

Regarding the “Consultation on the Standing Offer Agreement for Quality Professional Services 2 (SOA-QPS2) in the Government of the Hong Kong Special Administrative Region” paper, we have the following comments:

a) Categorization of Services and Supplies

We don't believe QPS should be creating a new Service Category with every new emerging technologies. Instead, during each QPS tender, the contract admin office can constantly sensing the new demands from the b/ds and fine-tune the service scope of the existing Service Categories, and their Staff Categories, in order to include any new technology trends.

b) Participation by Suppliers

In order to participate in the SOA-QPS, it takes substantial resource and financial commitments from the individual contractor. Overtime, this needs to be paid off by the revenue generated from the SOA-QPS WABs. Introducing more competitors within each category will no doubt decrease the attractiveness of the SOA-QPS to the contractors. In fact, through the different sub-contracting arrangements of the SOA-QPS contractors, more companies will be able to participate in the government projects. This would achieve the same desired effect of promoting the local IT industry while keeping the SOA-QPS attractive at the same time.

c) Length of Contracts

No comment.

d) Bidding Performance

We agree with the suggestion in the consultation paper that bidding on every WAB should not be made mandatory. Different contractors have different focuses, experiences and resource situations at different time. These may not necessarily match with every single WAB well. Requiring contractors to bid on every WABs wastes valuable resources of both the contractors and the b/ds.

e) Categorization of Human Resources

From time to time, new technologies emerge, so does new resource roles with different skill sets. We believe QPS admin office should regularly review/add/update the Staff Category in order to reflect these new resources type and where they should generally fall within the Staff Category scale. For example, a Mobile Apps designer with 2 years experience would not be in the same staff category as a JAVA programmer with 2 years experience.

f) Sub-contracting

No comment.

g) Timing for Proposal Submission

In general, the existing timeframe is enough for contractor to prepare for one WAB. However, it is not unusual to see 5-6 WABs all due on the same week. We suggest the QPS contract admin office to find a way to greatly standardize the proposal requirements(e.g. standardized CV format and compliance check table rather than full proposal). This is particularly true for Service Category 4 WABs, where we see on average more than 2 new WAB each week.

h) Payment for Services

With the existing provision such as the refund clause and other remedies to the Government, b/ds should comfortably let the contractors to freely propose the payment schedule in order to support the local IT industry. Cash flow is particularly important to the local SME contractors.

i) Continuity of Project Staff

Staff turnover is simply the fact of life in this industry. As a contractor, we simply cannot guarantee a particular staff can be available throughout a project. That is why SOA-QPS2 has specific terms on how a project team member should be replaced. After all, b/ds procure through the SOA-QPS2 should be looking for a particular service, with specific outcome, deliverables and timeline in mind only. As long as the requirements are met, whether there is staff turnover should not concern the b/ds. As such, requiring additional non-chargeable resources for compensation of staff change does not make sense.

We also suggest that during the delivery of a WAB, when there is a need to the replace a staff member, the proposed staff member's staff category in the original technical proposal should be used as a base to qualify the new replacement. Different person has different experience and skills, staff category in the original proposal could be the only subjective standard available for the replacement purpose.

j) Project Delay

Project delays could be caused by a lot of different reasons and will have negative impacts to both the contractor and the b/d. Some of these reasons are controllable by the contractors, others aren't. To unilaterally penalize the contractor is simply not a fair practice.

We also suggest b/ds to spend the time and resource on the feasibility study before issuing Service Category 3 WAB of a certain size, in order to avoid vague, incomplete and/or unrealistic requirements. This would also reduce the chance of project delay later on.

k) CPAR

We suggest when evaluating contractor's performance, a mechanism should be employed such that the highest and lowest CPAR scores should be dropped. This would prevent uncontrollable incident which negatively affect the quality score of an otherwise high-performer.

We also suggest to separately evaluate a contractor's performance by each Service Category.

l) Quality

Unlike the commodity industries, the quality and performance commitment of an IT service provider greatly affect the quality of final deliverables. We believe under the SOA for Quality Professional Service, proposal evaluation should put emphasis on the quality and performance score, rather than on the price.

We suggest a standard marking scheme for evaluating a proposal with 60% on quality and 40% on the price.

m) Others

**No Limitation of Liability** - The terms in the Government QPS contract have no cap on liability and no exclusions of indirect and consequential damages.

To reasonably mitigate the contractor's risks and reduce the project costs and hence the price to the Government, it has been an industry practice to exclude the indirect, incidental or consequential damages from the contractor's liability and to include a reasonable limitation of the contractor's total liability in the contract, such as capping the liability at 100% total contract value. Such limitation of liability provisions are agreed and accepted by majority of our customers around the world, no matter the commercial or public customers. It was also agreed by some departments in the Hong Kong Government before. We suggest the Government can also introduce such limitation of liability provisions to the new QPS tender.

**Termination for Convenience** – In the existing QPS contract, the Government has rights to terminate the contract for convenience. As many of the RFPs are likely to be fixed price, it's not fair to ask the contractor to commit for the whole term unilaterally. The Government's right to terminate the contract should be based on and limited to reasonable causes, such as the contractors' breach of contract.

**Refund Clauses** - The terms in the Government contract usually require the refund of all sums previously paid by the Government. The sums previously paid to the contractor by the Government are based on the products/services that the contractor provided/performed and accepted by the Government and the contract already contains provisions such as liquidated damages and other remedies to the Government. It is not reasonable to ask the Contractor to refund to the Government all moneys previously paid under the contract.

**Intellectual Property Rights** - The Government owns the rights to the copyright and other intellectual property rights of anything new supplied under the contract. As an IT company, it is always a company policy to retain ownership of intellectual property rights (no matter it's pre-existing or newly developed software). We are willing to grant license to the Government for use within the purpose of the project and consider such license provisions are sufficient to satisfy the Government's needs.

**Price Protection** – The Government bids often require the contractor to commit the services and prices for the long-term maintenance period after the end of warranty. However, the Government does not make the corresponding commitment. Besides, any price adjustment is subject to the Government's discretion and capped at the Consumer Price Index (CPI) for Hong Kong. With the rapid developments in technology, we consider such unilateral and long-term commitment is neither fair nor practical. Moreover, based on our experiences, using CPI as the ceiling of price adjustment cannot reflect the increases in the contractor's costs. We expect the Government can allow the flexibility to negotiate such price protection provisions on case-by-case basis in the new QPS tender.