

海事處

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海港政府大樓

香港郵政總局信箱 4155 號



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立法會政府帳目委員會
(經辦人：詹詠儀女士)

詹女士：

政府帳目委員會
審議審計署署長第七十五號報告書第 1 章
海事處收集和清理海上垃圾的工作

2020 年 12 月 14 日來函收悉。來函要求的文件及資料見附件。部分文件只有英文版，敬希備悉。此外，附錄所載的部分文件包含商業敏感資料或內部記錄，不應向公眾披露。有關文件只限政府帳目委員會成員作參考之用。

海事處處長

(陳卓生  代行)

連附件

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2020 年 12 月 29 日

同心協力，促進卓越海事服務
We are One in Promoting Excellence in Marine Services

就政府帳目委員會 2020 年 12 月 14 日來信的回覆

第 1 部分：引言

- (a) 根據審計署報告書第1.11段，海事處自2005年7月起把海上垃圾清理及處置服務全面外判。請問海事處有否定期審查上述外判安排能否有效提高相關服務的運作效率，如無，原因為何；如有，請提供有關審查的詳情，包括負責主持審查的公職人員職級及相關會議記錄和報告；

回覆： 審計署於2004年完成審查海事處提供的清理海上垃圾服務（2004年10月發表的《審計署署長第四十三號報告書》第9章）。審計署提出的建議當中，包括建議海事處處長應檢討以海事處船隻提供清理垃圾服務的成本效益。海事處經檢討後，自2005年7月起把海上垃圾清理及處置服務全面外判。

海事處一直透過審閱承辦商提交的各類報表和報告，以及每月與承辦商舉行會議，監察承辦商在服務表現上的效益和效率。根據現行做法，承辦商須在進行清理工作前一天向海事處提交每天船隻調配表，並在服務完成後提交每天情況報告。海事處會檢查和審閱承辦商提交的報告，並在有需要時指示承辦商重新調配船隻和清潔隊，以處理不時收到的服務要求。此外，海事處每月會與承辦商進行由海事主任／污染控制小組主持的合約管理委員會會議，在會上與承辦商研究香港水域各區海上垃圾收集數量的趨勢，以找出海上垃圾黑點作跟進，並找出須改善之處。每月的合約管理委員會會議記錄樣本載於附錄A*，以供參閱。

*附錄A為本處與承辦商的內部會議記錄，內容包括承辦商的行動細節，因此有關文件只限政府帳目委員會成員作參考之用。

***委員會秘書附註：附錄 A 並無在此隨附。**

除了上文所述定期審查承辦商的表現外，海事處亦會在進行下一輪招標前審視現有海上垃圾清理及處置合約的安排，並考慮落實改善措施。舉例而言，處方在2011年進行招標前審視保留兩份海上垃圾清理及處置合約的成本效益，並認為應合併該兩份合約以提升營運的規模經濟效益，同時亦可鼓勵投標者投資於更加創新方式以提供服務。其後，香港東部和西部水域的合約在2011年合併進行招標。此外，海事處亦訂立燃油價格波動調整機制，讓承辦商和政府於燃油市價大幅波動時共同承擔風險，此機制有助促進競爭性投標和達致最佳的經濟效益。2011年招標文件相關條款的摘要載於附錄B。

海事處在2017年進行招標前，審視了海上清理及處置垃圾服務的覆蓋範圍。為提升香港水域的潔淨度，處方在2017年就全港水域進行招標的文件中，將優先清理海域的數目由36個增至43個，並規定承辦商為核心服務所安排的清理和支援船舶不得少於60艘，從而確保中標的承辦商具備足夠的船隊規模以提供服務。此外，為加強清理近岸漂浮垃圾而設立的近岸清潔隊的數目亦由原來兩隊增至三隊。2017年招標文件相關條款的摘要載於附錄C，以供參考。

海事處會繼續與承辦商保持每天溝通和每月舉行會議，以持續檢討和監察海上垃圾清理及處置服務的效益和效率，並會按需要在招標文件內加入新規定，以提升服務成效。

第 2 部分:管理海上垃圾清理及處置合約

- (b) 關於審計報告第2.19段中承辦商A作出未經批准的分判安排，請提供／告知：
 - (b)(i) 按2017年10月至2022年9月期間的全港水域合約及2018年10月至2020年9月期間的大埔區合約而分別作出的每天運送海上垃圾分判協議的副本（包括合約價值）；以及

回覆： 有關的分判安排涉及承辦商租賃車輛，以在陸上運送承辦商所收集的海上垃圾。

承辦商與分判商在全港水域合約（由2017年10月至2022年9月）下租賃車輛運送海上垃圾的分判協議副本載於附錄D*，至於大埔區合約（由2018年10月至2020年9月）的分判協議副本則載於附錄E*。

**附錄D及E為承辦商與分判商之間的合約，包含商業敏感資料，因此不應向公眾披露。有關文件只限政府帳目委員會成員作參考之用。*

(b)(ii) 新訂的大埔區海上垃圾清理及處置合約（由2020年10月至2022年9月）中，是否有任何分判安排？如有的話，請提供該等分判協議的副本（包括合約價值）；

回覆： 有關的分判安排涉及承辦商租賃車輛，以在陸上運送承辦商所收集的海上垃圾。

承辦商與分判商在大埔區水域合約（由2020年10月至2022年9月）下租賃車輛運送海上垃圾的分判協議副本載於附錄F*。

**附錄F為承辦商與分判商之間的合約，包含商業敏感資料，因此不應向公眾披露。有關文件只限政府帳目委員會成員作參考之用。*

(c) 關於審計報告第2.20段所述海事處就未經批准的分判安排所作的糾正行動，請提供／告知：

(c)(i) 全港水域合約（由2017年10月至2022年9月）及大埔區合約（由2018年10月至2020年9月）這兩份合約下分判安排的審批人員；

回覆： 分判安排由首長級人員負責審批。上述兩份合約所作分判安排的審批人員為海事處總經理／海事服務，屬首長級薪級表第1點人員。

***委員會秘書附註： 附錄D、E及F並無在此隨附。**

(c)(ii) 海事處處理上述分判安排的所有相關記錄，例如備忘錄、會議紀要或記錄的摘錄以及徵求事後批准的文件；以及

回覆： 與處理全港水域合約（由2017年10月至2022年9月）、大埔區合約（由2018年10月至2020年9月）及大埔區新合約（由2020年10月至2022年9月）分判安排的相關記錄分別載於附錄G、H及I*。

**附錄G、H及I包括承辦商與分判商之間的合約，包含商業敏感資料，因此不應向公眾披露。有關文件只限政府帳目委員會成員作參考之用。*

(c)(iii) 上述兩份關於全港水域和大埔區的合約，是否有分別訂明承辦商違反合約規定的罰則？如無，原因為何？如有，請提供該等條文的相關詳情，以及海事處為何不就承辦商 A 未事先取得處方書面同意而另聘分判商作出任何懲罰。

回覆： 根據全港水域和大埔區合約的一般條件第36.2條，倘承辦商違反了任何合約條件，政府可向其發出書面通知（服務表現違約通知書），列出違約詳情、承辦商須予採取的補救措施（如有）以及承辦商必須在合理時間內達到服務表現違約通知書中所訂定的規定。全港水域合約及大埔區合約訂明的罰則摘錄分別載於附錄J及K。

全港水域合約和大埔區合約的分判安排涉及承辦商租賃車輛，以在陸上運送承辦商所收集的海上垃圾。由於分判安排沒有影響所提供服務的質素，也未曾對政府造成任何損失或損害，故海事處並沒有向承辦商發出服務表現違約通知書。然而，海事處已提醒承辦商日後須恪守合約的條款和條件。倘承辦商日後再次違反有關規定，海事處會向其發出服務表現違約通知書。

除了上述分判安排外，海事處於2020年11月27日收到承辦商申請，在全港水域合約下向另一家公司租賃車輛，以提供在陸上運送由承辦商所收集的海上垃圾的服務。海事處正在處理有關申請。

***委員會秘書附註：附錄G、H及I並無在此隨附。**

第 3 部分：監察海上垃圾清理及處置服務

- (d) 就審計署報告書第 3.23 段，請提供全港水域的海上垃圾清理及處置服務的現行合約價格，連同該合約所涵蓋的四個海上垃圾收集站的個別營運成本；以及

回覆： 現時全港水域的海上垃圾清理及處置服務為五年期合約，總合約金額為\$447,386,200（不包括燃油價格波動調整）。四個海上垃圾收集站的營運成本已包括在總合約金額內，並無其分項成本。

第 4 部分：其他相關事宜

- (e) 就審計署報告書第 4.3 段，請告知採取針對海上棄置廢物的執法行動的程序，並提供一份相關的作業手冊／指引副本（如有）。

回覆： 針對海上棄置廢物的執法行動的程序載於附錄 L*的指引。

**附錄 L 為內部執法程序，不應向公眾披露。有關文件只限政府帳目委員會成員作參考之用。*

***委員會秘書附註： 附錄 L 並無在此隨附。**

2011年招標文件相關條款摘要

Part V

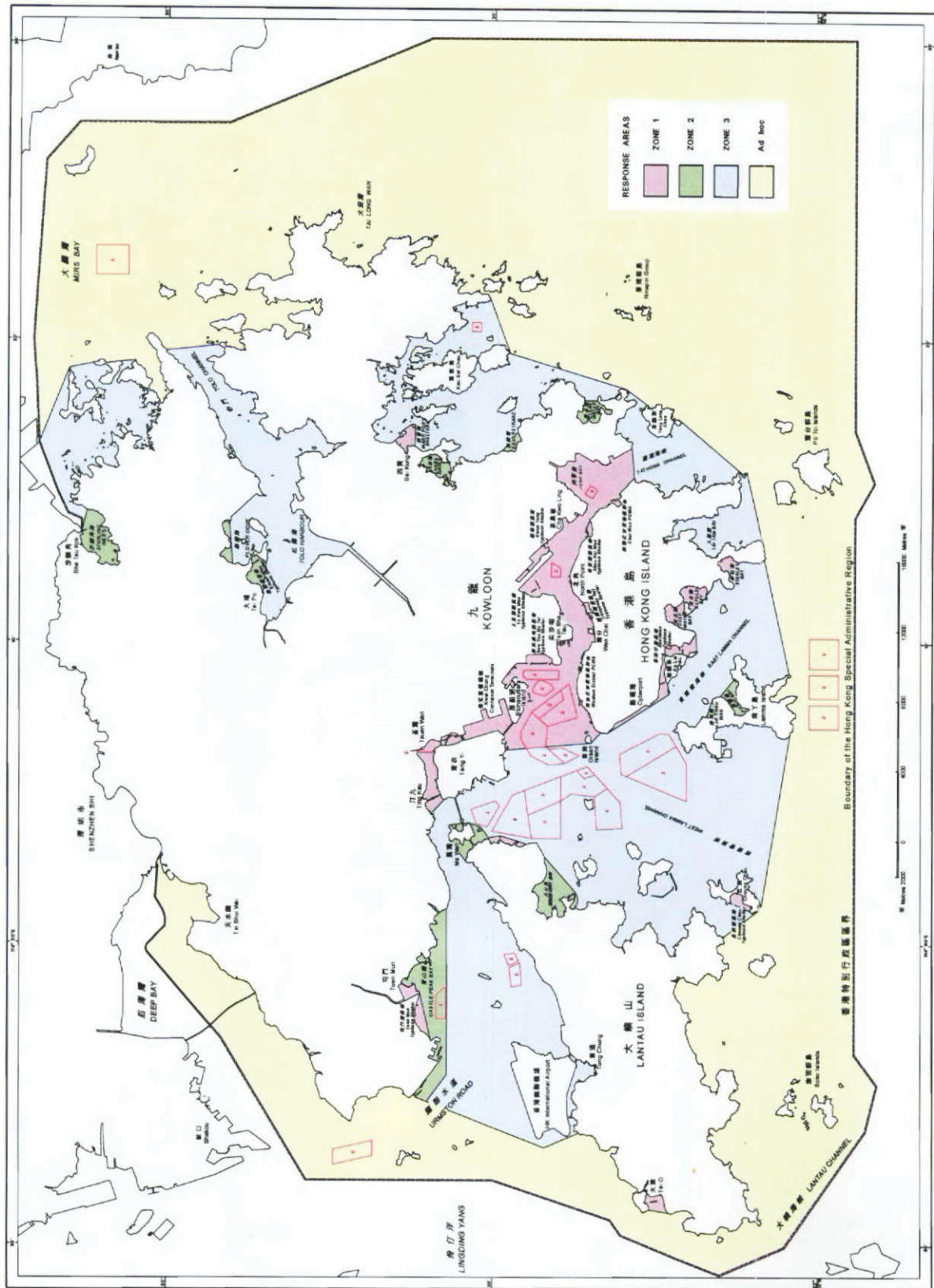
Schedule 1

Marine Refuse Cleansing Service Areas

The Marine Refuse Cleansing Service Areas are shown in the attached Drawing No 2010MAR040

***委員會秘書附註：本文件只備英文本。**

Marine Refuse Cleansing Service Areas



PART VII

Indexation Mechanism for Proportionate Sharing of the Risk of Fuel Prices Fluctuations

1 Introduction

- 1.1 It is estimated, that fuel costs make up about 20% of the Contractor's total operating costs for provision of the Services as required by the Contract. Under this proportion, a fuel price fluctuation adjustment has been devised and incorporated in the payment structure in order to remove the tenderers' uncertainty for fuel costs at the time of the tender and to equitably share the risk of fuel price fluctuation between the Government and the Contractor.
- 1.2 The primary objective of fuel price fluctuation adjustment is to compensate the Contractor (for upside risk) or the Government (for downside risk) when there are excessive fluctuations in fuel prices.

2 Structure of Service Payments

The Monthly Rates for the provision of Marine Refuse Cleansing and Disposal Services (Contract (A)) or Marine Oil Pollution and Marine Hazardous and Noxious Substances Spillage Cleansing, Confinement and Remediation Services (Contract (B)) are made up by

- (i) Monthly Rates quoted in Table 1 (a) of Section I (Contract (A)) or Table 1 (a) of Section II Contract (B) of Schedule 3, and
- (ii) if applicable, under Clause 4 of Part VII, Monthly Fuel Price Fluctuation Adjustment

3 Adoption of Indexation Mechanism

- 3.1 The Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) published monthly by the Census and Statistics Department (C & S D) of the Hong Kong Government is used as the reference index for determining the monthly fuel price fluctuation adjustment. Tenderers may obtain this information in Census and Statistics Department' website http://www.censtatd.gov.hk/hong_kong_statistics/statistical_tables/index.jsp?charsetID=1&subjectID=11&tableID=130
- 3.2 For determining the monthly fuel price fluctuation adjustment of this Contract, the Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) for **March 2011** is adopted as "**Base Index**". The Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) for the

current month will be referred as “**Current Index**”

- 3 3 The unit value of Gas Oil, Diesel Oil and Naphtha for March 2010 published by C & S D was HK\$ 6 30 per litre, therefore 6 30 is adopted as the **Base Index** of this Contract. The table of Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) showing the value of March 2011 is extracted at Annex A of this Part for Tenderers’ reference

4 **Fuel Price Fluctuation Adjustment**

- 4 1 If the absolute value of the difference between **Current Index** and **Base Index** is 20% or less ($\leq 20\%$), it is considered as normal business risk, therefore no Fuel Price Fluctuation Adjustment will be applied to the Monthly Rates. The Government will only pay the Contractor the Monthly Rates as quoted in Table 1 (a) of Section I (Contract (A)) or Table 1 (a) of Section II (Contract (B)) of Schedule 3

- 4 2 When the absolute value of the difference between **Current Index** and **Base Index** is over 20% ($>20\%$), The Fuel Price Fluctuation Adjustment will be triggered and applied to the Monthly Rates. Calculation of the value of Fuel Price Fluctuation Adjustment is illustrated as follows

- (i) Percentage of Adjustment

$$\frac{\text{difference of Current Index and Base Index}}{\text{Base Index}} \times 100\% - 20\%$$

- (ii) Actual Amount of Adjustment

Result of (i) \times 20% of the Monthly Rates quoted in Schedule 3

- 4 3 Application of Fuel Price Fluctuation Adjustment is only valid when the absolute value of the difference between **Current Index** and **Base Index** is over 20% ($>20\%$), and the Fuel Price Fluctuation Adjustment should be

- (i) added to the Monthly Rates quoted in Table 1 (a) of Section I (Contract (A)) or Table 1 (a) of Section II (Contract (B)) of Schedule 3 if the **Base Index** is lower than the **Current Index**, or
- (ii) subtracted from the Monthly Rates quoted in Table 1 (a) of Section I (Contract (A)) or Table 1 (a) of Section II (Contract (B)) of Schedule 3 if the **Current Index** is lower than the **Base Index**

- 4 4 Examples of Fuel Price Fluctuation Adjustment calculations are demonstrated in Annex B to Part VII for Tenderers’ ease of reference

Annex A to Part VII

Table 130 The Unit Value of Imports of Selected Oil Products (sample)

Table		Unit Values of Imports of Selected Oil Products				
HK\$/litre(unless otherwise specified)						
Year	Month	Aviation gasoline and kerosene	Motor gasoline		Gas oil, diesel oil and naphtha	Fuel oil
			(Leaded petrol)	(Unleaded petrol)		
2007		4 27	-	4 58	4 13	2 78
2008		6 14	-	5 86	5 51	4 11
2009		3 44	-	3 94	3 47	2 71
2010		4 41	-	4 71	4 39	3 58
2010	Jan	4 18	-	4 61	4 15	3 67
	Feb	4 14	-	4 64	4 05	3 65
	Mar	4 18	-	4 74	4 25	3 60
	Apr	4 55	-	4 90	4 57	3 46
	May	4 55	-	4 75	4 49	3 64
	Jun	4 30	-	4 50	4 21	3 59
	July	4 20	-	4 49	4 22	3 45
	Aug	4 27	-	4 46	4 22	3 49
	Sep	4 29	-	4 46	4 29	3 45
	Oct	4 48	-	4 61	4 48	3 54
	Nov	4 68	-	4 91	4 76	3 73
	Dec	4 97	-	5 25	4 94	3 87
2011	Jan	5 19	-	5 55	5 32	4 05
	Feb	5 60	-	5 87	5 60	4 28
	Mar	6 03	-	6 38	6 30	4 77

This table is available at the Census and Statistics Department's website

http://www.censtatd.gov.hk/hong_kong_statistics/statistical_tables/index.jsp?charsetID=1&tableID=130

Annex B to Part VII

Examples of Fuel Price Fluctuation Adjustment calculations

Assumed monthly charges for provision of Marine Refuse Cleansing and Disposal Services quoted in Table 1 (a) of Section I of Contract (A) in Schedule 3 of Part V is HK\$ 1,000,000

Scenarios

- (i) Assumed the **Current Index** of a particular month is 7 00, i.e. the Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) for that month is HK\$ 7 00 per litre. The difference of **Current Index** and **Base Index** is –

$$\frac{7\ 00 - 6\ 30}{6\ 30} \times 100\% = 11\ 11\%$$

- (ii) Assumed the **Current Index** of a particular month is 5 70, i.e. the Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) for that month is HK\$ 5 70 per litre. The difference of **Current Index** and **Base Index** is –

$$\frac{5\ 70 - 6\ 30}{6\ 30} \times 100\% = -9\ 52\%$$

For Scenario (i) and (ii), the **Fuel Price Fluctuation Adjustment** will not be triggered and applied to the Monthly Rate as the differences of **Current Index** and **Base Index** in both scenarios are below 20%

- (iii) Assumed the **Current Index** of a particular month is 7 70, i.e. the Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) for that month is HK\$ 7 70 per litre. The difference between **Current Index** and **Base Index** is –

$$\frac{7\ 70 - 6\ 30}{6\ 30} \times 100\% = 22\ 22\%$$

The **Fuel Price Fluctuation Adjustment** will be calculated as below

$$(22\ 22\% - 20\%) \times 20\% \times \text{HK\$ } 1,000,000 = \text{HK\$ } 4,440$$

- (iv) Assumed the **Current Index** of a particular month is 5 00, i.e. the Unit Value of Imports of Selected Oil Products (Gas Oil, Diesel Oil and Naphtha) for that month is HK\$ 5 00 per litre. The difference between **Current Index** and **Base Index** is –

$$\frac{5\ 00 - 6\ 30}{6\ 30} \times 100\% = -20\ 63\%$$

The **Fuel Price Fluctuation Adjustment** will be calculated as below

$$(20.63\% - 20\%) \times 20\% \times \text{HK\$ } 1,000,000 = \text{HK\$ } 1,260$$

For Scenario (iii), **Fuel Price Fluctuation Adjustment** will be triggered and applied to the Monthly Rates of that particular month. As the **Base Index** is lower than the **Current Index**, the Government will **pay** the Contractor **HK\$ 4,440** in addition to the Monthly Rates quoted by the Contractor in Table 1 (a) of Section I of Contract (A) in Schedule 3 of Part V.

For Scenario (iv), **Fuel Price Fluctuation Adjustment** will be triggered and applied to the Monthly Rates of that particular month. As the **Current Index** is lower than the **Base Index**, the Government will **deduct** **HK\$ 1,260** from the Monthly Rates quoted by the Contractor in Table 1 (a) of Section I of Contract (A) in Schedule 3 of Part V.

2017年招標文件相關條款摘要

Annex A to Part VI

Priority Areas

Harbour East		Harbour West	
1.	Causeway Bay Typhoon Shelter	24.	Central (between Wanchai and Macau Ferry Terminal)
2.	To Kwa Wan water front and To Kwa Wan Typhoon Shelter	25.	Tsim Sha Tsui East water front
3.	Kwun Tong Typhoon Shelter	26.	China Ferry Terminal and Yau Ma Tei
4.	Wan Chai (off Convention Centre)	27.	New Yau Ma Tei Typhoon Shelter
5.	Sam Ka Chuen Typhoon Shelter	28.	Cheung Sha Wan
6.	Shau Kei Wan Typhoon Shelter	Kowloon West	
7.	Shau Kei Wan to North Point	29.	Rambler Channel Typhoon Shelter and Tsuen Wan
8.	North Point (between Oil Street & Healthy Street East, underneath the Island Eastern Corridor)	30.	Ma Wan, Ting Kau, and Sham Tseng
9.	Chai Wan and Heng Fa Villa	31.	Beaches along Castle Peak Road
10.	Chai Wan Public Cargo Working Area	32.	Tuen Mun Immigration Anchorage and Butterfly Beach
11.	Junk Bay	33.	Tuen Mun River Trade Terminal and its vicinity
Sai Kung and Tai Po		34.	Tuen Mun Typhoon Shelter
12.	Sai Kung Harbour and Hebe Haven	35.	Urmston Road
		36.	Deep Bay
13.	Sha Tin Hoi and Pak Shek Kok	Outlying Islands	
14.	Shuen Wan Typhoon Shelter	37.	Cheung Chau and Peng Chau
15.	Po Toi O and Clear Water Bay	38.	Sok Kwu Wan
16.	Tolo Harbour	39.	Hung Shing Ye Wan and Yung Shu Wan
17.	Starling Inlet (Sha Tau Kok Hoi)	40.	Disneyland Park
Hong Kong South		41.	Discovery Bay
18.	Aberdeen Typhoon Shelter	42.	North of Chek Lap Kok
19.	Tin Wan	43.	Tai O
20.	Cyberport		
21.	Stanley Bay		
22.	Deep Water Bay		
23.	Repulse Bay		

shall be in operation carrying out the Services or patrolling the designated service area in search for Floating Refuse.

- 5.4 The Contractor shall provide Ship Refuse Collection Services and Boat Refuse Collection Services with no more than three substantiated complaints received in any calendar month regarding the delivery of the said Services.
- 5.5 The Contractor's scavenging/collection fleet shall be cleared of Refuse and cleaned up at the end of each day. All Collection Points shall be cleared of Refuse and properly washed down at the end of each day. Refuse containers provided in the Collection Point shall be properly covered. Equipment in the Collection Points shall be properly shut down and secured.
- 5.6 After completion of the Taskforce cleansing Services, the level of cleanliness of the site that has been cleaned shall be at Good level.
- 5.7 The time required for completion of Taskforce cleansing Services and ad hoc Services shall be no longer than the pre-agreed programme, which is stated in the work order for a particular job.

6. Vessels, Equipment and Facilities

- 6.1 The Contractor shall at its own expenses provide all materials, equipment and facilities necessary for proper and efficient performance of the Services. The Government shall not be liable for the loss of or damage to such materials or equipment or any facilities used by the Contractor. The Contractor shall be responsible for paying any utilities and fuel costs arising from delivery of the Services.
- 6.2 The Contractor shall at its own expenses provide not less than 60 scavenging and supporting vessels for the core services mentioned under paragraph 3.1 in sub-PART A of Part VI.
- 6.3 The Contractor shall at its own expenses provide not less than three quick response workboats to be deployed on the shallow water in response to the urgent request by the Government Representative of foreshore refuse cleansing and disposal services.
- 6.4 The Contractor shall at its own expenses to support the scavenging of marine refuse where the scavenging boats cannot gain access due to be geographical or environmental restrictions out of the available depth of water, the freedom to manoeuvre amongst congested moorings, etc. The equipment provided by the Contractor shall consist of, amongst others, suitable portable pumps, hoists, pipe-works and nozzle sets so as to enable the scavenging team to deploy the required physics of buoyancy and water flow dynamics to drive the inaccessible refuse towards a reachable sea area for the scavenging operations to be undertaken by the workboats as required under paragraph 6.3 in sub-PART A of Part VI.
- 6.5 All vessels, vehicles, equipment and facilities used for the performance of the Services shall be safe, in good order and condition, free of excessive noise,

Contractor pursuant to this Contract.

- (iv) Empty the containers at the Collection Point at the end of each working day.
- (v) Maintain the Collection Point in tidy and clean conditions to the satisfaction of the Inspecting Officer.

3.1.5 Taskforce Cleansing Services, which shall include but not be limited to:

- (i) Provision of three Taskforce Cleansing Teams, of 12 persons each, to scavenge Floating Refuse from the waters close inshore and to collect refuse along the foreshore in the littoral areas, which may or may not be assessable by land transport, within the specified service areas as instructed by the Government Representative.
- (ii) Transportation of all Refuse scavenged or collected by the Contractor for loading into temporary storage containers or directly onto a Land Transport Vehicle for subsequent conveyance to and disposal at a Disposal Site.

3.1.6 Other Services, which shall include but not be limited to:

- (i) Provision of ad hoc labour services at a rate as specified in the Schedule 3 to carry out extra services as and when required by the Government.
- (ii) At no extra cost to the Government, participation in education campaign or publicity organized by the MD in conjunction with other Government departments or non-Government organizations.

3.2 Optional Services

3.2.1 Floating Refuse Scavenging Services by Sea Cleaner class scavenging vessels, which shall include but not be limited to:

- (i) The three Sea Cleaner class scavenging vessels shall be bareboat chartered to the Contractor stipulated at Annex A to Part IV - Form of Charter Party Agreement. For details about the Agreement, please refer to the Annex A to Part IV.
- (ii) Maintain two of Sea Cleaner class scavenging vessels on regular and daily regional scavenging duties at the Eastern and Western waters of Hong Kong (including waters of Southern and Northern part of Lantau Island). The third Sea Cleaner class scavenging vessel should be deployed for ad hoc pollution control duties of up to 500 hours per year, subject to the Government Representative's instruction. Enable each of the Sea Cleaner class scavenging vessel to be quickly redeployed from one cleansing region into another and with contingency arrangement to redeploy the vessels from Marine Refuse Cleansing and Disposal Services onto Marine Oil and HNS Pollution Cleansing

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34 Independent Contractor

For the purpose of the Services to be performed under the Contract, the Contractor is an independent contractor. The Contractor is not an agent or a partner of the Government and has no power to bind the Government to any obligation whatsoever.

35 Examination and Inspection by the Government

35.1 Where the Services are carried out on the Contractor's premises or facilities such premises or facilities shall be open to inspection by the Government Representative at all reasonable times.

35.2 The Contractor shall, on the request of the Government made at any time, permit any officer authorised by the Government, including internal/external auditors, to enter upon Contractor's premises to inspect and examine the Equipment and the books and accounting records of the Contractor.

36 Performance Default

36.1 In the event that the Government is of the opinion that:

- (i) the Contractor has failed to provide all or any part of the Services in accordance with the Service Specifications; or
- (ii) the Contractor has breached any of the conditions of this Contract; or
- (iii) the Contractor has acted in its performance of this Contract in a manner that is or is likely to adversely affect the image or reputation of the Government or the Marine Department, and

the Government may without prejudice to its rights and remedies under this Contract take all or any of the actions set out in Clause 36.2.

36.2 The actions the Government may take pursuant to the conditions of Clause 36.1 are as follows:

- (i) Issue the Contractor with a written notice (hereinafter called a "Performance Default Notice") giving details of the breach, the steps required by the Contractor to remedy the breach (if any) and a reasonable time within which the Contractor must comply with the Performance Default Notice.
- (ii) Without determining the Contract itself provide or procure a third party to provide that part of the Services until such time as the Contract Manager shall have demonstrated to the satisfaction of the Government Representative that the Contractor will once more be able to perform such part of the Services to the Performance Standards in which event during such period the Contractor's performance of such part of the Services and the Government's payment to the Contractor for such part

of the Services shall be suspended.

- 36.3 (i) In the event that the Contractor complies with the Performance Default Notice served upon it pursuant to Clause 36.2 to the satisfaction of the Government Representative, the Contractor will be charged the Government's administration costs resulting from the breach.
- (ii) In the event that the Contractor fails to comply with a Performance Default Notice served upon it pursuant to Clause 36.2 to the satisfaction of the Government Representative or the breach is such that remedy is not possible the Government shall be entitled to deduct from payments due to the Contractor such reasonable sum or sums as the Government considers appropriate to reflect the actual loss to the Government resulting from the breach including administrative charges such sum or sums to be calculated by reference to the rates in the Price Proposal.
- 36.4 For the purpose of Clause 36.2 (ii) the Government shall serve a notice on the Contractor setting out those parts of the Services which the Government intends to provide or procure the provision of and shall serve a notice on the Contractor that (if such be the case) the Government requires the Contractor to resume the provision of such part of the Services.
- 36.5 The Government shall be entitled to deduct from payments due to the Contractor any cost (including any administration costs) reasonably incurred by the Government in respect of the provision of any part of the Services by the Government or by a third party in the circumstances set out in Clause 36.1 (ii) to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

37 Intellectual Property Right

The Contractor shall at all times during the term of the Contract exercise due diligence in software asset management and undertakes that the use of any software by the Contractor for the purpose of or otherwise in connection with the Services shall not infringe any intellectual property rights (including without limitation any patent, copyright, registered design or trademark) of any third party.

38 Termination of Contract

- 38.1 The Government shall be entitled forthwith upon the happening of any of the followings to exercise the rights contained in Clause 38.2, below:
- (i) if the Contractor fails to comply fully with the proposals specified in the Implementation Plan submitted under Schedule 2;
- (ii) if the Contractor fails to commence Services on the Commencement Date
- (iii) any substantial breach of the conditions of this Contract;
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attend meetings with any persons, groups or associations in order to handle complaints or deal with suggestions for improvements in relation to the Services.

34 Independent Contractor

For the purpose of the Services to be performed under the Contract, the Contractor is an independent contractor. The Contractor is not an agent or a partner of the Government and has no power to bind the Government to any obligation whatsoever.

35 Examination and Inspection by the Government

35.1 Where the Services are carried out on the Contractor's premises or facilities such premises or facilities shall be open to inspection by the Government Representative at all reasonable times.

35.2 The Contractor shall, on the request of the Government made at any time, permit any officer authorised by the Government, including internal/external auditors, to enter upon Contractor's premises to inspect and examine the Equipment and the books and accounting records of the Contractor.

36 Performance Default

36.1 In the event that the Government is of the opinion that:

- (a) the Contractor has failed to provide all or any part of the Services in accordance with the Service Specifications; or
- (b) the Contractor has breached any of the conditions of this Contract; or
- (c) the Contractor has acted in its performance of this Contract in a manner that is or is likely to adversely affect the image or reputation of the Government or the Marine Department, and

the Government may without prejudice to its rights and remedies under this Contract take all or any of the actions set out in Clause 36.2.

36.2 The actions the Government may take pursuant to the conditions of Clause 36.1 are as follows:

- (a) Issue the Contractor with a written notice (hereinafter called a "Performance Default Notice") giving details of the breach, the steps required by the Contractor to remedy the breach (if any) and a reasonable time within which the Contractor must comply with the Performance Default Notice.
- (b) Without determining the Contract itself provide or procure a third party to provide that part of the Services until such time as the Contract Manager shall have demonstrated to the satisfaction of the Government Representative that the Contractor will once more be able to perform such part of the Services to the Performance Standards in which event during such period the

Contractor's performance of such part of the Services and the Government's payment to the Contractor for such part of the Services shall be suspended.

- 36.3 (a) In the event that the Contractor complies with the Performance Default Notice served upon it pursuant to Clause 36.2 to the satisfaction of the Government Representative, the Contractor will be charged the Government's administration costs resulting from the breach.
- (b) In the event that the Contractor fails to comply with a Performance Default Notice served upon it pursuant to Clause 36.2 to the satisfaction of the Government Representative or the breach is such that remedy is not possible the Government shall be entitled to deduct from payments due to the Contractor such reasonable sum or sums as the Government considers appropriate to reflect the actual loss to the Government resulting from the breach including administrative charges such sum or sums to be calculated by reference to the rates in the Schedule 1 to Part IV.
- 36.4 For the purpose of Clause 36.2(b) the Government shall serve a notice on the Contractor setting out those parts of the Services which the Government intends to provide or procure the provision of and shall serve a notice on the Contractor that (if such be the case) the Government requires the Contractor to resume the provision of such part of the Services.
- 36.5 The Government shall be entitled to deduct from payments due to the Contractor any cost (including any administration costs) reasonably incurred by the Government in respect of the provision of any part of the Services by the Government or by a third party in the circumstances set out in Clause 36.1(b) to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

37 Intellectual Property Right

The Contractor shall at all times during the term of the Contract exercise due diligence in software asset management and undertakes that the use of any software by the Contractor for the purpose of or otherwise in connection with the Services shall not infringe any intellectual property rights (including without limitation any patent, copyright, registered design or trademark) of any third party.

38 Termination of Contract

- 38.1 The Government shall be entitled forthwith upon the happening of any of the followings to exercise the rights contained in Clause 38.2 below:
- (i) if the Contractor fails to commence Services on the Commencement Date unless it has applied and the Government has granted a gearing up period stipulated in Clause 3.2 of the General Conditions of Contract;
- (ii) any substantial breach of the conditions of this Contract;