

For discussion
on 8 May 2001

Legislative Council Panel on Environmental Affairs

Contractual Arrangements for Waste Management Facilities

Purpose

This paper informs Members of the existing contractual arrangements for the waste management facilities under the purview of the Environmental Protection Department.

Background

2. The Administration has been developing a network of waste facilities¹ to manage the increasing volume of waste generation in Hong Kong and to meet the waste disposal needs of the community.

3. The design, construction and operation of these waste facilities have been contracted out to the private sector under Design-Build-Operate (DBO) contracts. The DBO approach is considered appropriate for these waste management facilities as it ensures unity of responsibility. The contractors are totally responsible for all aspects of the design, construction and operation of the facilities over periods ranging from 17 years for refuse transfer stations to about 50 years for landfills. They will not be able to disclaim liability in respect of any failure to comply with their obligations under the contracts by blaming other parties such as the designer or builder of the facility.

4. The Government recognizes that satisfactory performance of waste management facilities depends very much on the capabilities and performance of the waste management contractors during all phases of the development of the

¹ These waste facilities include the West New Territories Landfill, South East New Territories Landfill, North East New Territories Landfill, Kowloon Bay refuse transfer stations (RTS), Island East RTS, Sha Tin RTS, West Kowloon RTS, Island West RTS, North Lantau RTS, Outlying Islands Transfer Facilities, North West New Territories RTS and Chemical Waste Treatment Centre.

facilities, in particular the operation phase. It is therefore essential to maintain these capabilities as well as make available any additional required expertise to the contracting companies throughout the duration of the waste management facilities contracts. In addition to stringent prequalification and tendering exercises to select suitable contractors, the parent companies of the contracting companies have also been required to provide guarantees for the due performance of the contracting companies. Under the guarantees the parent companies are responsible for all losses, damages and expenses etc. incurred by the Government due to any act, default or omission on the part of the contracting companies in complying with their obligations under the relevant contracts.

5. In addition to the guarantees mentioned above, in most of the waste management facilities contracts, the parent companies have also provided undertakings to the effect that, without the written consent of the Government, they will not sell their ownership of their shareholding in the contracting companies. The objective of the provision of the undertaking is similar to that of the guarantee.

Change in Ownership

6. As change of ownership of companies is common in the private sector, the waste management facility contracts have allowed for changes in the ownership of contractors. To ensure that the changes will not affect the contractors' ability to discharge their contractual obligations, as required by the undertakings, the existing parent companies will have to seek EPD's approval to allow any proposed ownership change to proceed. In considering applications for ownership change, EPD will evaluate the technical and financial capabilities of the proposed new parent companies to ensure that they would be able to provide adequate support to the contracting companies to fulfil their obligations under the contracts. EPD will also consider whether to accept the new parent companies as the new guarantors of the contractors. Before approval is granted and the replacement guarantees and undertakings provided by the new companies are accepted by EPD the existing parent companies continue to be bound by their guarantees and undertakings.

7. It must be noted that the contracts are awarded to contracting companies formed by different consortia. These contracting companies undertake the obligations under the contracts to design, construct and operate the waste

facilities in accordance with the requirements stipulated in the contracts. There is no direct contractual relationship between the parent companies and the Government.

Conclusion

8. The present guarantee and undertaking arrangement under the existing waste management facility contracts takes account of the nature and duration of the contracts, the substantial environmental liabilities, and the fact that transfer of ownership is common in the private sector. It provides the Government with the additional security to ensure the performance of the contracting companies.

Environmental Protection Department
May 2001