

Response to the Consultation on
the Standing Offer Agreement for Quality Professional Services (SOA-QPS)
in the Government of the Hong Kong Special Administrative Region

I generally support the Government's SOA-QPS initiative succeeding ITPSA in implementing the strategy of outsourcing Government's ICT projects. The outsourcing strategy enables latest technology to be introduced in Government's ICT systems and facilitates the development of local ICT industry at the same time.

Nonetheless, I have long been collecting views on Government's ICT procurement from IT industry players, and many of them have expressed a wide range of opinions on the issue. Hence my office, together with several industry professional organizations, conducted a survey during May to August in 2007 to consolidate industry views and effectively channel them to the Government. A total of 31 completed questionnaires, answered by ICT corporations which had been contractors or subcontractors of Government's ICT projects, were received. I would like to set forth my comments on the consultation based on the survey.

Unlimited liability regime (Section B7, C1 & C2)

Among several areas, unlimited liability regime is the area most respondents (48%) would like to see a change. Opinions on the current liability regime are overwhelming. 64% respondents agreed that the current liability regime created burden to their capital provisioning. Only 6% respondents expressed that it did not deter them from participating in Government contracts; only 10% respondents considered that it matches the risk profile of Government contracts; only 9% respondents thought that it did not prevent them from supplying innovative solutions to the Government.

Though unlimited liability regime can shield the Government from all risks, it does not necessarily mean the best procurement policy. Such a regime will create great uncertainty to ICT corporations, they will be very cautious when participating in the bidding. For multinational ICT corporations, their goodwill may be damaged if they are dragged in tremendous amount of compensation; the situation for SMEs is worse, they may have to close down if they cannot pay the compensation.

When ICT corporations are cautious in bidding, there will be less competition and the Government will have less choice as a consumer. And even if they are willing to participate, they are not likely to propose innovative solutions as innovativeness may

sometimes also mean more risky. Needless to say, they have to buy a large amount of insurance, and the cost eventually is transferred to the Government.

I notice that the Government has begun to cap liabilities of its contracts, but I encourage the Government to examine the feasibility of capping liabilities of more contracts. In the area of reforming the liability regime, 50% respondents ranked capping indirect and consequential liabilities for all Government contracts their first priority; 32% respondents ranked carrying out risk assessment exercises before determining liabilities their first priority.

Profit margin (Section A11)

71% respondents considered that profit margin of Government contracts did not match similar contracts in the private sector. Such a mismatch also means low incentive for ICT corporations to participate in Government contracts. In long term, the Government may not get the best solutions from the market as competitive corporations will prefer private sector contracts more. I suggest the Government to lower the ratio of price in the selection criteria so that price will not be the only determinant and “cut-throat price competition” will also be eased.

Selection criteria – innovativeness (Section B1 & B4)

For SOA-QPS contracts, 39% respondents considered emphasis on bidders’ innovativeness insufficient and no one considered it sufficient. For open tender contracts, 48% respondents considered innovativeness insufficient, only 6% respondents considered it sufficient.

It shows that respondents believed that more emphasis should be placed on innovativeness for both SOA-QPS contracts and open tender contracts. I recommend the Government to raise the ratio of innovativeness in selection criteria. Not only does such a measure lower the ratio of price as a determinant, it also creates incentive for ICT corporations to propose innovative solutions, which is also an aim of the e-Government strategy.

Out-of-scope task (Section A9)

Half of the respondents had been assigned out-of-scope tasks of contracts. Of which, remuneration of 80% respondents’ out-of-scope tasks was settled by market prevailing rate, Government or contractors initiated offer, or rate specified on contract. Despite this high proportion, there are still 13% respondents who had to absorb the cost for out-of-scope tasks by themselves. 29% respondents considered

current remuneration for out-of-tasks unacceptable, only 6% respondents thought acceptable.

I recommend the Government to review current arrangement for remuneration for out-of-scope tasks and implement a mechanism which will settle out-of-scope tasks in a fair and reasonable manner to both contractors and the Government.

Timing for tender consideration and technical demonstration (Section A4 & A5)

A total of 63% respondents had less than 1 month to consider the tender. 27% even had less than 2 weeks. Considering the relatively large scale of Government's ICT projects, such a period is relatively short. 26% of respondents thought that time provided to consider tender was insufficient.

For technical demonstration, 45% respondents who were required to conduct technical demonstration considered provided time insufficient; only 15% respondents thought sufficient.

I recommend the Government to provide more time to bidders to consider tender and prepare technical demonstration. This will encourage more SMEs to participate in bidding; where, in the past, they could not due to stretching resources and insufficient time.

The Government has been positioning itself as a facilitator of ICT application for years. I welcome the Government to continue its investment in ICT and will be delighted to see improvement in the above suggested areas, which the industry has longed for years. Nevertheless, the above discussion has only focused on certain aspects of the survey report, I advise the Government to go through the whole report to have a complete overview of industry views.

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