

財經事務及庫務局



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來函檔號 Your Ref. : CB4/PAC/R63

29 December 2014

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 letter dated 17 December 2014 regarding the two contract variations to the Air Traffic Management System ("ATMS") contract. Our responses are set out in the ensuing paragraphs.

Promoting fair, competitive and open bidding has all along been a fundamental principle in government procurement. All bureaux/departments are required to comply with the Stores and Procurement Regulations ("SPR") when conducting their procurement activities. Tendering for the ATMS contract was conducted through an open bidding process. The tender requirements were made known to all tenderers and acceptance was based on the tender attaining the highest score in terms of the pre-determined tender evaluation criteria. As such, the contract was awarded through an open, fair and transparent bidding process.

The Government has clear guidelines for bureaux/departments to deal with contract variations to ensure that they are properly conducted. As stipulated in SPR, contract variations should be avoided as far as possible and should normally be used as a stop-gap measure. Under no circumstances may a department vary a contract which will result in the approved commitment or approved project estimate being exceeded. For contract variations amounting to new procurements covered by the Agreement on Government Procurement of the World Trade Organization (“WTO GPA”), the procuring department shall ensure that all relevant requirements of WTO GPA are complied with and seek advice from the Department of Justice if needed. There are different levels of authorities for approval of contract variations of different nature and value. The department should copy the approved contract variations to the Director of Audit for record.

The ATMS contract was awarded by the Government Logistics Department (“GLD”) on behalf of the Civil Aviation Department (“CAD”). Under SPR, for goods and service contracts awarded by GLD on the advice of the Central Tender Board, the GLD Tender Board (“GLDTB”) is the approving authority for variations with the accumulated value of the variations up to 30% of the original contract value. According to the information provided by CAD to the GLDTB, the two contract variations to the ATMS contract were required to meet the higher international standards on air traffic management, new requirements of the International Civil Aviation Organization and the operational needs of the future air traffic growth in Hong Kong. CAD had confirmed that they were **not** aware of these additional/new requirements at the time of preparing the tender specifications for the ATMS contract. The additional/new requirements were essential to meet CAD’s operational requirements and hence a genuine need of procurement.

ATMS is a highly complex and mission-critical system. Installation of any enhancements requires modifications of the proprietary software developed by the ATMS contractor, which has the exclusive intellectual property rights over the source codes. According to CAD, there was no other potential and suitable supplier with such technical expertise which could arrange software customization and development for the additional/new requirements of the ATMS. In the absence of any reasonable alternative, procuring the additional/new requirements by contract variation with the existing ATMS contractor was the only viable option.

CAD had also sought legal advice on the appropriateness to procure the additional/new requirements by contract variations from the WTO GPA's perspective. For protection of the intellectual property rights of the products provided by the ATMS contractor, and for reasons of compatibility and interchangeability with the existing functions of the ATMS, no legal objection to procuring the additional/new requirements by contract variations was received.

The ATMS contractor had provided proposals for the contract variations with detailed costs and manpower requirements for evaluation by the Government. After comparing the prices quoted in the proposals and those in the ATMS contract, CAD had confirmed that the quoted prices were fair and reasonable for the Government to accept as they were no less favourable than the existing contract rates. CAD had also evaluated the manpower requirements to ensure that these were commensurate with the work required.

In considering the two contract variations concerned, the GLDTB had critically examined the justifications provided by CAD to ensure that the process was conducted in a fair manner and the Government's interest was duly protected. When granting approval for the contract variations, the GLDTB had nevertheless remarked that it was unsatisfactory for a procuring department to seek multiple contract variations and requested CAD to review its tendering strategy and better plan its purchases in the future.

Against the above, we are content that the contract variations were approved in accordance with the established procedures and guidelines in this respect.

Yours sincerely,



(Miss Winky Wong)

*for* Secretary for Financial Services and the Treasury