we believe is one mechanism by which SMEs develop their skills and experience. We therefore believe it would be wrong simply to expand the panels to include more SMEs.

One way to tackle this would be to create a different approach to categorization where perhaps a larger number of SMEs were included in the panel and they alone were asked to bid for smaller assignments under ITPSA. Provided the SMEs were able to provide the skills, the larger players such as IBM, HP and EDS would be excluded. Larger engagements could be let as a separate category – limited to the larger players on the panel – though these panel members would have the flexibility as now to sub contract work to smaller players.



A more radical alternative would be to limit ITPSA to smaller engagements completely, with an upper limit set for the value under ITPSA. ITPSA panelists might then be restricted to the SMEs, providing them with access to smaller Government projects which are likely to represent a better risk profile for them and for Government. All substantial pieces of work (perhaps everything above HK\$1.3m) would then go to open tender.

Either approach would enable a broadening access to Government's IT work for SMEs whilst avoiding uneven competition between very different IT organizations.

Participation of Contractors

In the existing ITPSA mechanism, each contractor must submit proposal for every work assignment brief to maintain a high participation rate for having a fair competition. This imposes significant bid costs on the ITPSA panelists, and in some cases requires companies to bid for assignments where they may not have the best experience or resources. If the Government decides to bring in more providers, this would significantly increase the 'wasted' effort if a larger number of bidders are obliged to bid. If many of the additional bidders are SMEs, they will suffer disproportionately as their resources tend to be more limited. We therefore believe that the Government should remove or at least relax the current requirement to bid. With a large enough group it may be that no obligation to bid is necessary. Alternatively, panelists might be required to bid on a given % of opportunities – perhaps 50%.

Intellectual Property (IP) Rights

We have highlighted earlier our view that the ITPSA should be viewed not just as a mechanism for the Government to procure IT services but also as an opportunity for the Government to facilitate the appropriate development of the local IT industry and economy – whilst of course protecting the Government's interests as a purchaser. The development and exploitation of intellectual property is a vital element in having a successful and robust IT industry.

Under the current ITPSA, all rights in intellectual property developed by the contractors in any ITPSA projects belong to the Government. In discussions with the Government we understand that the arguments for this are, first, Government wishes to ensure that it is not restricted in any way in its use of the materials and deliverables from such projects,



and second, Government may wish to exploit the IP. However, this approach requires contractors to give up the value of their innovations – potentially for a very small value Government contract. In practice, Government has not to our knowledge made use of the IP rights, which it has insisted on owning. In effect this amounts to locking up the value of innovation and throwing away the key. It is also arguable whether Government is in the best position to exploit IP given the inevitable restrictions imposed by its public accountability and procedures.

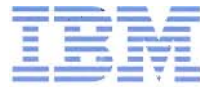
In Digital 21 Strategy 2004, the Government committed itself to facilitating the development of innovative technology, through a series of supporting measures, including opening up the IP ownership for wider application by IT industry. It is striking that the Singapore Government, which previously retained all IP ownership generated from the projects, has recently changed its policy to allow contractors own and exploit IP – provided government also has the right to use the IP. We would suggest that ITPSA be revised to give effect to the Government's stated policy, and to come into alignment with international best practice. ITPSA might be amended to provide that IP rights rest with the contractor developing the IP, with the Government gaining an unlimited right to use the IP.

Liability

In the current Government terms and conditions, regardless of the size of the project, Government requires contractors to accept unlimited liability. From the business point of view, this is a mismatch of risk and reward when a contractor is looking for less sizeable projects from the Government. This may be intimidating for small contractors in particular. It is also significantly out of line with normal commercial principles and, all other things being equal, will increase the cost of IT projects because companies will need to take account of this extreme risk. We believe the Government should consider limiting the liability of contractors in accordance to the project size.

Lowest bid Mechanism

In practice, departments using the ITPSA seem to assume that all the contractors on the panel will have an equal ability to do any piece of work, and on this basis projects seem always to be awarded to the lowest bidder. We believe that this single minded focus on price tends to undermine the quality of work under ITPSA as it encourages bidders to cut



corners as the only way to secure work. When choosing whether to put forward the right team and/or solution or the cheapest, it seems to be attractive to other panelists to put forward the cheapest solution because they know they will not otherwise get the work. For Government, this approach risks undermining the quality of the IT services it procures. For the IT industry, it risks a decline into a commoditized low value Hong Kong IT industry – with little capability to drive innovation or to become a centre of expertise for China.

According to the ITPSA consultancy paper, the total value of work assignments awarded is HK\$ 246 millions whilst the total man years are 575.5. By a simple calculation, it shows that the average price of man-year of effort under ITPSA is around HK\$ 427,000, which is far below the market price for IT services. This suggests ITPSA is driving commoditization – with potentially dangerous consequences.

In order to improve the current situation of selecting service providers purely on price, we recommend that the Government changes the practical operation of the ITPSA to reassert quality as a factor to be considered when selecting the contractor for an individual bid. This might be linked to robust tracking of contract performance set out below.

Scoring System

The past performance of contractors would be a good benchmark for departments in the evaluation process. To improve and maintain the service level of the contractors, the Government could adopt a scoring system to track the performance of the contractors with various departments. This information could be circulated to all departments using ITPSA, and potentially it could be published. Another enhancement would be to debar a contractor from bidding for a specified period if they were consistently rated as performing below acceptable standards.

Categorization

There are 4 service categories in ITPSA and each category covers a discrete scope of services. Under the current arrangement, the scope of category A includes all kind of complex services, including consultancy study, system development and integration.



From the IT industry and Government perspective, consultancy studies are very different from standard IT implementation work. The quality and experience of the teams and the approaches proposed need to be carefully evaluated in the context of the individual assignment. We believe therefore that it is particularly inappropriate to purchase IT consultancies through a panel mechanism like ITPSA with little account taken of technical evaluation for particular studies. This point is emphasized by the fact that when consultancies go through the normal tendering processes with the Central Consultancy Selection Board, the typical weighting of technical and price factors is 70/30. It is hard to justify using ITPSA for similar work with a 100% price factor. We understand that full ISSS studies are not purchased through ITPSA. But we see many Departmental IT plans and Feasibility Studies being commissioned through ITPSA. We, therefore, suggest excluding all consultancy studies from the existing categorization, and make the category A for pure system implementation.

Another approach would be to create a separate category for consultancy and apply different processes (e.g. a structured technical price evaluation). But we believe that this would impose more complexity. In practice departments can commission small to medium scale consultancy assignments speedily, so there is no real need to apply ITPSA.

Debarment

The ITPSA processes tend to default to imposing debarment for subsequent work for a contractor that carries out consulting work, which may lead to follow up systems implementation. If Government adopts our suggestion above that consulting assignments should be excluded from ITPSA, then this issue falls away.

However, if consulting studies were retained, we believe Government should revisit its approach to debarment. It is striking to us that the debarment clauses being applied under ITPSA are more restrictive than those generally applied to consultancy studies let through other mechanisms. Thus, for example, ISSS consultancies have not in the past led to contractors being debarred from implementations where there is an intervening feasibility study carried out by another vendor. Also, we have no precedents outside ITPSA for recently imposed clauses under ITPSA which even debar companies from supplying hardware and software. Given the move to open systems, it is really hard to see how such an extreme approach to debarment is necessary. In essence, debarment is simply to avoid any contractor being given an unfair advantage, and often this can be achieved by simply making the results of earlier work available to all bidders.



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Tender Submission

Although the Government has contributed a lot to promoting “IT in community”, the ITPSA tendering process still requires paper-based proposals. As the pioneer and facilitator, we recommend that the Government should take the lead and promote e-tendering in line with its own consultancy paper - Digital 21 Strategy, of leading by example.