

**The Administration's response to the request for information by
the Legislative Council Panel on Public Service
at the meeting on 25 April 2014 in relation to
the Letter from the Hon Claudia MO dated 8 April 2014 on
Issues Arising from the Procurement of
the New Air Traffic Management System by
the Civil Aviation Department**

At the meeting of the Panel on Public Service held on 25 April 2014, the Administration, in response to the letter from the Hon Claudia Mo dated 8 April 2014 on the procurement of the new Air Traffic Management System (ATMS), undertook to provide the views of the Civil Aviation Department (CAD) regarding the allegations in relation to its procurement of the new ATMS and information on the post-service outside work control for civil servants.

Procurement of the New ATMS

2. The Government maintains stringent requirements in relation to procurement. The CAD has strictly followed the relevant rules as stipulated in the Government Stores and Procurement Regulations (SPR) and the Agreement on Government Procurement of the World Trade Organization (WTO GPA) throughout the procurement process of the new ATMS, from the invitation to tender to assessment of tender proposals, to ensure that the procurement complies with the principles of fairness and impartiality. Before the commencement of the tender exercise, the CAD had also studied the latest standards on ATMS to ensure that the new system meets the international requirements on air traffic management.

Tendering process

3. The tender document for the procurement of the new ATMS was prepared by the CAD in accordance with the SPR. The tender document had been vetted and approved by the Government Central Tender Board (GCTB), which was chaired by the Permanent Secretary for Financial Services and the Treasury (Treasury) and comprised representatives from the Government Logistics Department and Department of Justice. The tender document had spelt out the technical requirements for the new system, including a robust and

reliable system architecture, enhanced flight plan and data processing capability, highly automated and advanced safety conflict alert features, sophisticated flight trajectory computation function, etc. These requirements were formulated based on the latest technical, operational and safety standards adopted worldwide in regard to ATMS, and the experience of operating the existing system. The CAD had stipulated in the tender document for the new ATMS detailed requirements regarding the hardware and software of the system, and had not lowered any technical standards. The capacity and functions of the new ATMS procured by the CAD, namely AutoTrac3, are more sophisticated than the existing system, and the new system fully meets the international requirements for air traffic management.

4. As regards the assessment of tenders for the new system, it was carried out by a Tender Assessment Panel (TAP) established by the CAD in accordance with the SPR and comprising experienced air traffic control and engineering personnel. Prior to the evaluation of tenders, all TAP members had declared that they had no actual, potential or perceived conflict of interest throughout the tendering process in accordance with the stipulations in the SPR.

5. After the tender assessment, the findings and recommendations of the TAP were submitted to the GCTB, which was chaired by the Permanent Secretary for Financial Services and the Treasury (Treasury) and comprised representatives from the Government Logistics Department and Department of Justice, for final consideration and approval. These procedures and arrangements served as checks and balances to ensure the impartiality and fairness of the tendering process.

Whether the new system had proven performance record

6. The Raytheon Company of the United States which was awarded the contract has over 50 years of experience in designing and manufacturing air traffic control and radar systems. Its systems are widely used by civil aviation authorities around the world, including the United States, Dubai, India, etc. Since its commissioning in 1998, the Hong Kong International Airport (HKIA) has been using the first-generation ATMS provided by the Raytheon Company, which has been in smooth operation over the years.

7. When the CAD conducted the tender exercise for the new ATMS in 2011, an unsuccessful tenderer alleged that the AutoTrac3 of the Raytheon

Company had failed to meet the requirement of possession of “proven performance record” as specified in the tender document, hence in breach of the relevant provision of the WTO GPA. In accordance with the relevant provisions of the WTO GPA, the Government had immediately referred the complaint to the Review Body on Bid Challenges¹, a dedicated and independent body established under the WTO GPA, for review. After careful review of the case, the Review Body found that the system proposed by the Raytheon Company did possess the necessary “proven performance record”. The Review Body had not seen any unfairness or bias which the Government had operated on any tenderer including the complainant. The complaint² was therefore dismissed.

8. The Airports Authority of India (AAI) had formally put the AutoTrac3 system into full operation in 2011. Regarding the reported incidents of the ATMS used in the airports of New Delhi, Mumbai and Chennai in India, the CAD had enquired with the AAI and had been advised that some of the reported incidents were due to the problematic power supply of the airport or improper procedure handling unrelated to the operation of the AutoTrac3. The AAI also stated in its reply that it was satisfied with the overall performance of the AutoTrac3. The AAI was awarded the Jane’s 2012 ATC Operational Efficiency Award³ and the ATC Global Awards 2013 - Air Navigation Services⁴. These awards aim at commending and rewarding parties and organisations with good performance records in air traffic control and great achievements in driving forward the air traffic management industry.

¹ The Review Body provides a dedicated, independent and impartial avenue to review challenges by suppliers who are involved in the relevant procurement against any alleged breach of the WTO GPA during the procurement process. It is served by a Secretariat within the Trade and Industry Department, and comprises 12 members selected from a wide spectrum of society, including legal, engineering, accountancy fields, and are appointed by the Secretary for Commerce and Economic Development.

² Details of the case and the decision of the Review Body could be accessed via the link below – http://www.tid.gov.hk/english/trade_relations/tradefora/reviewbody/reviewbody_hear_0211.html

³ The award is presented by Jane’s Airport Review under IHS (Information Handling Services). This organisation is an independent and well recognised platform in the aviation industry. The award aims at commending and rewarding party with good performance records over the past 12 months across seven key areas of air traffic control. The Airports Authority of India was the winner of Operational Efficiency Award in 2012.

⁴ The award is presented by the ATC Global in association with Air Traffic Management magazine. It aims at commending and rewarding individuals and organisations to drive forward the air traffic management industry.

Involvement of Mr LEUNG Pui-kong, Peter, former Chief Air Traffic Control Officer

9. Mr Peter Leung, a directorate officer in CAD, proceeded on his pre-retirement leave in August 2006 and retired from the Civil Service in February 2007. Mr Leung was employed by CAD as non-civil service contract (NCSC) staff in September 2006 through open recruitment. Among other duties, Mr Leung was involved in the team responsible for preparing the tender document and developing the marking scheme for the new ATMS. The team was headed by a CAD directorate officer. During the entire tender assessment process, Mr Leung was not assigned any tender evaluation or scoring role. He left CAD in August 2012 on completion of his NCSC contract.

10. According to the established policy, the NCSC Staff Scheme is to provide departments with a flexible means of employment to respond more promptly to changing operational and service needs which may, inter alia, be time-limited in nature. NCSC staff are not supposed to take up duties which should more appropriately be carried out by civil servants. In line with the policy, during Mr Leung's employment as NCSC staff, he was not assigned any duties crucial to tender evaluation and assessment in relation to the new ATMS, which should more appropriately be taken up by civil servants.

Control Regime on Post-service Outside Work

11. The objective of the post-service outside work control is to ensure that civil servants leaving the Civil Service do not take up work, within the prescribed restriction periods, which may constitute actual, potential or perceived conflict of interest with their former government duties or which could undermine the image of the Civil Service or embarrass the Government.

12. Under the above-mentioned control regime, directorate civil servants are required to obtain prior permission from the decision authority before they can take up any outside work during the prescribed restriction periods, which take the form of a final leave period⁵, a minimum sanitisation period⁶ and a control period⁷ counting from one's departure from the Civil

⁵ Full-time paid work with specified non-commercial organisations or outside work of a commercial nature is normally not allowed during the final leave period.

⁶ Directorate civil servants who leave the Government on retirement ground are subject to a minimum sanitisation period of six months (for those below Directorate Pay Scale Point D4 or equivalent) or 12 months

Service. The decision authority will take into account assessments within the Administration and the advice of an independent Advisory Committee on Post-service Employment of Civil Servants before making a decision.

13. In respect of Mr Peter Leung, he was subject to the above-mentioned control regime and his control period counting from the date of retirement had already lapsed in February 2009.

Conclusion

14. The CAD has strictly followed the relevant rules as stipulated in the SPR and the WTO GPA throughout the procurement process of the new ATMS. Checks and balances have been put in place during the procurement process and no single officer could unduly influence the process. There is no evidence showing that the allegations in relation to CAD's procurement of ATMS raised in Hon Claudia Mo's letter are substantiated.

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(for those at D4 or above or equivalent) counting from cessation of active government service. Outside work of a commercial nature is normally not allowed during the sanitisation period.

⁷ The control period for directorate civil servants at D1 – D7 is two years and for D8 three years.