

The Committee noted that the Audit Commission had conducted a review to examine the Civil Engineering and Development Department (CEDD)'s administration of three works contracts for a Lantau development.

2. The Committee did not hold any public hearing on this subject. Instead, it asked for a written response to its enquiries.

3. According to paragraph 2.24 of the Director of Audit's Report (Audit Report), the CEDD attached to the prequalification documents an information note on sand supply from Mainland waters for the prequalification applicants' reference. In the information note, the CEDD indicated, among other things, that a contractor who wished to use the sand source in the vicinity of Wailingding Island could make arrangements with Company X. It was also stated in the prequalification documents that the information note was for reference only and did not form part of the prequalification documents. However, the Committee noted from paragraphs 2.28 to 2.31 of the Audit Report that Contractor A submitted a claim to the CEDD in December 2001 on the grounds that he could not obtain sand from Company X as suggested in the information note. In April 2004, the CEDD conducted a review of Contractor A's claim with the assistance of the Legal Advisory Division (Works) of the Development Bureau and, in April 2006, entered into a settlement agreement with Contractor A. The CEDD subsequently paid Contractor A a lump sum in full and final settlement of his claim. Since the information note was only for the applicants' reference at the prequalification stage, and was not incorporated into the tender documents or the contract, the Committee asked:

- why the CEDD had liability in relation to the information contained in the information note; and
- about the legal standing of the prequalification documents.

4. The **Director of Civil Engineering and Development** replied in his letter of 22 April 2008, in *Appendix 18*, that:

- the tender exercise for the project in question was of two stages, the prequalification stage and the tender stage. Prequalification was for the purpose of prequalifying a few contractors who were interested in and capable of undertaking a contract and to keep tendering cost to the minimum. The prequalified tenderers would be subsequently invited to submit their bids for the contract. The prequalification documents therefore set out the qualification, experience and expertise required to be fulfilled, and other assessment criteria as well as information on the contract to be tendered;

- the information note containing information on sand supply relating to the project was attached to the prequalification document. There was no explicit exclusion of liability for such information nor explicit statement that the information provided was limited to the prequalification stage. At the time of resolving the claim and after obtaining legal advice, the CEDD came to the view that it had potential liability in relation to the information note; and
- the CEDD welcomed and would follow up the audit recommendation in paragraph 2.32 of the Audit Report. In similar cases in future, the CEDD would consider including an explicit statement on exclusion of liability in prequalification documents after seeking legal advice.

5. The Committee also enquired:

- whether the total final payment to Contractor A (i.e. lump sum settlement payment plus the original contract sum) exceeded the tender price of the second lowest bid; and
- about the specific item against which the lump sum settlement payment was charged under the approved project estimates for this reclamation works.

6. The **Director of Civil Engineering and Development** stated in the same letter that:

- the total final payment to Contractor A was slightly higher than the tender price of the next lowest bid. However, such a comparison might not be directly relevant as the next lowest bidder might also submit a similar claim should it be awarded the contract; and
- the lump sum settlement payment was related to the reclamation works at Penny's Bay, which was within the scope of the project 662CL of the Capital Works Reserve Fund. The payment concerned was therefore charged to the subhead of 662CL.

7. The Committee notes the above reply of the Director of Civil Engineering and Development, and wishes to be kept informed of the progress made in implementing the various audit recommendations.