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來函檔號 Your Ref. : CB4/PAC/R63



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**GOVERNMENT LOGISTICS DEPARTMENT**

10th Floor, North Point Government Offices

333 Java Road, North Point, Hong Kong

15 April 2015

Mr Anthony Chu  
Clerk to the Public Accounts Committee  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr Chu,

**Public Accounts Committee**  
**Consideration of Chapter 4 of the Director of Audit's Report No. 63**  
**Administration of the air traffic control and related services**

I refer to your letters dated 30 March and 1 April 2015 regarding the procurement of the Air Traffic Management System ("ATMS"). The required information is provided below.

(1) Records on Drafting of Clause 8.4 of the Conditions of Tender

According to the Stores and Procurement Regulations of the Government ("Regulations"), if a goods or services contract has an estimated value exceeding \$100 million, the department must send the tender documents to the Department of Justice ("DoJ") for vetting before the issue of the tender. The Government Logistics Department ("GLD") will also vet the tender documents from the perspective of good procurement practice.

The Civil Aviation Department ("CAD") sent the first version of the tender documents for the ATMS ("first version") to DoJ and GLD for vetting via its email dated 13 May 2009 in accordance with the above requirements of the Regulations. The last sentence of Clause 8.4 of the first version is "A proposed System with no proven performance (that meet the requirements in the Specifications) will not be considered further." (at Annex I).

According to our record, DoJ's comments on and proposed amendments to CAD's first version were issued via its email dated 12 June 2009. Paragraph 5 of that email concerns DoJ's comments on Clause 8 of the first version (at Annex II). In that paragraph, DoJ requested CAD to confirm whether in accordance with the mandatory requirements of Appendix B of the first version, it was not necessary for a tenderer to have experience in supplying and installing air traffic management system which was the same model as the one proposed for that tendering exercise. DoJ also pointed out that the last sentence of Clause 8.4 of the first version, "A proposed System with no proven performance (that meet the requirements in the Specifications) will not be considered further.", appeared slightly clumsy. DoJ suggested that in deciding whether the wording in the brackets was needed, CAD should consider whether the product literature and the statement of compliance provided by a tenderer would be sufficient to prove that the system complied with the specifications, and whether the system must have been used elsewhere before it could be accepted.

According to our record, CAD responded via its email dated 24 June 2009 to DoJ's comments on and proposed amendments to the first version (at Annex III). In response to DoJ's advice on Clause 8 above, CAD agreed that the reference to the same model be removed from Clause 8, to be consistent with the mandatory requirements in Appendix B, and agreed with DoJ's proposed wording on Clause 8.4 for amending the last sentence as "A proposed System with no proven performance records will not be considered further."

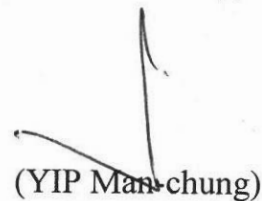
According to our record, GLD had not commented on or proposed amendments to Clause 8 of the first version.

## (2) Reports on the Use of Autotrac III in Indian Airports

According to our record, GLD had not received any information or document concerning reports on the use of Autotrac III in Indian airports before the award of the said ATMS contract in February 2011.

On 15 March 2011, GLD replied to an unsuccessful tenderer's letter dated 4 March 2011 (at Annex IV). Paragraph 5.4 of our letter was in response to that unsuccessful tenderer's comments on the newspaper cuttings about the problems on the use of Autotrac III in Indian airports. GLD had consulted CAD and DoJ on the responses to the letter before replying to that unsuccessful tenderer.

Yours sincerely,




(YIP Man-chung)

for Director of Government Logistics

Encl.

- c.c. Secretary for Transport and Housing (fax no.: 2523 9187)
- Director-General of Civil Aviation (fax no.: 2910 6384)
- Secretary for Financial Services and the Treasury (fax no.: 2147 5239)
- Director of Audit (fax no.: 2583 9063)



**ATMS tender document (Version 1) (1 of 4 files)** 

**Ronald WC Wong** to: Sandra PY TSANG, Joe WC WONG,  
cd@doj.gov.hk

13/05/09 21:57

Cc: Ronald WC Wong

From: Ronald WC Wong/CAD/HKSARG@CAD  
To: Sandra PY TSANG/GLD/HKSARG@GLD, Joe WC WONG/GLD/HKSARG@GLD,  
cd@doj.gov.hk  
Cc: Ronald WC Wong/CAD/HKSARG@CAD

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Dear Joe, Sandra and Denise

Please find attached the updated ATMS tender document (version 1)  
for your appropriate action

copy all 4 zip files in 1 folder before unzip or read

call me if you have any questions, thanks much

Ron Wong  
EE(13), AESD Projects Section  
CAD, 3/F Dragonair House,  
11 Tung Fai Rd, HKIA  
TEL: (852) 2591 5051  
FAX: (852) 2845 7160  
rwcwong@cad.gov.hk



ATMS tender Parts I to VI and VIII GLD - (version 1).zip

## PART II

### CONDITIONS OF TENDER

#### CONTENT

1. Tender Documents
2. Invitation to Tender and Scope of Work
3. Two Envelopes System in Submission of Tenders
4. Compilation of the Tender
5. Completion of Tender
6. Information and Descriptive Literature
7. Company/Business Organisation Status
8. Track Records
9. Particulars of Offer
10. Qualifications
11. Manufacturer Undertaking
12. Not Used
13. Offer of Products
14. Staff and Sub-contractors
15. Quotation
16. Accuracy of Tender Prices
17. Tender to Remain Open
18. Tenderer's Commitment
19. Tenderer's Counter-Proposal
20. Alternative Proposals
21. Communication with the Government
22. Tenderer's Enquiry
23. Tenderer's Response to Government Enquiries
24. Evaluation Criteria and Marking Scheme
25. Performance Bond and Guarantee
26. Negotiations
27. Award of Contract

28. Formation of Contract
29. Government Discretion
30. New Information Relevant to Qualified Status
31. Contractor Performance Monitoring
32. Cost of Tender
33. Personal Data Provided
34. Consent to Disclosure
35. Intellectual Property Rights License
36. Warning Against Bribery
37. Supplementary Information
38. Immigration
39. Site Survey
40. Documents of Unsuccessful Tenderers
41. Complaints About Tendering Process or Contract Awards
42. Environmental Protection

#### Appendices

- Appendix A – Guidance Note GN-1
- Appendix B – List of Mandatory Requirements
- Appendix C – Evaluation Criteria and Marking Scheme for Selected Essential Specifications
- Appendix D – Evaluation Criteria and Marking Scheme for Desirable Specifications

~~8.3 In addition to the details required in Clause 8.1, the Tenderer shall provide documentary evidence to demonstrate its technical expertise and working experience in performing the installation, testing and commissioning of the proposed System, particularly with the local on-site work experience in a multi-contractor environment to control, monitor and manage the contractors' work and activities.~~

8.4 The Government may, and is hereby authorized by the Tenderer to, contact any of the users details of which are provided pursuant to Clause 8.1 or 8.3 above or otherwise request a reference and such supplementary information either from the Tenderer or from the users as is considered necessary or desirable by the Government. In the event that the reference from a user indicates the System proposed cannot meet with the requirements in the Specifications, the Tenderer shall provide explanation and new user reference to prove the performance of the proposed System. **A proposed System with no proven performance (that meet the requirements in the Specifications) will not be considered further.**

~~8.5 Details of experience to be provided in accordance with Clause 8 shall demonstrate that the Tenderer fulfils the mandatory requirement specified in Item 3 of Appendix B hereto. There are explanatory notes below item 3 which further elaborate on what experience will and will not be accepted for the purpose of determining whether the mandatory requirement has been fulfilled. The Tenderer is reminded to pay careful attention to the mandatory requirement and the notes when preparing and collating the details of experience to be submitted.~~

**Extracts of e-mail dated 12.6.2009 from DoJ to CAD and GLD on Clause 8 of the Conditions of Tender**

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**5. Provision of Track Records (Clause 8)**

5.1 Under the mandatory requirement concerning experience in Appendix B, it appears it is not necessary for the Tenderer to have experience in "supplying and installing" air traffic management system which is the same model as the one proposed for the present tendering exercise. The requirement being that so long it has 10 years' experience in the last 15 years preceding the Tender Closing Date with "supplying and installing" of any model of ATMS, subject further to the requirements in the second sub-paragraph of the mandatory requirement, this would be sufficient. Please confirm.

~~5.2 On this basis, under clause 8 of COT, the Tenderer is required to submit two types of records:~~

- ~~a. one set of records which shows that it complies with the mandatory requirement concerning experience;~~
- ~~b. another set of records which shows that the system proposed for the present tendering exercise has been supplied and installed at other air traffic control centres.~~

5.3 The bold wording in clause 8.4 appears slightly clumsy. Please consider the question underneath the text.



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13. Offer of Products
14. Staff and Sub-contractors
15. Quotation
16. Accuracy of Tender Prices
17. Tender to Remain Open
18. Tenderer's Commitment
19. Tenderer's Counter-Proposal
20. Alternative Proposals
21. Communication with the Government
22. Tenderer's Enquiry
23. Tenderer's Response to Government Enquiries
24. Evaluation Criteria and Marking Scheme
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26. Negotiations

Tender Ref. : PT/0000/2009  
File Ref. : A0000002009

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- 27. Award of Contract
- 28. Formation of Contract
- 29. Government Discretion
- 30. New Information Relevant to Qualified Status
- 31. Contractor Performance Monitoring
- 32. Cost of Tender
- 33. Personal Data Provided
- 34. Consent to Disclosure
- 35. Intellectual Property Rights License
- 36. Warning Against Bribery
- 37. Supplementary Information
- 38. Immigration
- 39. Withholding Tax
- ~~39-40.~~ Site Survey
- ~~40-41.~~ Documents of Unsuccessful Tenderers
- 42. Complaints About Tendering Process or Contract Awards
- 43. Environmental Protection

格式化: 縮排: 左: 2.04 公分

格式化: 項目符號及編號

格式化: 項目符號及編號

格式化: 編號 + 階層: 1 + 編號樣式:  
1, 2, 3, ... + 起始號碼: 33 + 對齊方  
式: 左 + 對齊: 2.04 公分 + 定位點  
之後: 3.31 公分 + 縮排: 3.31 公分,  
定位停駐點: 8.5 字元, 左 + 不在  
8.52 字元

格式化: 英文 (美國)

#### Appendices

- Appendix A – Guidance Note GN-1
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- Appendix D – Evaluation Criteria and Marking Scheme for Desirable Specifications

- ~~operational site; and~~
- (k) ~~date of de-commissioning, if applicable.~~
- 8.2 Fact verification visits to the factor(ies) and operational site(s) of each Tenderer who has passed Stage 2 evaluation in Clause 24.1 may be required so as to enable the Government to inspect the operational equipment as proposed in its tender. In this regard, Tenderers should specify in the tenders the locations of the factor(ies) and operational site(s) recommended for the visits by the Government during the evaluation exercise.
- 8.3 In addition to the details required in Clause 8.1, the Tenderer shall provide documentary evidence to demonstrate its technical expertise and working experience in performing the installation, and testing and commissioning of the proposed System, particularly with the local on-site work experience in a multi-contractor environment to control, monitor and manage the contractors' work and activities.
- 8.4 The Government may, and is hereby authorized by the Tenderer to, contact any of the users details of which are provided by the Tenderer pursuant to Clause 8.1 or 8.3 above, or The Government also reserves the right to request additional otherwise request a references and such other supplementary information either from the Tenderer or from the users as is considered necessary or desirable by the Government. In the event that the reference from a user indicates the System proposed cannot meet with the requirements in the Specifications, the Tenderer shall provide explanation and new user reference to prove the performance of the proposed System. **A proposed System with no proven performance records [which evidence that it (that meets the requirements in the Specifications)] will not be considered further.**  
[Do]: Are you saying product literature and statement of compliance are not sufficient to prove that the System complies with the Specifications. But not all requirements the compliance with which can be proven by performance record. Or are you saying that the System must be used elsewhere before it can be accepted under the Contract? If yes, the words in square brackets are not necessary.]
- 8.5 ~~Details of experience to be provided in accordance with Clause 8 shall demonstrate that the Tenderer fulfils the mandatory requirement specified in Item 3 of Appendix B hereto. There are explanatory notes below item 3 which further elaborate on what experience will and will not be accepted for the purpose of determining whether the mandatory requirement has been fulfilled. The Tenderer is reminded to pay careful attention to the mandatory requirement and the notes when preparing and collating the details of experience to be submitted.~~

Extracts of e-mail dated 24.6.2009 from CAD to DoJ in response to DoJ's comments on Clause 8 of the Conditions of Tender

**5. Provision of Track Records (Clause 8)**

5.1 Under the mandatory requirement concerning experience in Appendix B, it appears it is not necessary for the Tenderer to have experience in "supplying and installing" air traffic management system which is the same model as the one proposed for the present tendering exercise. The requirement being that so long it has 10 years' experience in the last 15 years preceding the Tender Closing Date with "supplying and installing" of any model of ATMS, subject further to the requirements in the second sub-paragraph of the mandatory requirement, this would be sufficient. Please confirm.

[CAD: I have removed from Clause 8 the reference to "same or equivalent model/type" to be consistent with the mandatory requirement in Appendix B, and also realizing that same or equivalent model would be very difficult to qualify]

~~5.2 On this basis, under clause 8 of CoT, the Tenderer is required to submit two types of records:~~

- ~~a. one set of records which shows that it complies with the mandatory requirement concerning experience;~~
- ~~b. another set of records which shows that the system proposed for the present tendering exercise has been supplied and installed at other air traffic control centres.~~

~~[CAD: due to the change above, only 1 type of record is required to be submitted, reflected in CoT Clause 8.1 and Schedule 3A]~~

5.3 The bold wording in clause 8.4 appears slightly clumsy. Please consider the question underneath the text.

[CAD: your suggested wordings are accepted]

Tender Ref. : PT/0000/2009  
File Ref. : A0000002009

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Tender Ref. : PT/0000/2009  
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格式化: 非醒目提示

- ~~(k) date of de-commissioning, if applicable.~~
- 8.2 Fact verification visits to the factor(ies) and operational site(s) of each Tenderer who has passed Stage 2 evaluation in Clause 24.1 may be required so as to enable the Government to inspect the operational equipment as proposed in its tender. In this regard, Tenderers should specify in the tenders the locations of the factor(ies) and operational site(s) recommended for the visits by the Government during the evaluation exercise.
- 8.3 In addition to the details required in Clause 8.1, the Tenderer shall provide documentary evidence to demonstrate its technical expertise and working experience in performing the installation and testing and commissioning of the proposed System, particularly with the local on-site work experience in a multi-contractor environment to control, monitor and manage the contractors' work and activities.
- 8.4 The Government may, and is hereby authorized by the Tenderer to, contact any of the users details of which are provided by the Tenderer. The Government also reserves the right to request additional pursuant to Clause 8.1 or 8.3 above or otherwise request a references and such other supplementary information either from the Tenderer or from the users as is considered necessary or desirable by the Government. In the event that the reference from a user indicates the System proposed cannot meet with the requirements in the Specifications, the Tenderer shall provide explanation and new user reference to prove the performance of the proposed System. **A proposed System with no proven performance records (that meet the requirements in the Specifications) will not be considered further.**
- ~~8.5 Details of experience to be provided in accordance with Clause 8 shall demonstrate that the Tenderer fulfils the mandatory requirement specified in Item 3 of Appendix B hereto. There are explanatory notes below item 3 which further elaborate on what experience will and will not be accepted for the purpose of determining whether the mandatory requirement has been fulfilled. The Tenderer is reminded to pay careful attention to the mandatory requirement and the notes when preparing and collating the details of experience to be submitted.~~

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GOVERNMENT LOGISTICS DEPARTMENT  
 10th Floor, North Point Government Offices  
 333 Java Road, North Point, Hong Kong

[REDACTED] Tenderer E

15 March 2011  
**BY FAX**

Fax No.: [REDACTED]

Dear Sirs,

**Tender Ref.: PT/0230/2009 (A1310422009)**  
**Invitation to Tender for the Supply of Air Traffic Management System  
 and the Provision of Related Services for the Civil Aviation Department**

~~We refer to your letter of 4 March 2011 concerning the captioned invitation to tender. Our answers to your queries are set out below.~~

~~2. Terms and expressions appearing herein have the meanings given to them in the Tender Documents issued by the Government in relation to the captioned invitation to tender.~~

~~**3. Change in proposal from [REDACTED] Tenderer B**~~

~~3.1 The Government of the Hong Kong Special Administrative Region ("Government") is committed to ensuring the fairness and procedural propriety of its tender exercises. All tender offers, including those for the captioned tender exercise, have to be evaluated in strict accordance with the evaluation procedures set out in the relevant Tender Documents issued by the Government as well as the requirements of the Agreement on Government Procurement of the World Trade Organization (WTO GPA) where the WTO GPA is applicable to the tender exercises.~~

~~3.2 In this case, Government handled the tenders received strictly in accordance with the Tender Documents, and the requirements of WTO GPA. Specifically, we confirm that no Tenderer was allowed to change its tender proposal in the evaluation process. We repeat that the successful Tenderer did not make any counter-proposal to the essential specifications.~~

~~**4. The requirement in clause 8.4 of the Conditions of Tender in Part II of the Tender Documents (Part II) that "A proposed System with no proven performance record will not be considered further"**~~

~~4.1 Please be explained that reference to a "proposed System" in clause 8.4 of Part~~



~~It refers to each sub-component of the System in the context of this clause. You would note that ATMS (or System) is an umbrella term comprising many sub-system components with different functions as specified in Clause 4 of the Specifications for the Air Traffic Management System in Part VII of the Tender Documents.~~

4.2 The major sub-system components of the System i.e. SDP and FDP offered by the successful Tenderer has a proven performance record as evidenced by the reference site information provided by the successful Tenderer in compliance with clause 8.2 of Part II. Please refer to paragraph 5.3 below for examples. These reference sites were requested just in case if Government considered there was a need to verify compliance with the essential specifications under Stage 3 evaluation as mentioned in clause 24 of Part II (please see sub-clauses (b) and (c) under the sub-heading of “Stage 3 – Assessment of Compliance with the Essential Specifications” in clause 24 and also clauses 8.2 and 8.4 of Part II). You would note that Government did make inspection visits to the factory sites of all tenderers which passed the Stage 2 evaluation for this purpose. On this basis, the words “proven performance record” at the end of clause 8.4 should be read and understood in this context, viz site references which can prove that the proposed sub-system which forms part of the offered System can meet the relevant essential specifications applicable to it. This intention of Government is confirmed by the second last sentence which reads “In the event that the reference from a user indicates **the System proposed cannot meet with the requirements in the Specifications**, the Tenderer shall provide explanations and a new user reference **to prove the performance of the proposed System.**” Hence the last sentence, “A proposed System with no proven performance record will not be considered further”, should be read together with the afore-mentioned preceding sentence, but not on its own.

4.3 In addition, please be clarified that this “proven performance record” requirement is separate and independent from the mandatory requirements in items 3 and 4 of Appendix B to the Part II. The more detailed requirements on track record which must be possessed by the Tenderer (or its proposed Sub-contractor for the mandatory requirement in item 4) are all set out in Appendix B items 3 and 4. Please also be clarified that it is very clear from the wording in items 3 and 4 that there is no requirement that the air traffic management system referred to in item 3 or the fallback system referred to in item 4 must be exactly the same as the System offered by the Tenderer. Based on the same reason, it is possible that the reference sites provided by the Tenderer for the purposes of demonstrating that it fulfils the requirements in items 3 and 4 of Appendix B can be different from the reference sites mentioned in clause 8.2 of Part II.

4.4 Indeed, it is neither the user requirement nor the intention of Government as stated in the Tender Documents that the offered System **as a whole** in exactly the same composition and technologies must have been used elsewhere. This threshold would have been too high, unrealistic and would also deprive Government the opportunity to procure newer and more advanced technologies. You would note that a fair amount of customisation must also be required to ensure an air traffic management system complies with a user’s requirements which are unique to that user. Furthermore, Government ~~would have the right to opt for newer technologies after award of the Contract under~~

~~Clause 9 of the Conditions of Contract in Part IV of the Tender Documents. If Government insists that the offered System as a whole must have been used previously, Government would not have put in this option in Clause 9. Truly, what Government insists is that the Tenderer must have sufficient track records in the provision of air traffic management system, but not that the proposed System in exactly the same make-up must have been used elsewhere. We are satisfied that the successful Tenderer qualifies for such requirements.~~

4.5 The above is our further explanation on Government's user requirements as stated in the Tender Documents including clause 8, and items 3 and 4 of Appendix B to Part II. **Government's user requirement** as stated in the last sentence of clause 8.4 of Part II should be read and understood in the context as mentioned above.

## 5. **Comments on the AutoTrac III system**

5.1 The major sub-system components of AutoTrac III have been in operation world-wide. As mentioned above, the FDP sub-system that the AutoTrac III FDP is based on has been in operation in 7 Area Control Centres across Canada with the first commissioned more than 5 years ago. The SDP sub-system that the AutoTrac III SDP is founded on is operational in the USA Standard Terminal Automation Replacement System (STARS) and EnRoute Automation Modernization (ERAM) programmes. As mentioned above, these reference sites were only required for the purposes of the inspection visit to verify the proposed System's compliance with the essential specifications, which Government has a right, but not an obligation, to conduct.

5.2 As explained above, the words "performance record" should be understood in the context of record showing compliance with the essential specifications, but not the performance record for the purposes of proving compliance with the mandatory requirements specified in items 3 and 4 of Appendix B.

5.3 In any event, apart from the above reference sites, we would also draw your attention to the fact that a version of AutoTrac III system (comprising both FDP and SDP sub-systems similar to the technologies of the proposed System offered by the successful Tenderer) has been delivered and accepted by the Airports Authority of India in December 2008 and in shadow operation in 2010 at the airports in Delhi and Mumbai (viz around the ~~time when the tenders were evaluated for the captioned tendering exercise).~~

5.4 You have attached to your letter certain reports on the problems encountered by Indian airports concerning AutoTrac III. As you would appreciate, the success of a project depends on many factors. The problems reported in the Indian local news and the Internet sites of India (even if accurate) might not have been caused by intrinsic problems of Auto Trac III. At the time of tender evaluation stage, there was no official information about AutoTrac III system outage from the Airports Authority of India or any other accredited channels. As explained above, based on the factory sites inspection visit, Government is satisfied that the System proposed by the successful Tenderer complies with all the essential specifications; and inspection visit to the reference site at Delhi and Mumbai was considered unnecessary. In devising the user requirements for this

Invitation to Tender, Government took into account the risk related matters and included stringent user requirements in the system architecture design, project management, detailed design review, training, acceptance test and maintenance, safety and quality assurance and so on. You would note that these stringent user requirements were the joint efforts of our engineering and air traffic control staff.

~~6. Article XIII(4)(a) of the WTO GPA~~

6.1 The offers received in this tender exercise were evaluated in strict accordance with the evaluation procedures set out in the Tender Documents. The offer from Tenderer B [REDACTED] complies fully with all the mandatory requirements and essential specifications and achieves the highest combined score under the marking scheme in the Tender Documents. As explained in paragraphs 4 and 5 above, Government is satisfied that the proposed System complies with all the essential specifications. The award of the Contract to [REDACTED] is WTO GPA-compliant and a re-tendering exercise is considered not necessary and unfair to the successful Tenderer.

7. Thank you again for participation in this tender exercise. We understand and fully appreciate that you have put in efforts in preparing the tender. However, at the end of the day, there could only be one winning Tenderer after an evaluation based on the marking scheme set out in the Tender Documents. We genuinely hope that you find our further clarification helpful in answering your queries. In light of our explanations provided above, you may wish to reassess the necessity of pursuing your complaints further. Please let us know if you wish to have further explanation concerning Government's user requirements as stated in the Tender Documents.

Yours faithfully,



(YIP Man-chung)

for Director of Government Logistics

c.c. Director - General of Civil Aviation  
(Attn.: Mr Peter YEUNG)  
Fax No.: 852 2845 7160