

For information

**Legislative Council Panel
on Information Technology and Broadcasting**

Internet Learning Support Programme

Purpose

1. This paper provides a detailed account of the events leading to the selection of the Implementer for the Internet Learning Support Programme (the Programme) and the role of Mr Jeremy Godfrey, former Government Chief Information Officer (GCIO)¹, in these events.

Selection of Proposal and Founding of Implementer for the Programme

2. The Office of the Government Chief Information Officer (OGCIO) launched an open Request for Proposal (RFP) exercise between May and July 2010 with a view to identifying a non-profit organisation to take forward the Programme implementation to assist students from low-income families with web-based learning at home. The terms of the RFP were such that the proponent of the chosen proposal would be expected to found the non-profit organization (the Implementer) which may or may not exist at the time of the RFP exercise. The contents of the RFP document, the evaluation criteria and the evaluation framework were set by OGCIO. The evaluation basis was published in the RFP document and presented to the Finance Committee in May 2010. OGCIO also briefed interested parties about the requirements of the RFP and the evaluation criteria at the end of May 2010.

3. By the deadline for submission, OGCIO received five proposals. All the proposals were assessed by an Evaluation Panel led by GCIO and comprising representatives of the Education Bureau (EDB) and the Office of the Telecommunications Authority (OFTA), in accordance with the published process and criteria. The Commerce and Economic Development Bureau (CEDB) was not involved in the design of the RFP and did not take part in the evaluation. Members of the Evaluation Panel ascribed scores to individual aspects of the proposals according to the preset criteria.

¹ Mr Godfrey vacated his post as GCIO on 12 February 2011.

4. Upon completion of the evaluation, GCIO presented an update to the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCT) in August 2010. GCIO reported that despite the lack of consensus on the overall assessment, there was general agreement about the strengths and weaknesses of the two leading proponents. One proposal was seen to benefit from better business insight, while the other leading proposal was stronger in the ability to build an on-the-ground network of NGOs and in corporate governance. GCIO considered it would be lost opportunity if the Government were unable to pursue the business concept proposed by one of the two leading proponents. Equally it would be a pity not to take advantage of the connections and corporate governance experience of the other leading proponent. In the circumstances, GCIO proposed to invite the two leading proponents to collaborate to see if the Government can cherry pick the best aspects from each of the proposals. He advised that this was the approach OGCIO took in 2008 when assessing proposals for the District Cyber Centre pilot scheme, which led to the creation of the District Cyber Centre Alliance (DCCA), involving the Internet Professional Association, Hong Kong Council for Social Service (HKCSS) and the Hong Kong Cyberport Management Company Limited. GCIO considered that the DCCA programme had been successful though there had been some tensions amongst the partners.

5. From a procedural propriety perspective, CEDB was concerned to note that, despite the significant value of the project (\$220m), allowance was not made for a separate set-up equivalent to a tender board under the tendering regime to review the selection procedures and outcome of the evaluation team. PSCT presented her analysis to the Secretary for Commerce and Economic Development (SCED) and consulted her on the way forward. SCED agreed that it was important for the Government to ensure that there was a proper system of checks and balances in the whole process and, since the funding involved was a substantial sum of public money, it called for the highest standard of due process and integrity from all involved in the evaluation. SCED agreed to form a review committee to act as a tender board equivalent to advise GCIO on procedural matters relating to the ILSP selection process, with PSCT as the chairman, and including representatives from the Financial Services and the Treasury Bureau (procurement authority) and the Education Bureau.

Review committee

6. The review committee met twice in September 2010. It noted the constraints inherent in the design of the assessment framework. For instance, there was no dedicated criterion to enable a focused, systematic, comparative

assessment to be made on the business/financial propositions amongst the bidders. As business viability and sustainability were core to the assessment, the absence of a comparative analysis amongst bidders invited doubts on whether the assessment framework was as comprehensive as desired. The review committee also noted a lapse in compliance with intended scoring methodologies. One of the scoring departments was meant to submit a score sheet on the basis of scores moderated between its two representatives; as events unfolded, only one representative scored. The omission would have affected the range of scores reported (hence the ranking of the bidders, particularly the two closest contenders) in the evaluation report. With this in mind, the review committee concluded that the overall score sheets and the conclusions presented in the evaluation report should be interpreted with caution. The review committee agreed that, despite the inadequacies, the selection process was by and large fair and had managed to produce two strong contenders with very high scores.

7. The review committee also reviewed the propriety of GCIO's proposal to seek a collaborative approach between the two leading contenders. GCIO confirmed that it would be in the best interests of the low-income families for a collaborative approach to be explored. He also confirmed that the Government would be able to proceed with any one of the two original proposals submitted by the two leading contenders should the collaboration fail.

8. Since collaboration between proponents was not envisaged within the framework of the RFP, the review committee advised GCIO that if collaboration was to be pursued, it should be treated as an exercise separate from the RFP lest the excluded bidders would accuse the Government of moving the goal post in the middle of the RFP exercise. Having regard to the procedural concerns, the circumstances of the case, the fact that the Government was not bound to select any proposal submitted under the RFP, and GCIO's advice that it would be in the best interests of the public to seek a collaborative approach between the two leading contenders, the review committee had no objection to GCIO concluding the RFP exercise by not selecting any proposal submitted and pursuing the collaborative approach as a separate exercise.

9. In the course of the deliberations, GCIO suggested that should the two leading contenders refuse to collaborate, the proponent with the highest score or second highest score could be selected. The review committee did not agree with this. For Government to invite the two leading contenders to contemplate collaboration, it would be necessary procedurally to first have the RFP concluded. But once the RFP had been concluded, the Government could not seek to reinstate it and award the contract to the proponent with the highest score, should the proposal to seek a collaborative approach fail. This would not be logical or defensible. Government could not be seen to be moving the

goal post as it wished. In any event, as explained in paragraph 6 above, the review committee considered that there was no basis for determining which of the two leading contenders had the highest score.

10. In October 2010, GCIO announced the decision to conclude the RFP exercise without selecting any proposal and to commence exploratory discussions about the collaborative approach between the two leading contenders, namely, HKCSS and eInclusion Foundation Limited (eInclusion).

Post RFP negotiations on a “collaborative approach”

11. Between November and December 2010, HKCSS and eInclusion were engaged by CEBD and OGCIIO for intensive (no less than nine) discussions on the possibility of co-founding an Implementer for the Programme. However, both organisations had difficulty in reaching agreement on collaboration under one roof. It was therefore necessary to identify a fallback arrangement.

12. In considering the fallback options, the Government had critically reviewed the options available, including the setting up of an FSI (Financial Secretary Incorporated) company, OGCIIO acting as the Implementer, single tender, re-tendering, and a dual implementer approach. Factors considered included procedural considerations, accountability, speed of and confidence in securing stakeholder’s agreement, speed of finalizing the implementation details, resource implications on the Government and the low income families, and public reaction. There was clear agreement amongst FS, SFST, SCED and PSCT that, in case collaboration failed, the Government should sound out HKCSS and eInclusion on the dual implementer approach, with the setting up an FSI company as the last resort.

13. A tripartite meeting was initially scheduled for 4 January 2011 for HKCSS and eInclusion, along with the Government, to make a last ditch attempt to seek collaboration. On 4 January, shortly before the meeting, Government was informed that one of the parties would prefer to be excused. Government decided to turn the tripartite meeting into two separate sessions with the parties. PSCT officially announced the end of the collaboration approach and offered two fallback options – namely, dual implementer subject to both parties agreeing to this option, and failing this, a fresh tender on the basis of a scope different from that covered in the RFP. On 6 January, both organisations agreed to implement the Programme in two geographical zones, with each of them taking up the responsibility for one of the zones. OGCIIO has since been working out the implementation details with both parties.

14. We have already reported the implementation arrangement to this Panel in January and March 2011 and to the Finance Committee in April 2011.

Clarifications

15. The ILSP selection process involved two key decisions. There were concerns that the decision to invite the two leading contenders to **collaborate** was out of turn. This decision was prompted by a wish to secure the best delivery entity for the ILSP. No impropriety was involved.

16. There were also concerns that the decision to subsequently invite the two leading contenders, upon their refusal to collaborate under one roof, to pursue the dual implementer approach, was out of turn. This decision was a conscious one collectively agreed at senior levels with due regard to relevant factors and options available, and after full consideration of the divergent views held by the concerned officer.

17. We reiterate that the ILSP selection process was conducted in a fair manner and guided only by what is best for the project in overall terms.

18. The submission by Mr Jeremy Godfrey to the ITB Panel on 25 May 2011 suggested that he was aware that there was “a political requirement to select a particular implementer”. This is misleading. That there were internal discussions reflecting the strengths of a social enterprise to execute ILSP is a fact. But this could not and should not be construed as a suggestion that the competitive bidding process should be waived or that the level playing field should be tilted. The memorandum prepared by Mr Godfrey referred to his being assured by the former and incumbent PSCT that the Government had to run an open and fair process and that the team should only do what was right in the interests of the low income families. Mr Godfrey was personally involved in making the first of two key decisions in the ILSP selection process – the decision to explore collaboration between the two leading contenders. He has denied any impropriety. The Government stands by this decision. Mr Godfrey was also involved in the making of the second key decision in the ILSP selection process – the decision to pursue a dual implementer approach. This is a collective decision with due regard to all relevant factors, and Mr Godfrey’s advice. Differences of opinion should not be taken as any suggestion of impropriety.

Current Position

19. OGCIO has concluded a Funding and Operation Agreement with eInclusion on 9 May 2011 and with the Internet Learning Resource Centre, a non-profit organisation newly established by HKCSS as the Implementer for this purpose, on 23 May 2011. Both organisations are now making active preparations for launching the Programme in July 2011, before the 2011-12 school year as scheduled.

**Commerce and Economic Development Bureau
Office of the Government Chief Information Officer
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