

**Response from HKCS**

**on**

**Consultation on the Standing Offer Agreement  
for Quality Professional Services (SOA-QPS)  
in the Government of the HKSAR**

**December 2007**

## **(I) Introduction**

The Standing Offer Agreement for Quality Professional Services (SOA-QPS) launched by the Government in December 2005 is a significant improvement over the previously implemented ITPSA (IT Professional Services Agreement) and generally agreed by the industry as a successful procurement practice of the Government's IT services in terms of efficiency and responsiveness.

The fact that the number of contractors has increased from 12 under the ITPSA to 22 in 40 Standing Offer Agreements in the current SOA-QPS is a good evidence of the Government's willingness to provide more flexibility and choices for its departments to secure the best suitable IT solutions. It also provides more opportunities for qualified contractors to participate in the Government's IT projects. The incorporation of a clearer standard marking scheme, the relaxation of the Intellectual Property Rights, and the capping of contractor's liability on indirect and consequential damages in the SOA-QPS are a few examples of those moves that are welcome by the industry. We feel, however, that more can be done by the Government to make the SOA-QPS better serve its needs as well as that of the IT industry, in order to achieve a truly innovative digital society for Hong Kong

Our suggestions for improvement fall into two main areas, namely, the Selection of Contractors and Quality Consideration, and Contractor's Liability. A few other items not mentioned in the consultation paper but are frequently discussed by the contractors are also listed.

## **(II) Selection of Contractors and Quality Consideration**

The Standard Marking Scheme incorporated in the SOA-QPS provides a clear guideline and ratio of price-quality to assess the qualification of a contractor. However, we feel that the current marking scheme does not place enough emphasis on quality to better differentiate the suppliers.

The current 70/30 price-quality score used in the Work Assignment marking scheme has put too little emphasis on quality. A higher proportion for quality should be adopted. The 70% weight on price encourages the potential contractors to reduce the price at the expense of quality, hence raising the risk of not offering the best solutions under a premium price. One might argue that the existing 22 contractors have already gone through a higher proportion of quality to price (70/30) assessment during the selection process, but that is only a general assessment of the contractor's capability and what counts should be the relevant qualification pertinent to the specific work assignment. We suggest that the marking scheme should be changed to 50/50.

And within the quality score, it is currently subdivided into assessment on General Quality and Work Assignment Quality with a ratio of 60/40. Again, this is an under emphasis on Work Assignment Quality. As the general quality of the contractors has been assessed in Stage 1, it is not necessary to duplicate the effort here. In the event that it is required, the ratio on General Quality should be much lower than that of the Work Assignment Quality, of which we would propose to the Government a ratio of 30/70.

We believe only with the best effort to raise the standard of quality can then provide the opportunity for the contractors to demonstrate their ability to innovate. When many segments of the IT industry are becoming commoditised today, the service sector remains one that could differentiate itself as well as Hong Kong from the other countries. And that could only be accomplished with serious emphasis on quality.

### **(III) Contractor's Liability**

Contractor's liability has been a heated discussion subject between the Government and a few of the contractors for a long period of time. Unlimited cap on liability was used by default in almost all government contracts in the past, causing many well established contractors to shy away from the government projects as they did not want to risk their company's future with possible open-ended financial penalty. This over protective attitude from the Government has in turn seriously jeopardized its ability to acquire the best innovative solutions from these companies.

The Government's setting cap on indirect and consequential damages in the SOA-QPS is a positive step forward to getting more closely aligned with other jurisdictions' practices. We agree that a balance should be struck between reducing a supplier's risk exposure and protecting the Government from accepting risk prematurely before having the chance to study and assess the supplier's proposal. But where possible, we would encourage the Government to announce the cap during the proposal stage instead of that at the negotiation.

A possible approach to help the Government setting the cap in the proposal stage and avoid excessive resources spent on determining the amount of the liability cap case by case is to pre-determine the cap based on the nature of services and the project value. Projects with similar nature tend to have similar project values and risk levels. Under this principle, a fixed cap can be set for projects below a certain value and another cap for projects over that value. Each of the 4 categories may use the same approach. In other words, there will be a total of 8 pre-determined caps used.

While the unlimited liability clause continues to apply to infringement of IP Rights, unlawful conduct, property damage, death and personal injury, we see some jurisdictions have begun to explore the possibility of capping some, in particular in the cases of property damage, and personal injury. We encourage the Government to continuously look into these changes so as to strike the best suitable practice and interest for both the Government and the IT industry.

#### **(IV) Others**

A few other items frequently brought to our attention but not listed in the consultation paper are as follows:

1. The HK\$1.3M used as the dividing point for major and minor works groups in categories 1, 2 and 3, the HK\$260,000 used as the dividing point for major and minor works groups in category 4, as well as the HK\$10M project ceiling value should all be reviewed for possible adjustment.
2. The number of staff categories in all of the 4 service categories is insufficient to cater for the project needs.
3. OGCIO should assign its staff with project management experience to sit on the project governance with the user department's team. This will help reduce potential miscommunications as not all government departments have professional IT personnel.
4. Debarment for subsequent work has become more and more restrictive. The Government should revisit its approach although fairness and transparency are still to be observed. Fewer service providers will be willing to perform the upstream work if they are subject to the default debarment clause regardless of the nature of the project. The Government will eventually suffer from the limitation of choice of these contractors.