

**Tender for**  
**Appointment to the Litigation Services Panel of the**  
**Competition Commission**

**Closing date: Wednesday, 31 March 2021 (6:00 PM, Hong Kong Time)**

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**Tender Submissions to: [procurement5@compcomm.hk](mailto:procurement5@compcomm.hk)**

## **1 Introduction**

- 1.1 The Competition Commission ("**Commission**") is an independent statutory body established under the Competition Ordinance (Cap. 619) ("**Ordinance**"). The primary functions of the Commission are to investigate conduct that may contravene the competition rules of the Ordinance and to enforce the provisions of the Ordinance. The Commission also performs advocacy and policy advisory functions to promote public understanding of the Ordinance and give advice to the Government on competition matters.
- 1.2 The Commission may, from time to time, require the services of Hong Kong solicitors' firms to assist its internal legal function in various litigation matters arising out of the enforcement functions of the Commission ("**Litigation Services**"). Litigation Services include the provision of legal advice and representation where the Commission is:
- (a) the applicant in enforcement proceedings in the Competition Tribunal ("**Tribunal**");
  - (b) the respondent in proceedings for the review of a reviewable determination in the Tribunal or judicial review proceedings; and
  - (c) involved or interested in any other proceedings or contemplated proceedings under the Ordinance.
- 1.3 The Commission has maintained a panel of solicitors firms since 2016, with appointments to the panel for a period of two years ("**Litigation Services Panel**").
- 1.4 The Commission is now inviting tender submissions (each a "**Tender**") from Hong Kong solicitors' firms (each a "**Tendering Firm**") with respect to the Litigation Services Panel. This document sets out further details as to the Litigation Services Panel and the requirements for Tenders.

## **2 Litigation Services Panel**

- 2.1 The Litigation Services Panel will consist of up to 8 solicitors' firms, which may from time to time be appointed to provide Litigation Services to the Commission during the term of the Litigation Services Panel.
- 2.2 The scope of Litigation Services to be provided by solicitors' firms appointed to the Litigation Services Panel will include handling litigation matters, providing legal advice to the Commission, preparing legal documents and other documentation, attending meetings and where necessary instructing counsel, economic experts and other professional advisers.

2.3 The term of appointment of solicitors' firms to the Litigation Services Panel will be for a period of two years, beginning from the date on which the successful Tendering Firms are appointed in accordance with Clause 7 below.

### **3 Eligibility**

3.1 To be eligible for the appointment to the Litigation Services Panel, the solicitors' firm must:

- (a) be a Hong Kong's solicitors' firm;
- (b) have solicitors who possess relevant experience and qualifications in the provision of the type of services described in the Tender; and
- (c) meet the mandatory requirements set out in Clause 6.1(a) below.

3.2 For the avoidance of doubt, the Commission is open to Tenders from solicitors' firms whether or not they have experience in advising on competition law in Hong Kong.

### **4 Conflicts of Interest**

4.1 The Commission considers that appointment to the Litigation Services Panel will not automatically cause a Tendering Firm to be conflicted out from acting for its clients in potential matters relating to the Ordinance.

4.2 However, if a solicitors' firm is acting for the Commission in a specific matter ("**Specific Matter**"):

- (a) Unless the Commission's prior written consent is obtained by that solicitors' firm, all members of the solicitors' firm will be prevented from accepting instructions from any party (whether an existing client or not) (other than the Commission) in relation to investigations, market studies or other forms of inquiry initiated by the Commission and/or Tribunal proceedings involving the Commission ("**Other Commission Matter**"), even if the Other Commission's Matter(s) involve(s) different party/parties and/or subject matter(s) than those in the Specific Matter;
- (b) The Commission will only grant the prior written consent as referred to in Clause 4.2(a) above in exceptional circumstances and shall have the sole discretion in determining whether or not to give such consent after taking into account the circumstances in each individual case, including (but not limited to) whether:

- (i) the acceptance of such instructions by the solicitors' firm will be prejudicial to the Commission's interests having regard to the Specific Matter and Other Commission Matter(s) in question; and
  - (ii) the solicitors' firm can demonstrate to the Commission's satisfaction that there are effective internal safeguards that prevent the inadvertent disclosure of confidential information, strategic considerations, and other relevant information between the respective teams within the solicitors' firm.
- (c) For the avoidance of doubt, the prohibition against the solicitors' firm accepting instructions from any party in relation to Other Commission's Matters as referred to in Clause 4.2(a) above shall cease upon the final conclusion of the Specific Matter.

## 5 Content of and Submission of Tenders

### Information required to be provided in Tenders

- 5.1 Tendering Firms are required to submit a Tender in accordance with Clause 5.5 below, completed in the English language, comprising a Non-price Proposal and a Price Proposal.
- 5.2 The **Non-Price Proposal** must include the following:
- (a) a cover sheet identifying the name of the Tendering Firm;
  - (b) details about the team of solicitors that is proposed to provide Litigation Services to the Commission ("**Designated Team**"), which should identify for each member of the Designated Team:
    - (i) the years of experience in handling litigation in Hong Kong and, separately and if applicable, overseas;
    - (ii) details of key litigation matters handled, in particular matters before the Hong Kong Courts;
    - (iii) details of experience in handling antitrust or competition matters, in particular those relating to the Ordinance (including the Litigation Services), if any; and
    - (iv) proficiency in reading, writing and speaking in the English and Chinese languages (including Cantonese and Mandarin);

- (c) details of the person within the Designated Team who will serve as the primary person responsible for handling the Litigation Services to be provided to the Commission (“**Team Leader**”);
- (d) a statement confirming that the Designated Team will provide the Litigation Services to the Commission in the event the Tendering Firm is appointed to the Litigation Services Panel, unless otherwise expressly accepted by the Commission;
- (e) details of the Tendering Firm’s experience, generally, in handling cases before the Hong Kong Courts;
- (f) where appropriate, details of any proposed internal arrangements of the Tendering Firm (such as Chinese walls etc.) to address issues of potential conflicts of interest that may arise and/or may otherwise be necessary to protect the interests of the Commission (taking into account the matters set out in Clause 4 above);
- (g) all other information required in Clause 6 below, or any information that the Tendering Firm considers relevant to the provision of Litigation Services to the Commission; and
- (h) a Non-Collusive Quotation Certificate (**Annex A**) signed by a Partner or a person authorized by the Tendering Firm.

5.3 The **Price Proposal** must include the following:

- (a) a cover sheet identifying the name of the Tendering Firm;
- (b) details of the Tendering Firm’s fee schedule (in Hong Kong Dollars) for providing the Litigation Services to the Commission, with reference to the Tendering Firm’s standard billing rates, including:
  - (i) hourly rates of each member of the Designated Team, including the Team Leader;
  - (ii) hourly rates and job titles for solicitors practising at the Tendering Firm outside of the Designated Team who may be involved in providing the Litigation Services to the Commission where necessary, broken down by PQE year or bands of years;
  - (iii) fees and/or hourly rates for other staff of the Tendering Firm (such as, but not limited to, trainee solicitors, legal executives, litigation clerks, paralegals, translators, etc.) who may be involved in the provision of the Litigation Services to the Commission; and

- (iv) any other fees and/or disbursements which the Tendering Firm considers relevant in providing the Litigation Services including consideration of fee caps and fixed fees for certain types of work as well as miscellaneous services such as, but not limited to, data hosting;
  - (c) the Tendering Firm's agreement that it commits to the fee schedule provided pursuant to Clause 5.3(b) above during the term of the Litigation Services Panel, unless the Commission accepts a proposed price adjustment;
  - (d) details of the Tendering Firm's standard practice on disbursements and timing/frequency of billing (e.g. monthly billings); and
  - (e) a draft of the Tendering Firm's proposed Letter of Engagement in relation to the appointment to the Litigation Services Panel for the Commission's consideration (including any relevant terms relating to pricing or fees).
- 5.4 The fees quoted in the Price Proposal should not appear in any part of the Non-price Proposal. Tendering Firms should make certain the fees schedules provided (as required in Clause 5.3(b) above) are accurate before submitting their Tender.

#### Submission of Tenders

- 5.5 Tendering Firms must make their submission via e-mail to [procurement5@compcomm.hk](mailto:procurement5@compcomm.hk) in separate PDF documents, one copy for the Non-price Proposal and the other for the Price Proposal with the following stated clearly on the e-mail subject:
- “Appointment to the Litigation Services Panel of the Competition Commission – [the type of proposal (i.e. Non-Price Proposal or Price Proposal)]”
- 5.6 Tenders must be received by the Commission via e-mail to [procurement5@compcomm.hk](mailto:procurement5@compcomm.hk) on or before 6:00 p.m. on Wednesday, 31 March 2021 (Hong Kong time) (“**Tender Closing Time**” or “**Tender Closing Date**”, as appropriate).
- 5.7 If a typhoon signal No. 8 or above is hoisted or black rainstorm warning is in force in any period between 9:00 a.m. and 12:00 noon on the Tender Closing Date, the Tender Closing Time will be postponed to 6:00 PM (Hong Kong time) on the next working day (excluding Saturday).
- 5.8 Tenders received after the Tender Closing Time or incomplete Tenders will not be considered by the Commission.

5.9 Tendering Firms agree that Tenders shall remain valid for not less than 90 days after the Tender Closing Date (“**Agreed Validity Period**”). Tendering Firms agree not to withdraw their Tenders during this period.

## **6 Tender Evaluation**

6.1 The Commission will set up a tender assessment panel (“**Assessment Panel**”) to assess the Tenders as follows:

(a) Stage 1: Assessment of Satisfaction of Mandatory Requirements

Tendering Firms must satisfy all the mandatory requirements set out below. Any Tender which does not demonstrate that the Tendering Firm satisfies all of the mandatory requirements set out below will not be considered beyond Stage 1.

(i) **Team Leader**

The Team Leader must (a) be a full-time practising solicitor at the Hong Kong office of the Tendering Firm, (b) hold a current practising certificate to practise as a solicitor in Hong Kong (as at the Tender Closing Date), and (c) have at least 10 years’ relevant post-qualification experience handling litigation matters in Hong Kong.

(ii) **Designated Team**

The Designated Team must meet all of the following requirements:

- i. The Designated Team must have at least two full-time practising solicitors, each holding a current practising certificate to practise as a solicitor in Hong Kong (as at the Tender Closing Date);
- ii. At least one solicitor on the Designated Team (other than the Team Leader) must have at least three years’ relevant post-qualification experience handling litigation matters in Hong Kong; and
- iii. At least one solicitor (one of whom may be the Team Leader) on the Designated Team must have proficiency in reading, writing, listening and speaking in both the English and Chinese languages (including Cantonese and Mandarin).

(iii) **No civil judgment, criminal conviction or disciplinary action**

The Tendering Firm must make a statement confirming to the Commission that it (and each member of the Designated Team) has no civil judgment, criminal conviction and/or disciplinary action taken by the Law Society of Hong Kong which affects or may affect its practice as a solicitor in Hong Kong and the provision of legal services to the Commission.

**(iv) Conflicts of Interest**

The Tendering Firm must provide information satisfactory to the Commission on:

- i. the details of its conflict checking system and how it handles conflicts of interest;
- ii. whether it has any current conflict of interest with the Commission, including but not limited to any investigations, market studies or other forms of inquiry initiated by the Commission and/or Tribunal proceedings involving the Commission, and how it proposes to deal with it or them; and
- iii. the Tendering Firm's confirmation that it understands and agrees to the Commission's policy on conflicts of interest where a solicitors' firm is acting for the Commission, as set out Clause 4 above.

Tendering Firms who demonstrate in their Tenders that they satisfy the mandatory requirements set out above will proceed to assessment under Stage 2 and Stage 3, as detailed below.

The total maximum score a Tendering Firm may obtain from Stage 2 (Assessment of Non-price Proposal) and Stage 3 (Assessment of Price Proposal) is 100%. The relative weights of the Non-price Proposal and Price Proposal are **50%** and **50%** respectively.

**(b) Stage 2: Assessment of Non-price Proposals**

The Assessment Panel will assess Non-price Proposals (containing the information required in Clause 5.2 above) according to the following criteria:

Item	Non-price Proposal Evaluation Criteria	Total Score
1	<u>Expertise in Hong Kong litigation work</u> <ul style="list-style-type: none"> <li>• The experience, expertise and track record of the Team Leader of the Designated Team in</li> </ul>	30%



	<p>handling litigation matters before the Hong Kong Courts (including the Litigation Services), with an emphasis on complicated civil litigation, public enforcement and judicial review matters.</p> <ul style="list-style-type: none"> <li>• The overall experience, expertise and track record of the Designated Team (other than the Team Leader) in handling litigation matters before the Hong Kong Courts (including, where relevant, the Litigation Services).</li> <li>• The size of the Designated Team and the Tendering Firm's general depth in terms of relevant resources in providing the Litigation Services. The Tendering Firm's resources and personnel outside of Hong Kong will be considered, but will generally be considered by the Commission as being less relevant than resources and personnel within Hong Kong.</li> </ul>	
2	<p><u>Experience advising public bodies</u></p> <ul style="list-style-type: none"> <li>• The experience, expertise and track record of the Designated Team in providing legal advice to other regulatory authorities or Government agencies (e.g. the Securities and Futures Commission and the Communications Authority).</li> <li>• The experience, expertise and track record of the Designated Team in representing regulatory authorities or Government agencies in litigation matters before the Hong Kong Courts.</li> <li>• The experience, expertise and track record of other members of the Tendering Firm in advising other regulatory authorities or Government agencies.</li> </ul>	15%
3	<p><u>Experience before Hong Kong Courts and other relevant experience</u></p> <ul style="list-style-type: none"> <li>• The breadth of experience, expertise and track record of the Tendering Firm in matters</li> </ul>	5%

	<p>before the Hong Kong Courts (whether or not in relation to the Litigation Services).</p> <ul style="list-style-type: none"> <li>• The Tendering Firm's other experience in matters relevant to the Commission's work.</li> </ul>	
<b>Total Non-price Proposal Score</b>		<b>50%</b>

As part of the Stage 2 assessment, a Tendering Firm may be invited to conduct a presentation to the Assessment Panel and/or other members of the Commission's staff in relation to its ability and suitability to provide the Litigation Services. Where a Tendering Firm is invited but fails to conduct a presentation to the Commission within 14 days from the date of being invited, unless otherwise agreed, its Tender will not be considered further.

Tendering Firms who score 35% or above for their Non-price Proposal Score will proceed to be assessed in Stage 3.

(c) Stage 3: Assessment of Price Proposals

- (i) The Assessment Panel will assess Price Proposals (containing the information set out in Clause 5.3 above) on the basis of the Tendering Firm's proposed fee schedule for providing the Litigation Services to the Commission, as compared with all other Tendering Firms who have passed Stage 2 assessment. A maximum score of 50% will be allocated for a Tendering Firm's Price Proposal Score.
- (ii) The Price Proposal score shall be calculated based on a weighted fee, which is first calculated for each Tendering Firm based on the average fees in the fee bands provided by the Tendering Firm (35% of Team Leader rate, 15% of average Partner rate and 50% of average Associate rate) ("**Average Price Score**"). Thereafter, the Average Price Score is then calculated by having the lowest weighted fee divided into each individual Tendering Firm and then multiplied by the price weighting (50).
- (iii) For the avoidance of doubt, the Commission reserves its right to not consider the highest or lowest Price Proposals submitted by the Tendering Firms.

(d) Stage 4: Calculation of Combined Score

The combined score of each of the Tenders that have completed Stage 3 assessment will be the sum of the Tender's Non-price Proposal Score and Price Proposal Score.

- 6.2 As part of the Assessment Panel's assessment of Tenders, Tendering Firms may be requested to provide clarifications in relation to any information provided in the Non-price Proposals and the Price Proposals if necessary.

## **7 Appointment to the Litigation Services Panel**

- 7.1 Up to 8 Tendering Firms with the highest combined scores, as determined pursuant to Clause 6 above, will be appointed by the Commission to the Litigation Services Panel.
- 7.2 Notwithstanding the above, the Commission reserves the right to accept none or any of the Tenders received or, if it considers necessary and at its absolute discretion, cancel this invitation for Tenders without appointing a Litigation Services Panel.
- 7.3 The Commission reserves the right to negotiate with any Tendering Firm on any of the terms and conditions of this invitation for Tenders or its Non-price Proposal or Price Proposal.
- 7.4 Tendering Firms which are appointed to the Litigation Services Panel shall receive an indication of such appointment in writing ("**Letter of Appointment**") from the Commission. The terms of a Tendering Firm's appointment to the Litigation Services Panel shall be governed by (in order of precedence):
- (a) the Letter of Appointment;
  - (b) the terms and conditions set out in this invitation for Tenders; and
  - (c) the Tendering Firm's Non-price Proposal and Price Proposal, and all other documents submitted by the appointed Tendering Firm which forms part of its Tender.
- 7.5 Tendering Firms who do not receive any notification within the Agreed Validity Period shall assume that they have not been appointed to the Litigation Services Panel.
- 7.6 For the avoidance of doubt, the Commission reserves its sole discretion to decide which solicitors' firm within the Litigation Services Panel to choose for a Specific Matter. The Commission is under no obligation to discuss the assessment results with any Tendering Firm.

## **8 Disclosure by the Commission**

- 8.1 The Commission shall have the right to disclose to any third party whenever it considers appropriate, including upon request (written or otherwise) by any third party, and in such form and matter as it considers fit:
- (a) the Commission's appointment of the Tendering Firms to the Litigation Services Panel (including the names of the successful Tendering Firms);
  - (b) the fees, costs and expenses payable by the Commission for engaging the Tendering Firms appointed to the Litigation Services Panel; and
  - (c) the Tenders submitted by the Tendering Firms appointed to the Litigation Services Panel.
- 8.2 The Tendering Firms appointed to the Litigation Services Panel waive and forego their rights, if any, to make any claims against the Commission for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in connection with any disclosure made by the Commission under Clause 8.1 above.
- 8.3 Tendering Firms appointed to the Litigation Services Panel agree that they shall keep all documents and information regarding their appointment to the Litigation Services Panel confidential, and shall not disclose the existence of their appointment to any third party without obtaining the Commission's prior written consent.

## **9 Personal Data**

- 9.1 All personal data, as defined in the Personal Data (Privacy) Ordinance (Cap. 486), provided in a Tender will be used for the purpose of assessment of the Tender in the Commission's appointment of the Litigation Services Panel.
- 9.2 By submitting a Tender, a Tendering Firm is regarded to have agreed to, and have obtained from each individual whose personal data is provided in the Tender, his/her consent for the disclosure, use and further disclosure by the Commission of the personal data for the purposes related to the Litigation Services or the Litigation Services Panel.
- 9.3 Tendering Firms have the right of access and correction with respect to the personal data stipulated in and in accordance with Sections 18 and 22 as well as Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486). The right of access includes the right to obtain a copy of the personal data provided by Tendering Firms in the Tenders.

## **10 Governing Law**

- 10.1 This invitation for Tenders, and any appointment to the Litigation Services Panel, shall be governed by and construed in accordance with the laws of Hong Kong. The Commission and all Tendering Firms agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of this invitation for Tenders, and any appointment to the Litigation Services Panel.

## **11 Enquiries**

- 11.1 Any enquiries from a prospective Tendering Firm concerning this invitation for Tenders shall be made in writing to the Legal Division of the Commission by e-mail to [wilsonwu@compcomm.hk](mailto:wilsonwu@compcomm.hk) no later than five (5) working days prior to the Tender Closing Date.

**Competition Commission**

8 March 2021

## Annex A

### **Non-Collusive Quotation Certificate**

To: Competition Commission

Dear Sir/ Madam,

1. We, (name(s) of Service Provider(s)) of (address(es) of Service Provider(s)) refer to the Request for Quotation/Request for Proposal/Tender for the Contract (“RFP/RFP/EOI/Tender”) and our Proposal (as defined in the RFP/RFP/EOI/Tender) in relation to the RFP/RFP/EOI/Tender.

### **Non-collusion**

2. We represent and warrant that in relation to the RFP/RFP/EOI/Tender:
  - (a) Our Proposal was developed genuinely, independently and made with the intention to perform the Contract (as defined in the RFP/RFP/EOI/Tender) if our Proposal is accepted by the Commission;
  - (b) Our Proposal was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Service Provider or competitor) regarding:
    - (i) prices;
    - (ii) methods, factors or formulas used to calculate prices;
    - (iii) an intention or decision to submit, or not submit, a Proposal;
    - (iv) an intention or decision to withdraw a Proposal;
    - (v) the submission of a Proposal that does not conform with the requirements of the RFP/RFP/EOI/Tender;
    - (vi) the quality, quantity, specifications or delivery particulars of the products or services to which this RFP/RFP/EOI/Tender relates; and
    - (vii) the terms of the Proposal,

and we undertake that we will not, prior to the award of the Contract, enter into or engage in any of the foregoing.

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
  - (a) the Commission;
  - (b) a joint venture partner, where joint venture arrangements relevant to the Proposal exist and which are notified to the Commission;
  - (c) consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
  - (d) professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to the RFP/RFP/EOI/Tender;
  - (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement; and
  - (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing.

#### **Disclosure of subcontracting**

4. We understand that we are required to disclose all intended sub-contracting arrangements relating to the RFP/RFP/EOI/Tender to the Commission including those which are entered into after we receive a Letter of Acceptance from the Commission. We warrant that we have duly disclosed and will continue to disclose such arrangements to the Commission.
5. We understand that that the Commission is entitled to require us to disclose details regarding our shareholders or parent companies, or any other related, associated or controlling entities, to the Commission. We agree to disclose such details to the Commission if so requested.

#### **Consequences of breach or non-compliance**

6. We understand that in the event of any breach or non-compliance with any warranties or undertakings in this certificate, the Commission may, at its discretion, invalidate our Proposal, exclude us from the Commission's future tenders, or quotation exercises,

pursue damages or other forms of redress from us (including but not limited to damages for delay, costs and expenses of reissuing a request for quotation and other costs incurred), and/or (in the event that our Proposal is accepted by the Commission) terminate the Contract.

Signed for and on behalf of the (Service Provider):

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_