



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Invitation to Tender for Provision of Data Centre Services

27 August 2019

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Introduction

1. Background

- 1.1 The Securities and Futures Commission (SFC), as part of its on-going effort to enhance its infrastructure, would like to relocate some of its servers to a hosting centre. The purpose of this Invitation to Tender (the “Tender”) is to invite prospective vendors to submit a proposal on providing the data centre services to SFC.

2. Invitation to Tender and Interpretation

- 2.1 The SFC invites tenders containing proposals to provide the data centre services to SFC. The scope of the project and the technical requirement are included in section 3-8 of this Tender.
- 2.2 In this document, the following terms shall have the following meanings:
- 2.2.1 “Contract” means a formal agreement to be entered into between the SFC and the successful tenderer in relation to the project containing such terms and conditions as the parties shall agree including (but not limited to) those terms set out in this tender (unless the same shall have been modified by the SFC);
- 2.2.2 “Project” means the project described in section 3-8 hereof; and
- 2.2.3 “Tenderer” means the person or persons or corporation tendering for the project and includes the executors and administrators and permitted assigns of such person or persons or corporation.

Requirement Specification

3. Purpose
4. Contract Period
5. Data Centre Technical Requirement
6. Services Level Required
7. Services Requirement
8. Customer Reference

Note : Please sign and return the Confidentiality Acknowledgement (Appendix C) if you wish to see details of the requirement specification. The Acknowledgement should be sent to Mr. Yuk Wai WONG (email: ywwong@sfc.hk) or Mr. Philip CHAN (email: philipchan@sfc.hk). Contact email and phone number of the tenderer should be included.

Guidelines for Tenderers

These guidelines are intended to provide tenderers with guidance on the procedure for submitting their proposals and the approach that SFC will generally adopt in assessing such proposals. They do not bind, and are not intended to bind, the SFC in any way. The SFC reserves the right to accept or reject all or any part of a proposal.

9. Preparation and Submission of Proposals

9.1 What must proposals cover?

9.1.1 Tenderers may propose alternatives to the SFC's conditions and requirements if they consider that such conditions and requirements are either not feasible or do not provide the SFC with the best solution in the circumstances.

9.2 What form must proposals take?

9.2.1 All proposals in writing must be submitted in both physical and electronic form.

9.2.2 One hardcopy of each proposal must be provided, together with a softcopy on CD-ROM or USB. The softcopy should be in Microsoft Word or PDF format.

9.2.3 The SFC will not consider any proposal that is submitted in writing without an accompanying softcopy.

9.3 To whom must proposals be submitted?

9.3.1 Written proposals should be marked with the reference "**Provision of Data Centre Services**" and must be submitted in a sealed envelope and deposited to a TENDER BOX at the following address:

Securities and Futures Commission
30th Floor, Cheung Kong Center
2 Queens's Road Central
Hong Kong

9.4 What is the deadline for the submission of proposals?

9.4.1 Proposals must be received by the SFC at the above-mentioned addresses on or before **2:30pm 24 September 2019**.

9.4.2 The SFC will not consider any late proposals.

9.5 How must proposals be set out?

9.5.1 Each proposal must be separated into the following parts:

- (a) a Technical Part describing the proposals;
- (b) a Price Schedule; and

- (c) a Letter:
- (i) offering to carry out the works described in the Technical Part for the prices detailed in the Price Schedule in compliance with the "Payment and Other terms" set out in section 13-18 of this Invitation to Tender;
 - (ii) stating the period that the offer is to remain open;
 - (iii) undertaking to negotiate in good faith to finalize promptly the Contract and to commence work immediately thereafter;
 - (iv) containing an acknowledgement and agreement that the SFC :
 - is not bound to accept the lowest tender or any tender;
 - reserves the right to make changes to the project requirement; and
 - will not defray any expenses incurred in tendering and/or in negotiating the Contract, whether successful or otherwise
 - (v) signed by the tenderer (in the case of an individual) or a duly authorized officer of the tenderer (in the case of a company).
- (d) a signed Acknowledgement and Undertaking form (Appendix C)

9.5.2 For the proposal hardcopy as well as its softcopy, the Technical Part the Price Schedule, the letter and the Acknowledgement form must be submitted as separate documents (the Price Schedule should be on its own CD-ROM and NO other parts of the tender should be on this CD-ROM) and be placed in separate envelopes. The envelope containing the Technical Part must be clearly marked "Technical Proposal". The envelope containing the Price Schedule must be clearly marked "Price Schedule" The envelope containing the Letter must be clearly marked "Offer Letter". The envelope containing the Acknowledgement form must be clearly marked "Acknowledgement form". Price information **must not** be specified in the Technical Part.

9.5.3 Details in relation to what should be specified in each part are set out in APPENDIX A (Technical Part) and B (Price Schedule) to this document.

9.6 How long should tenderers' offers remain open?

9.6.1 By making a proposal in response to this Invitation to Tender, a tenderer will be treated as having made an offer to the SFC. A tenderer should clearly state in its proposal how long this offer will remain open.

9.6.2 In order to allow the SFC sufficient time to consider all proposals validly submitted, tenderers should keep their offers open for at least 90 days

from the closing date of this Invitation to Tender. If this cannot be done, the reason must be stated in the proposal.

10. Queries Regarding This Invitation to Tender or Proposals Made In Response

10.1 What if the SFC has any queries about a particular proposal?

10.1.1 If the SFC considers that any aspect of a proposal requires clarification from the tenderer, the SFC may request that the tenderer:

- (a) supplement its proposal; or
- (b) answer the SFC's queries

orally or in writing, or in any manner that the SFC deems fit.

10.2 What if a tenderer has any queries?

10.2.1 Any queries regarding this Invitation to Tender should be made to:

Mr. Yuk Wai WONG
Senior Manager
Information Technology, Corporate Affairs
Telephone: 2231 1671
Email: ywwong@sfc.hk

Or, alternatively:

Mr. Philip CHAN
Assistant Manager
Information Technology, Corporate Affairs
Telephone: 2231 1728
Email: philipchan@sfc.hk

11. Notification of Results and Rejection of Proposals

11.1 The SFC will notify each shortlisted-tenderer by e-mail within 14 days of finalising its selection as to whether or not they have been selected by the SFC.

11.2 The SFC retains the right to reject any or all tenders(s) submitted.

12. Acceptance

12.1 No tender (or part thereof) shall be taken to have been accepted unless and until execution of the Contract.

Payment and Other Terms

13. Payment Terms

- 13.1 The SFC has a performance-based payment policy, under which payments will be made on actual delivery of services or products.
- 13.2 Wherever possible, and if the SFC considers appropriate in the circumstances, the SFC will make payments to the successful tenderer of the project as follows:
- 13.2.1 10% of the total contract price upon the SFC and the successful Tenderer entering into a binding contract;
 - 13.2.2 70% of the total contract price will be paid on the completion of the successful system roll out and acceptance of all required deliverables;
 - 13.2.3 20% of the total contract price will be retained by the SFC and be paid 3 months after successful system roll out and to the satisfaction of the SFC.

14. Termination of Service

- 14.1 The successful tenderer shall use its best endeavours to perform the Contract with such due care and skill as is expected of a provider of similar services and products and of a comparable standing in the industry but if for whatever reason, the SFC in its opinion, concludes that the successful tenderer is in breach of the Contract or does not provide the level of service required by the SFC, the SFC shall have the right to terminate the contract by notice in writing to the successful tenderer.

15. Sub-contracting of Services

- 15.1 If a Tenderer wishes to sub-contract any part (or all) of its obligations under its proposal, this must be clearly specified in the proposal. The tender must also clearly specify the person(s) to whom the Tenderer wishes to sub-contract, and the precise services or obligations intended by the Tenderer to be subject to such sub-contract. Sub-contracting of services will not normally be permitted. SFC reserves the right to either accept or reject the subcontracting of services.

16. Conflicts of Interest

- 16.1 A tenderer must have no interest which conflicts, or has the potential to conflict, with its duties to the SFC under the proposal. If a tenderer has any interest which conflicts, or has the potential to conflict, with its duties to the SFC under the proposal, the tenderer should clearly state this in the proposal. This requirement extends to the tenderer's associates, associated persons, group companies and each member of the tenderer's professional staff (and their associates and associated persons).

17. The Incorporation of Proposals into Contract signed with the SFC

- 17.1 Any proposals and responses to the SFC's inquiries submitted by the successful tenderer may form part of the Contract made between the SFC and such tenderer.
- 17.2 Every representation by the successful tenderer (whether of fact or performance, and whether set out in the proposal or otherwise) will be incorporated as warranties in any Contract between the SFC and such tenderer. Therefore, any statement of

fact or performance that the tenderer does not wish to be treated as a warranty should be clearly indicated.

18. Code of Conduct for Onsite Consultants

- 18.1 All employees, sub-contractors and consultants of the successful tenderer working at the SFC's office on a full-time basis will be bound by the SFC Staff Code of Conduct. They will also be subject to prior police vetting and be required to disclose all dealing in securities and futures to the SFC. Exemption may be granted on a case by case basis.

Grievance Procedures

19. SFC, as a public body, has a duty to conduct its affairs in a responsible and transparent manner. We have therefore put in place the Grievance Procedures with effect from 1 April 2004. The policy on Public Interest Grievances is intended to assist persons who are engaged by or to work in/with SFC who believes that they have discovered improper practices or misconduct relating to the running of SFC or work related activities of employees of SFC to report these in a constructive manner.

- 19.1 This policy is for any person who has an employment contract with SFC, is on secondment to SFC, is engaged as an independent consultant by SFC or is a contractor or supplier of services to SFC. Public Interest Grievances might include:

19.1.1 Criminal activity, such as accepting a bribe;

19.1.2 Financial or administrative malpractice;

19.1.3 Misconduct or improper behaviour;

19.1.4 Failure to comply with legal obligations such as those set out in the Securities and Futures Ordinance;

19.1.5 Endangering occupational health or safety;

19.1.6 Attempts to suppress or conceal information relating to any of the above.

- 19.2 The Policy on Public Interest Grievances can be found on the SFC website under "Lodge a complaint > Against the SFC > Staff/contractor complaints against the SFC or its employees". Please contact the Commission Secretary of the SFC if you have any questions.

20. Confidentiality

- 20.1 All information presented in or as a result of this tender, including information disclosed by the SFC during the selection process, is to be considered strictly confidential. Information must not be released to external parties without the express written consent of the SFC.
- 20.2 All responses and other materials submitted in response to this tender will become the property of the SFC. The SFC assumes no obligation and shall incur no liability regarding confidentiality of all or any portion of a response or any other material

submitted in response to this tender unless expressly agreed in writing to protect specifically identified information.

21. Conflict of Interest

21.1 No Proposer may have any interest which conflicts, or has the potential to conflict, with its duties to the SFC under the proposal. If a Proposer has any interest which conflicts, or has the potential to conflict, with its duties to the SFC under the proposal, the Proposer should clearly state this in its proposal. This requirement extends to the Proposer's associates, associated persons, group companies and each member of the Proposer's professional staff (and their associates and associated persons).

22. Prevention of Bribery

22.1 A Proposer shall prohibit its directors, employees, agents, and sub-contractors who are involved in this tender from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this mandate.

22.2 The Proposer shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that its directors, employees, agents and sub-contractors are aware of the prohibitions in this clause.

Appendix A: The Technical Part

The tenderer is free to include any information that it considers to be relevant to its proposal. However, **as a minimum**, this part should contain all of the following:

Table of Contents

1. Executive Summary
 - 1.1 This section should provide a full summary of the proposed solution.
2. The Proposed Solutions and Service Plan
 - 2.1 This section should describe the proposals in detail and explain how the proposals meet the conditions and requirements set out in section 3-8, and describe any limitations and compatibility issues associated with the proposals
3. Exceptions to the SFC's Conditions and Requirements
 - 3.1 If a tenderer wishes to propose alternatives to the SFC's conditions and requirements, these alternatives should be specified here. The tenderer should explain:
 - 3.1.1 why the SFC's conditions and requirements do not provide the SFC with the best solution in the circumstances; and
 - 3.1.2 the ways in which their alternatives are better.
4. Vendor Profile
 - 4.1 The tenderer should provide full details of its company profile. This should include the following matters:
 - 4.1.1 the company's background, history;
 - 4.1.2 the company's financial strength, supported by an audited report or financial summary;
 - 4.1.3 its experience in similar projects;
 - 4.1.4 references for similar projects (please provide the Scope, Team Size, Type of Services Provided etc.); and
 - 4.1.5 other relevant information.
5. Appendices
 - 5.1 Project Team and Structure
 - 5.1.1 Names, detailed qualifications and work experience to be assigned to implement the project and the team structure.



5.2 Other relevant information

5.2.1 The tenderer can include any other information that it considers to be relevant to its proposal.

Appendix B: The Price Schedule

This part should contain all of the following:

1. Executive Summary
 - 1.1 This part should provide a full summary of the project fee structure, and any payment arrangements.
2. Fees Schedule
 - 2.1 All fees must be quoted in Hong Kong Dollars.
 - 2.2 All fees should be properly itemized and explained and include all amounts payable by way of royalty, licence fee, software licence fee or otherwise for patent any copyright design or other intellectual property rights. The fee on hardware, software and consultancy services must be separately stated.
3. Payment Terms and Arrangements
 - 3.1 Payment must correlate with major milestones/achievements or deliveries, in accordance with the SFC's performance-based payment policy.

Appendix C: Confidentiality Acknowledgement

Acknowledgement and Undertaking

Acknowledgment in relation to the preservation of secrecy pursuant to section 378 of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (“SFO”) and avoidance of conflict of interests pursuant to section 379 of the SFO.

Terms in this acknowledgement shall have the same meaning as defined in the SFO, unless otherwise defined herein.

Section 378 of the SFO binds you and in particular subsection (1) of that section which provides as follows:

- (1) Subject to subsection 13(A), except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a specified person -
- (a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or in the course of assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions;
 - (b) shall not communicate any such matter to any other person; and
 - (c) shall not suffer or permit any other person to have access to any record or document which is in his possession by virtue of the appointment, or the performance of any such function under or the carrying into effect of any such provisions, or the assistance to the other person in the performance of any such function under or in carrying into effect any such provisions.

TAKE NOTICE THAT IF YOU CONTRAVENE SECTION 378(1) OF THE SFO YOU COMMIT AN OFFENCE UNDER SECTION 378(10) OF THE SFO. ANY PERSON WHO COMMITS AN OFFENCE UNDER SECTION 378(10) IS LIABLE:

- (a) on conviction on indictment to a fine of HK\$1,000,000 and to imprisonment for two years; or
- (b) on summary conviction to a fine of HK\$100,000 and to imprisonment for six months.

Section 379 of the SFO binds you and in particular subsections (1), (2) and (3) of that section which provide as follows:

(1) Subject to subsection (2), any member of the Commission or any person performing any function under any of the relevant provisions shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, a transaction regarding any securities, structured product, futures contract, leveraged foreign exchange contract, or an interest in any securities, structured product, futures contract, leveraged foreign exchange contract or collective investment scheme -

- (a) which transaction he knows is or is connected with a transaction or a person that is the subject of any investigation or proceedings by the Commission under any of the relevant provisions or the subject of other proceedings under any provision of the SFO; or
- (b) which transaction he knows is otherwise being considered by the Commission.

(2) Subsection (1) does not apply to any transaction which a holder of securities or a structured product effects or causes to be effected by reference to any of his rights as such holder -

- (a) to exchange the securities or structured product or to convert the securities or structured product to another form of securities or structured product;
- (b) to participate in a scheme of arrangement sanctioned by the Court of First Instance under the Companies Ordinance (Cap. 622) or the relevant Ordinance;
- (c) to subscribe for other securities or another structured product or dispose of a right to subscribe for other securities or another structured product;
- (d) to charge or pledge the securities or structured product to secure the repayment of money;
- (e) to realize the securities or structured product for the purpose of repaying money secured under paragraph (d); or
- (f) to realize the securities or structured product in the course of performing a duty imposed by law.

(3) Any member of the Commission or any person performing any function under any of the relevant provisions shall forthwith inform the Commission if, in the course of performing any function under any such provisions, he is required to consider any matter relating to -

- (a) any securities, futures contract, leveraged foreign exchange contract, structured product, or an interest in any securities, futures contract, leveraged foreign exchange contract, collective investment scheme or structured product -
 - (i) in which he has an interest;
 - (ii) in which a corporation, in the shares of which he has an interest, has an interest; or
 - (iii) which -
 - (A) in the case of securities, is of or issued by the same issuer, and of the same class, as those in which he has an interest;
 - (B) in the case of a futures contract, is interests, rights or property based upon securities of or issued by the

- same issuer, and of the same class, as those in which he has an interest; or
- (C) in the case of a structured product, is interests, rights or property based on a structured product of or issued by the same issuer, and of the same class, as that in which he has an interest; or
- (b) a person -
 - (i) by whom he is or was employed;
 - (ii) of whom he is or was a client;
 - (iii) who is or was his associate; or
 - (iv) whom he knows is or was a client of a person with whom he is or was employed or who is or was his associate.

TAKE NOTICE THAT IF YOU CONTRAVENE SECTION 379(1) AND/OR SECTION 379(3) OF THE SFO YOU COMMIT AN OFFENCE UNDER SECTION 379(4) OF THE SFO. ANY PERSON WHO COMMITS AN OFFENCE UNDER SECTION 379(4) IS LIABLE:

- (a) on conviction on indictment to a fine of HK\$1,000,000 and to imprisonment for two years; or
- (b) on summary conviction to a fine of HK\$100,000 and to imprisonment for six months.

The term “specified person” is defined in section 378(15) of the SFO and means-

- (a) the Commission;
- (b) any person who is or was a member, an employee, or a consultant, agent or adviser, of the Commission; or
- (c) any person who is or was -
 - (i) a person appointed under any of the relevant provisions;
 - (ii) a person performing any function under or carrying into effect any of the relevant provisions; or
 - (iii) a person assisting any other person in the performance of any function under or in carrying into effect any of the relevant provisions.

The term “person” has the meaning attributed to it in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) which provides that “person” includes any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word “person” occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation.



I/We acknowledge that I/we have received and read carefully a copy of sections 378 and 379 of the Securities and Futures Ordinance (Cap. 571), and understand that these sections (in particular, sections 378(1) and 379(1), (2) and (3)) impose statutory obligations on me/us. I/We further confirm that I/we understand and agree to be bound by the provisions of sections 378 and 379 of the Securities and Futures Ordinance (Cap. 571).

Signature

Name / Entity name (as applicable)

Name of authorized signatory (in the case of an entity)

Title of authorized signatory (in the case of an entity)

Date

Witnessed by:

Signature

Name

Title

Date