

TENDER FOR THE PROVISIONING OF CONSULTANCY SERVICES FOR THE DEVELOPMENT OF AN ACCOUNTING SEPARATION POLICY AND IMPLEMENTATION FRAMEWORK - TENDER NO: SKMM/LECD/CAD(2)/AD/TC/05/10(08)

Clarification on Questions posed by Tenderers

- Q1. We could not identify the tender evaluation criteria in the tender documentation. What is the weight attributed to each of the two proposal documents - the technical submission and the commercial submission?

Each of the technical submissions and commercial submissions will have their own designated points. SKMM did not specify the evaluation criteria in any of its tender.

- Q2. What is the estimated timetable for the assessment of the tender submissions and the award of the contract to the winning bidder? We could not identify this information in the tender documentation.

The time will vary from one tender to each tender. Normally, it will depend on the completion of the evaluation session, the tender committee meeting and the time required to seek for approval to award the tender.

- Q3. What resources (capacity) does SKMM estimate to allocate to operating an accounting separation regime after the consultancy has ended?

SKMM has not made a decision in terms of resources as this will depend on the implementation plan which will be finalized after the study.

- Q4. When was the latest market review conducted? Will any conclusions and determinations be made available to us during the project? If a market review has not yet been performed, is SKMM required to conduct a full market analysis / competition assessment as a basis for identifying the dominant players and SMP markets? What is SKMM plan and timetable to address this and how does this relate to the timetable of this project for the development of an accounting separation regime in Malaysia?

SKMM has not conducted a market review for dominance since the last Determination in 2004. Based on the current provisions in the CMA and barring any amendments, it is likely that a market analysis will be required as a basis for identifying dominant operators who will be imposed with accounting separation obligations. However, the consultancy project was initiated to formulate an accounting separation framework and clear criteria for implementation. It was not intended to result in an immediate implementation and therefore, is separate from any review for dominance in terms of timetable for this project.

- Q5. Are there any products and/or sectors in the telecommunications market that are of particular concern to the SKMM and where it feels regulatory intervention (accounting separation) may be required? For example where it is to provide greater information to support the TRA's regulatory review processes, ensure non-discrimination between upstream and downstream businesses in the market, etc.

In general, SKMM feels that once accounting separation is implemented, it will be easier for the regulator to assess competition complaints, retail rate setting, etc., since the main impediment currently is the lack of relevant data for regulatory and enforcement purposes.

Q6. The introduction to the tender (page 1, name 'Important instruction') included in the tender documentation, point 4 specifies that the Consultant is prohibited from displaying or including their brand name or name of the company in the Technical Submission. However Section 4 - Terms and conditions of tender, Paragraph 19.2 specifies that the Consultant shall ensure that the Consultant's official company stamp and authorised signature appear on all pages of the original set of documents. Could you please clarify if the Consultant's official company stamp and authorised signature should appear on all pages of the original Technical Submission as well or only on the Commercial Submission.

No. The consultant's official company stamp and authorized signature should appear on all pages of the original commercial submission only. Sorry for the confusion.

Q7. On Section 2 - Scope of work, Paragraph 4.1.3, can you provide further details on the regulatory framework - for example, does the SKMM consider that there is sufficient existing regulation to enforce accounting separation on carriers? Is assessing the legal basis for enforcing AS is part of the work, i.e. do we need to assess whether SKMM has the power and what does SKMM need to do to get the power (e.g. new regulations)?

SKMM is of the opinion that there is sufficient existing regulation for AS within the CMA including section 268, and license condition requiring record keeping. However, specific instruments may need to be issued/amended to enforce AS on operators. The consultancy is expected to assess the adequacy of these provisions for implementation of AS.

Q8. In relation to Section 2 - Scope of work, Paragraph 4.7, how many full-time SKMM staff will be allocated to this project and for what roles?

SKMM expects to deploy 2 officers on full-time basis from the Competition and Access Department to work with consultant on the AS project.

- Q9. Section 2 - Scope of work, paragraph 6.1 does not include the preparation of the final determination, however we noted that Appendix E, point 12 mentions 'draft determination'. Are the 'Draft Determination' and 'Final Determination' included in the tender deliverables or will these be produced independently by the SKMM?

The draft Determination is expected to be included in the consultant's presentation to the Commission for approval together with the PI report and final recommendations. Whether a Determination will be issued by the Commission is a policy decision and is not part of the Final Deliverables of this consultancy.

- Q10. Section 2 - Scope of work, paragraph 6.1 states that the estimated start date for the consultant work is July 2010, however the deadline for the tender submission is the 12th of August. Could you please provide the revised estimated project start date?

The tender process was delayed due to unavoidable circumstances after the tender documents were prepared, hence the deadline for submission in August. The overall timeline for the project is expected to remain at 7 months from whichever date the project commences.

- Q11. Section 3 - Consultancy Service Requirement, Paragraph 11.1 specifies the project weekly meetings. Would the SKMM find it acceptable if some weekly meetings being performed remotely for part of the consultant team (e.g. via teleconference or videoconference) rather than on-site, for example during the period of the project when we are waiting for responses from the industry?

Yes, it is possible for some meetings to be conducted remotely if there is a quiet period during the consultancy. However, SKMM expects the consultant to be available most of the time in order to fulfill requirements under paragraph 4.7.

Q12. Can you provide further clarification about the consultant' availability on a 'standing order' basis to address any ad-hoc queries related to the scope of work that is mentioned in Section 3 - Consultancy Service Requirement, Paragraph 11.2? For what length of time beyond the project delivery would the consultant need to be available for?

This requirement is only for the period of the consultancy. There is no need for the consultant to be available after acceptance of the deliverables by SKMM.

Q13. In relation to Section 3 - Consultancy Service Requirement, Paragraph 11.5, we cannot attach copies of recent work as most of the work we do is not published. Alternatively what would SKMM require in order for PwC to be able to comply with this clause?

SKMM would like any evidence of work in this area that points to your track record, experience and expertise. You can also refer to jurisdictions that you have advised in the past and attach any form of 3rd party write-ups/commentary/case analysis on their implementation of AS.

Q14. In relation to Section 4 - Terms and conditions of the tender, Paragraph 26.1: Conflicts of interest, PwC have ordinary commercial relationships with some operators, however none of these project are related to Accounting Separation and therefore would not conflict with activities that would need to be undertaken as part of this project's scope of work, i.e. we audit 3 of the operators (including the incumbent) and we provide consultancy to DiGi and other operators. Can you confirm that our existing relationships would not pose a problem for the SKMM and disqualify us from being able to take part in the tender.

Paragraph 26.1 only imposes an obligation on the part of the consultant to disclose any commercial relationship that the consultant may have with any of the Service Providers and this may not be a reason to disqualify PWC from being able to take part in this tender but may be taken into account in considering PWC's application to undertake this project.

- Q15. Section 4 - Terms and conditions, Paragraph 27.1, we would like to clarify the purpose of this clause. We would expect that neither party (the SKMM or consultant) should be penalised for delays beyond their control. Is this the meaning and effect of this clause?

Paragraph 27.1 imposes the penalty on the Consultant in the event of delay by the Consultant to complete the successful delivery of the service. Please note that the event of delay referred to in this paragraph is the 'willful and intentional delay' by the Consultant which can be avoided if reasonable care, skills and diligent is exercised by the Consultant in performing its obligations under the Project, and not the event of delay beyond the parties' control when undertaking the project.

- Q16. Appendix E, point 14 lists two final deliverables: General report (fixed - core and access) and General report. Could you please elaborate the difference between these two reports?

The reference to (fixed- core and access) are just examples. Consultant is free to make amendments to the table in Appendix E to match their tender.

- Q17. Could the SKMM advise whether the format of Appendix E (Time Schedule and Fees)' is for guidance purposes or must be strictly adhered to, i.e. will a MS project chart, excel diagram or similar representation suffice?

Consultants are free to make changes to the table in Appendix E to match their tender; however, the information and substance required by the table must be submitted for SKMM to evaluate the billings by consultant.

Q18. Appendix E - Time Schedule and Fees, point 13 specifies the training activities to be included in the project. In regards to providing training sessions, is this for the benefit of the SKMM only or it is to be provided to operators as well and what would be the timeline you have considered (one - two days of training)?

The training session is for SKMM only.

Q19. **Important Instruction** section: can SKMM clarify that the reference to "Section 2" in the Technical Submission description means our response on methodology and the work program? And that the reference to "Section 3" in the Commercial Submission refers to our response on fees and other commercial matters not otherwise included in the Appendices?

Yes. All of the appendices should be placed together with their respective sections.

Q20. Paragraph 11.6 indicates the desirability for foreign-based consultants to have a Malaysian professional services counterpart. How much weight will be given to a tie-up with a local Malaysian professional services counterpart in evaluating the commercial proposal?

It is important to have a relationship with a local counterpart who also brings knowledge and expertise to the project. A tie-up in name only or one that results in higher overall consultancy fees will not be given better rating in our assessment.

Q21. Paragraph 11.1 indicates weekly meetings with SKMM during the project. Will it be possible to hold some of these meetings by teleconference rather than in person?

Based on prior experience with similar large-scale consultancy projects, we expect that at least one consultant will be available here on full time basis.

Q22. Can the SKMM confirm that it has not implemented an accounting separation policy in the past?

To-date, we have not implemented accounting separation.

Q23. While paragraph 4.1.3.3 indicates that the SKMM requires clear criteria for when to apply accounting separation, can the SKMM indicate what expectations it has about how many operators are likely to be required to provide separated accounts under the accounting separation guidelines? For example, will all contributors to the Universal Service Provision fund be required to provide separated accounts?

Currently, all licensees that provide "designated" services are required to contribute to the USP fund including smaller VoIP providers. It is unlikely that these operators which do not have significant market power will all be required to comply with onerous accounting separation policy. However, SKMM is open to proposals and this project is expected to yield clear criteria for the application of accounting separation in Malaysia.

Q24. Paragraph 4.1.3.4 specifies that the accounting separation results should be "useful". Can the SKMM specify in more detail the objectives of the accounting separation regime as currently envisaged?

SKMM feels that the information gathered will be useful in assessments of competition complaints, analysis of consumer rate setting by service providers, etc.

Q25. Does the SKMM have the expectation that the guidelines will specify the same accounting separation rules for all operators from whom separated accounts will be required? That is, will there potentially be only a subset of accounting separation required for some operators?

Yes, it is possible that a subset of accounting separation policy will apply for some operators only, depending on the objective for gathering certain types of information.

Q26. Is the same AS framework and approach required for fixed and mobile operators or would the SKMM accept different standards of AS for mobile and fixed particularly given that the mobile segment is being more competitive than the fixed. Different standards could include less rigorous reporting requirements.

The same framework should be applicable for all operators, taking into account the size, level of significant market power, and who should be required to comply with onerous accounting separation policy. SKMM is open to proposals and this project is expected to yield clear criteria for the application of accounting separation in Malaysia. It is possible that a subset of accounting separation policy will apply for some operators only, depending on the objective for gathering certain types of information.

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