

The Government of the Hong Kong Special Administrative Region

BY FAX : 2537 1204

政府總部
環境運輸及工務局
運輸及工務科
香港花園道美利大廈



Environment, Transport
and Works Bureau
Government Secretariat
Transport and Works Branch
Murray Building, Garden Road,
Hong Kong

() in ETWB(CR)(W)172/47(2001)

本局檔號 Our Ref.

CB(3)/PAC/R37&CB(3)/PAC/CS(36&37)

來函檔號 Your Ref.

Tel : 2848 2704

Fax : 2869 0167

3 January 2003

Clerk to the
Public Accounts Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn: Ms Miranda HON)

Dear Ms Hon,

**The Public Accounts Committee's consideration of
the Director of Audit's Report No. 37**

Construction of two bridges

I refer to your letter of 18 December 2002 to the Secretary for Financial Services and the Treasury. As discussed between the Financial Services and the Treasury Bureau and your goodself, this Bureau has undertaken to respond to you direct on the subject.

Regarding question (a) in your letter, a circulation letter with proposed amendments to the standard forms of contract and consultancy agreement used by the Government was issued on 7 May 2002 to trade associations of the construction industry (copy attached at Annex I). The proposed amendments involve modifications to the Government's Mediation Rules and the Arbitration Rules promulgated by the Hong Kong International Arbitration Centre. By introducing those amendments, the Government would be able to disclose terms of dispute settlement to the Legislative Council on condition that the contractor/consultant may

request the Government to disclose commercially sensitive information on a confidential basis.

On your question (b), the contractor associations vigorously objected to the proposal. The construction industry considers that the proposal to disclose terms of arbitration awards and mediation settlements with commercially sensitive information is contrary to the fundamental principle that the two processes are conducted privately and should remain private and confidential. The industry insists that disclosure can take place only with the consent of the contracting parties.

The consultant association categorically objects to the proposal on similar grounds. The association raises the concern that the proposal would have a serious impact on the ability of consulting firms to obtain professional indemnity insurance. They are also concerned about the possibility of sensitive information being published and abused jeopardizing the business status of the concerned consulting firms. They consider that the proposal would also lead to higher construction cost.

The Hong Kong International Arbitration Centre has also written to the Government on its own accord. The Centre is strongly of the view that the proposal would undermine the fundamentals of the two dispute resolution mechanisms, and destroy the confidence the construction industry has had in adopting the process in resolving dispute with the Government.

On your question (c), the second round of consultation originally scheduled for October this year was deferred due to delay in replies from trade associations on the initial proposal. A revised proposal was issued on 2 December 2002 (copy attached at Annex II). A requirement for the Government to obtain consent from the other contracting party has been included if disclosure is made within six months of settlement, beyond which the contractor/consultant may still request for sensitive information to be disclosed on a confidential basis.

As the proposed amendments change the existing practice which has been in use for more than 20 years, we consider it prudent to allow sufficient time for the industry to fully express their views and concern. We have not yet received responses to the second round of consultation from the trade associations except the contractor association which has already indicated their objection to the revised proposal.

Yours sincerely,



(Wai Chi Sing)
for Secretary for Environment,
Transport and works

c.c. FSTB (Attn.: Ms Janice Tse)

**Note by Clerk, PAC: Annexes I and II not attached.*