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**MARINE DEPARTMENT**

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29 December 2020

Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Ms Wendy JAN)

Dear Ms JAN,

Public Accounts Committee

**Consideration of Chapter 1 of the Director of Audit's Report No. 75
Collection and removal of marine refuse by the Marine Department**

Thank you for your letter dated 14 December 2020. Copies of the documents and information required are set out at **Annex**. Please be advised that only English version is available for some of the documents. In addition, some documents in the Appendices contain commercially sensitive information or internal record and should not be made available to members of the public. Relevant documents should therefore be restricted for PAC Members' reference only.

Yours sincerely,

(Tony C.S. CHAN)
for Director of Marine

Encl.

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

c.c. Secretary for the Environment (email: sen@enb.gov.hk)
Secretary for Financial Services and the Treasury (email: sfst@fstb.gov.hk)
Director of Audit (email: john_nc_chu@aud.gov.hk)

Replies to questions raised in PAC's letter of 14 December 2020

Part 1: Introduction

- (a) according to paragraph 1.11 of the Audit Report, the Marine Department (“MD”) has since July 2005 fully outsourced the marine refuse cleansing and disposal services. Please advise whether MD has regularly reviewed the effectiveness of such outsourcing arrangement in improving the operational efficiency of the relevant services; if no, why not; if yes, please provide the details of the review(s) conducted, such as the rank(s) of the public officer(s) chairing the review(s) and the relevant minutes of meetings and reports;

Reply: In 2004, the Audit Commission completed a review on the marine scavenging services provided by the Marine Department (“MD”) (Chapter 9 of the Director of Audit’s Report No. 43 published in October 2004). The Audit recommended, among others, that the Director of Marine should review the cost-effectiveness of using MD’s in-house vessels to provide scavenging service. After the review, MD’s marine refuse cleansing and disposal services have been fully outsourced since July 2005.

MD has been monitoring the effectiveness and efficiency of the contractor’s performance through reviewing various returns and reports submitted by the contractor and conducting monthly meetings with the contractor. According to the existing practice, the contractor is required to submit a daily vessel operation schedule to MD the day before the cleansing work is carried out; and a daily situation report after the service is completed. MD will inspect and review the reports submitted by the contractor. If necessary, MD will instruct the contractor to redeploy vessels and cleansing teams to address service requests received from time to

time. In addition, at the monthly contract management committee meetings with the contractor chaired by the Marine Officer/Pollution Control Unit, MD will examine with the contractor the trend of the quantity of marine refuse collected in different areas of Hong Kong waters with a view to identifying black spots for follow-up action and areas for improvement. A sample of the minutes of the monthly contract management committee meeting is at **Appendix A*** for reference.

** Since Appendix A is the minutes of an internal meeting between MD and the contractor and operation details of the contractor are involved, it should be restricted for PAC Members' reference only.*

Apart from the aforementioned regular reviews on the contractor's performance, MD will examine the arrangements under the existing marine refuse cleansing and disposal contract and consider improvement measures prior to the conduct of the next round of tender exercise. For example, prior to the tender exercise in 2011, MD reviewed the cost effectiveness of maintaining two marine refuse cleansing and disposal contracts and came to the view that the two contracts should be combined to enhance the economy of scale in terms of operation and encourage investment in more innovative service delivery approaches. Subsequently, the contracts for the Eastern area of the Hong Kong waters and the Western area of the Hong Kong waters were combined in the 2011 tender exercise. Moreover, MD also introduced a fuel price fluctuation adjustment mechanism so that the contractor and the Government would share the risk when there are huge fluctuations in fuel prices in the market. This would help promote competitive bidding and achieve better value for money. Extract of the relevant clauses in the 2011 tender document is at **Appendix B**.

Before conducting the tender exercise in 2017, MD had reviewed the coverage of the marine cleansing and disposal services. With a view to enhancing the cleanliness of the Hong Kong waters, the number of priority areas was increased from 36 to 43 in the tender document for the 2017 tender exercise for the whole of Hong Kong waters. In addition, a requirement that the contractor should provide not less than 60 scavenging and supporting vessels for the core services was also added in the said tender document to ensure that the successful bidder would possess the necessary fleet size to deliver the services. Furthermore, the number of cleansing teams to enhance scavenging floating refuse along the foreshore was also

***Note by Clerk, PAC:** *Appendix A not attached.*

increased from two to three. Extract of the relevant clauses in the 2017 tender document is at **Appendix C** for reference.

MD will continue to review and monitor the effectiveness and efficiency of the marine refuse cleansing and disposal services through daily communications and monthly meetings with the contractor; and enhance the services by way of incorporating new requirements in the tender document as necessary.

Part 2: Administration of marine refuse cleansing and disposal contracts

- (b) referring to paragraph 2.19 of the Audit Report about the unauthorized sub-contracting arrangements made by Contractor A, please provide/advise:
 - (b)(i) a copy of sub-contract agreements (including the contract value) for the daily transportation of marine refuse made respectively under the two marine refuse cleansing and disposal contracts for the whole of Hong Kong waters from October 2017 to September 2022, and for Tai Po District from October 2018 to September 2020; and

Reply: The sub-contracting arrangement in question concerns the hire of a vehicle for land transportation of marine refuse collected by the contractor.

Copy of the agreement between the contractor and its sub-contractor made under the contract for the whole of Hong Kong waters (from October 2017 to September 2022) for hire of a vehicle to transport marine refuse is at **Appendix D*** while that for the Tai Po District (from October 2018 to September 2020) is at **Appendix E***.

** Appendices D and E are agreements made between the contractor and its sub-contractor and contain commercially sensitive information. Hence, they should not be made available to members of the public. The documents should be restricted for PAC Members' reference only.*

- (b)(ii) whether there are any sub-contracting arrangements made under the new contract for marine refuse cleansing and disposal services

***Note by Clerk, PAC:** *Appendices D and E not attached.*

in Tai Po District for the period from October 2020 to September 2022; if yes, please provide a copy of the sub-contract agreements (including the contract values);

Reply: The sub-contracting arrangement in question concerns the hire of a vehicle for land transportation of marine refuse collected by the contractor.

Copy of the agreement between the contractor and its sub-contractor made under the contract for Tai Po District (from October 2020 to September 2022) for hire of a vehicle to transport marine refuse is at **Appendix F***.

** Appendix F is an agreement made between the contractor and its sub-contractor and contains commercially sensitive information. Hence, it should not be made available to members of the public. The document should be restricted for PAC Members' reference only.*

(c) referring to paragraph 2.20 of the Audit Report about the remedial actions taken by MD for the unauthorized sub-contracting arrangements, please advise/provide:

(c)(i) the approving authority for the sub-contracting arrangements made under the two contracts for the whole of Hong Kong waters (October 2017 to September 2022) and Tai Po District (October 2018 to September 2020);

Reply: The authority for approving the sub-contracting arrangements rests with an officer at directorate level. The sub-contracting arrangements made under the two contracts concerned were approved by the General Manager/Services of MD (an officer at D1 level).

(c)(ii) all relevant records, such as memoranda, extracts of the notes or minutes of meetings and papers seeking covering approval, relating to the handling of the aforesaid sub-contracting arrangements by MD; and

Reply: The relevant records relating to the handling of the sub-contracting arrangements under the contract for the whole of Hong Kong

***Note by Clerk, PAC:** *Appendix F not attached.*

waters (from October 2017 to September 2022), the contract for Tai Po District (from October 2018 to September 2020) and the new contract for Tai Po District (from October 2020 to September 2022) are at **Appendices G, H and I*** respectively.

** Appendices G, H and I contain agreements made between the contractor and its sub-contractor which contain commercially sensitive information. Hence, they should not be made available to members of the public. The documents should be restricted for PAC Members' reference only.*

- (c)(iii) whether there were any penalty provisions stipulated in the aforesaid two contracts for the whole of Hong Kong waters and Tai Po District respectively for any breach of contractual requirements by the contractor; if no, why not; if yes, the relevant details of such provisions and why MD had not imposed any penalty on Contractor A for engaging a sub-contractor without obtaining MD's prior written approval;

Reply: According to Clause 36.2 of the General Conditions of the contract for the whole of Hong Kong waters and that for the Tai Po District, if the contractor has breached any of the conditions of the contract, the Government may issue the contractor with a written notice (the Performance Default Notice) giving details of the breach of conditions, 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. Extracts of the penalty provision stipulated in the contract for the whole of Hong Kong waters and the contract for Tai Po District are at **Appendices J and K** respectively.

The sub-contracting arrangement under the contracts for the whole of Hong Kong waters and the Tai Po District concerns the hire of a vehicle for land transportation of marine refuse collected by the contractor. Since the sub-contracting arrangements have not affected the quality of service provided and have not caused any loss or damage to the Government, MD did not issue Performance Default Notice to the contractor. Nevertheless, MD has reminded the contractor to strictly follow the terms and conditions in the contracts in future. Should the contractor fail to observe the requirement again, MD will issue Performance Default Notice to the contractor.

***Note by Clerk, PAC:** *Appendices G, H and I not attached.*

In addition to the aforementioned sub-contracting arrangements, MD received an application from the contractor on 27 November 2020 for hiring vehicles from another company to provide land transportation services for marine refuse collected by the contractor under the contract for the whole of Hong Kong waters. We are now processing the application.

Part 3: Monitoring of marine refuse cleansing and disposal services

- (d) with reference to paragraph 3.23 of the Audit Report, please provide the current contract price for the marine refuse cleansing and disposal services in the whole of Hong Kong waters, together with the operating costs of each of the four marine refuse collection points included under the contract; and

Reply: The total contract sum for the current marine refuse cleansing and disposal services for the whole of Hong Kong waters, which is a five-year contract, amounts to \$447,386,200 (excluding fluctuation of oil prices adjustment). The operating costs of each of the four marine refuse collection points are included in the total contract sum and there is no breakdown of this cost item.

Part 4: Other related issues

- (e) with reference to paragraph 4.3 of the Audit Report, please advise the procedures for enforcement actions against marine littering and provide, if any, a copy of the relevant operation manual/guidelines.

Reply: The procedures for enforcement action against marine littering are laid down in the guidelines at **Appendix L***

** Appendix L is an internal document on the enforcement procedure and should not be made available to members of the public. The document should be restricted for PAC Members' reference only.*

***Note by Clerk, PAC:** *Appendix L not attached.*

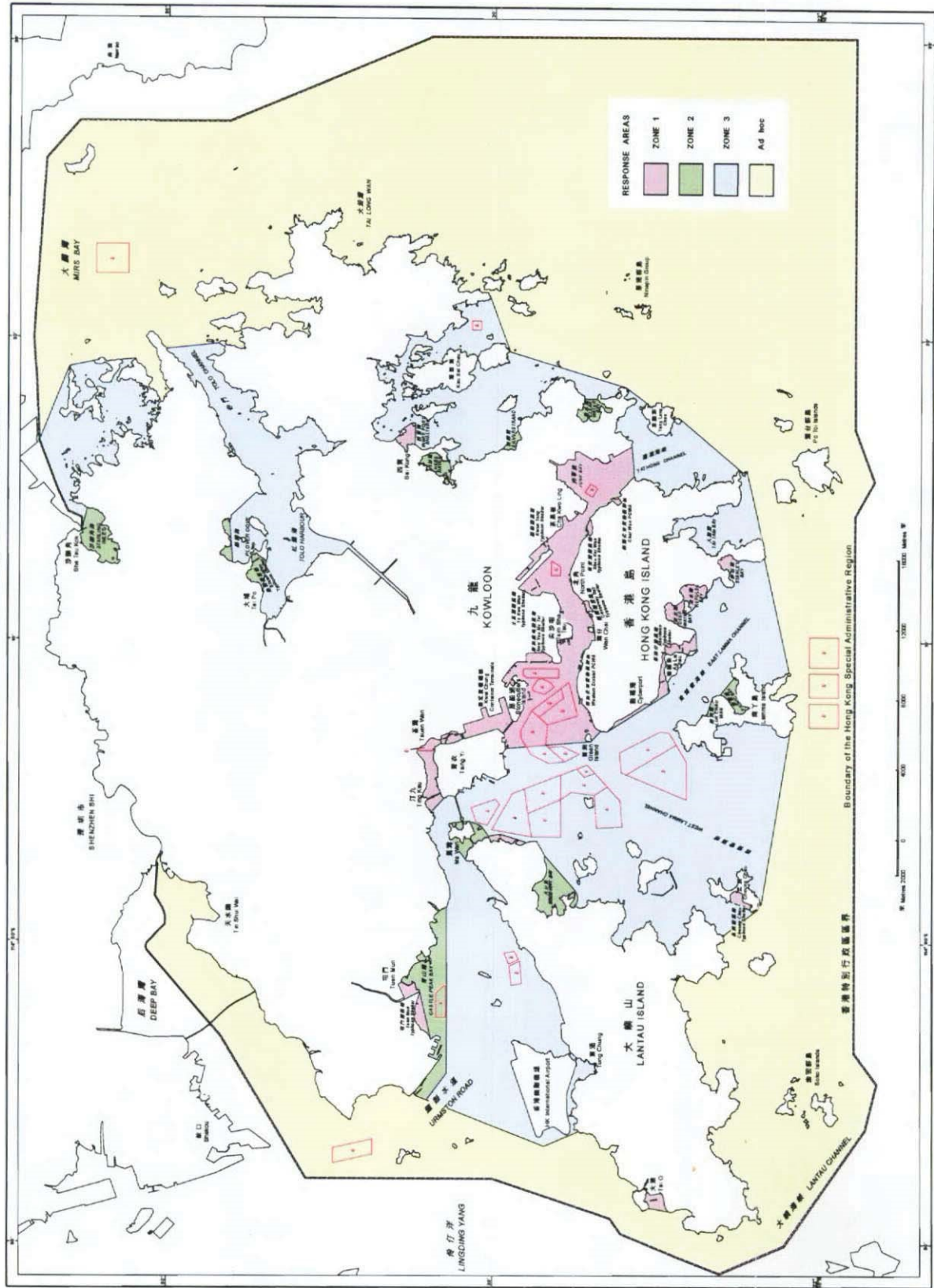
Extract of the relevant clauses in the 2011 tender document

**Part V
Schedule 1**

Marine Refuse Cleansing Service Areas

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

Marine Refuse Cleansing Service Areas



不宜作航行用途
NOT TO BE USED FOR NAVIGATION

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

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

- 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

$$(20\% - 63\%) \times 20\% \times \text{HK\$ } 1,000,000 = \text{HK\$ } 1,260$$

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.

Extract of the relevant clauses in the 2017 tender document**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

Penalty Provision in the Contract for the whole of Hong Kong waters

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;