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2 January 2004

Clerk to Public Accounts Committee  
 (Attn: Ms Miranda HON)  
 Public Accounts Committee  
 Legislative Council Building,  
 8 Jackson Road, Central,  
 Hong Kong.

Dear Ms Hon,

**The Director of Audit's Report on the  
 Results of value for money audits (Report No. 41)**

**Chapter 6: Buildings Department's (BD) efforts  
 to tackle the unauthorized building works (UBW) problem**

Thank you for your letter dated 18 December 2003. I provide below the information required in the order as set out in your letter.

- (a) (i) The targets relevant to the enforcement of statutory orders are not performance pledges per se but are performance measures which are set out in the annual Controlling Officer's Report. These performance measures are divided into two categories, namely targets and indicators. Key performance measures in respect of existing buildings for Year 2001, 2002 and 2003 are provided at Annex I.

We propose to set additional performance targets for the clearance of outstanding s.24 orders, details are given in Annex II.

- (ii) We intend to provide the public with information on the extent of compliance with s. 24 orders, the ageing analyses of outstanding s. 24 orders and our additional performance targets for the clearance of outstanding orders via BD's website starting from 1<sup>st</sup> April 2004.

- (b) In July 2000, we set up a dedicated Backlog Team to clear outstanding orders issued before Year 1996. In May 2002, this dedicated team also took up the task to clear outstanding orders issued before 3 July 2000 except those orders issued under large scale operations such as Blitz UBW Clearance operation. The latter is being followed up by other District Teams.

The duties of this Backlog Team include screening case files, carrying out site inspections, recommending and following up with necessary enforcement actions, attending meetings with the public arising from the clearance of the backlog orders.

When the backlog orders have been discharged, the Backlog Team will also update such information in the Buildings Condition Information System (BCIS) in respect of the backlog orders.

For cases arising from complaints, as mentioned in paragraph 4.7 of the Audit Report, they are being handled separately by our District Teams. We are deploying additional resources to expedite the actions.

- (c) A copy of the documents provided to the Blitz Contractors under Blitz UBW Clearance Operation 2001 is enclosed for your information.
- (d) Please note that the costs of law enforcement work have been included in the “supervision costs” in the Audit Report. We believe what was mentioned at the public hearing was the possibility of outsourcing **law enforcement work**, as a means to lower the “supervision costs”.

Section 2(2) of the Buildings Ordinance (BO) states that “the duties imposed on and the powers granted to the Buildings Authority under this Ordinance may be carried out and exercised by an officer of any Department of the Government specified in the Fourth Schedule who is authorized by the Director of Buildings either generally or particularly and subject to his instructions.”

A private contractor is not a public officer of any of the department specified in the Fourth Schedule. He cannot exercise such a power. If we were to empower the private contractor to carry out law enforcement work such as issuing statutory orders and accepting the discharge of orders, legislative amendment would be necessary. Such legislative amendment involving the principal ordinance would require submission of a Bill to the Legislative Council. However, this would involve a major policy change in law enforcement and would need to be carefully examined as regards its implications.

- (e) An organization chart showing the BD staff involved and duties of each tier of the organizational structure is provided at Annex III.

**(f) Current procedures for prosecution**

Under current procedures, if a s.24 order is not complied with, the Team Leader (TL) will refer the file to the Senior Professional Officer (SPO) with the recommendation for sending a letter to the owner warning him that the department may take prosecution action against him.

In considering a case for prosecution, the TL should ensure that sufficient site inspections and record checks have been carried out to ensure that the details specified in the order are correct. Supplementary and / or superceding orders should be initiated when necessary. Having satisfied himself that the order is enforceable and that a voluntary compliance cannot be anticipated, the TL should make a recommendation whether the offender(s) concerned should be prosecuted. This recommendation should be submitted through the SPO to the Chief Professional Officer (CPO) for endorsement.

In accordance with BO s.40(1B)(b), where on the assessment of the facts, a defendant is certainly able to establish a reasonable excuse, then there will not be a realistic prospect of securing a conviction. In this connection, there are practical difficulties in initiating prosecution in cases of multiple ownership. In such cases, the TL should offer practical assistance and advice to building owners on how they can best cooperate to meet the requirements of the orders and comply with the BO.

In cases where a person has appealed under BO s. 44(1) against the order,

the Building Authority (BA) is normally bound by the decision of the Appeal Tribunal. In such cases, prosecution would only be pursued if the Tribunal rules in favour of the BA.

Once the CPO has endorsed a recommendation for prosecution, the TL will arrange for the relevant information to be referred to the Legal Section of the Buildings Department which will proceed with prosecution actions. In case of trial, the inspecting officers, which may include the TL and his assistants, will be called to be the prime prosecution witness.

### **Monitoring of outstanding cases using the BCIS**

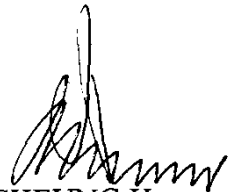
With the aid of the BCIS, all overdue cases can be monitored by BD's management in future. At district level, CPOs and SPOs can generate from the BCIS for monitoring purpose various exception reports, which will include a list of long outstanding cases that have not been recommended for prosecution. Cases of undue delay will be brought up for discussion at the Progress Monitoring Subcommittee meeting chaired by the CPO. Difficult cases may be further reported to the top management level at the Progress Monitoring Committee (PMC) Meeting. PMC will monitor overall progress of BD's enforcement work and will steer the direction in resolving difficult cases.

- (g) Please refer to the Annex of our previous letter dated 23<sup>th</sup> December 2003 regarding the current status of Cases 1 to 5 in Part 11 of the Audit Report.
- (h) Mr. LEUNG Chin-man was the Director of Buildings from 26 August 1999 to 30 June 2002, both dates inclusive.

I should be grateful if you could convey the above information to Members of the Committee.

The Chinese version of this letter and the enclosures will follow.

Yours sincerely,



(CHEUNG Hau-wai)  
Director of Buildings (Atg)

Encl.

c.c. Secretary for Housing, Planning and Lands – Attn: Mr. Parrish Ng  
Director of Audit – Attn: Mrs Josephine W F Ng

## Annex I

### The Key Performance Measures relating to s. 24 Orders for Year 2001, 2002 and 2003

<i>Targets</i>		Target	2001 (Actual)	2002 (Actual)	2003 Plan
(1) <b>24-hour Emergency Services</b>					
time for responding to emergencies	3 hours	98.7%	98%	100%	
(2) <b>Existing Buildings</b>					
(a) number of buildings targeted for clearance of unauthorized building works	1000 / year	1 571	1 759	1 000	
(b) number of buildings covered by the co-ordinated maintenance of buildings scheme	150 / year	150	200	200	
(c) number of single-staircase buildings improved under rooftop structure clearance operations	700 / year	402	632	700	
(d) number of advertisement signboards removed / repaired	1 200 / year	1 491	1 917	1200	

<b>Indicators</b>	2001	2002	2003
	(Actual)	(Actual)	(Estimate)
<b>(1) 24-hour Emergency Services</b>			
number of emergency reports attended to	852	836	900
<b>(2) Existing Buildings</b>			
(a) number of reports from members of the public on unauthorized building works attended to	13 817	15 555	13 000
(b) number of removal orders issued on unauthorized building works	13 212	54 010	25 000
(c) number of unauthorized structures removed and irregularities rectified	20 647	37 923	30 000

## **Annex II**

### **Proposed Additional Performance Targets**

Proposed additional performance targets for the clearance of outstanding s.24 orders by 31 March 2005<sup>1</sup> are as follows:

1. For the clearance of backlog orders issued in or before Year 1999:
  - (i) To clear<sup>2</sup> **all** orders issued in or before Year 1990;
  - (ii) To clear **75%** of all outstanding orders issued from Year 1991 to 1995;
  - (iii) To clear **50%** of all outstanding orders issued from Year 1996 to 1998;
  - (iv) To clear **35%** of all outstanding orders issued in Year 1999;
2. For the clearance of orders issued in Year 2000 and thereafter:
  - (i) To clear **80%** of all orders issued in Year 2000;
  - (ii) To clear **75%** of all orders issued in Year 2001;
  - (iii) To clear **52%** of all orders issued in Year 2002; and
  - (iv) To clear **40%** of all orders issued in Year 2003.

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<sup>1</sup> The targets for the clearance of backlog cases after 31 March 2005 have not been determined as the amount of financial provision to be allocated to BD for such clearance operations is not yet known.

<sup>2</sup> An order is "cleared" through voluntary compliance by the owner(s), initiating prosecution action by BD or other enforcement actions such as removal of UBW by government contractors.

### **Sample Documents provided to the BUC2001 consultants**

(a) BUC2001 Contract Brief

One copy of the approved building plans and a list of outstanding statutory Orders for the targeted buildings; (not included in this sample)

(b) One copy of the Comprehensive List of actionable UBW;

(c) A copy of sample inspection report, statistical return, standard format for translating Chinese addresses from records obtained from the Land Registry;

(d) A copy of sample advisory letters to owners (bilingual) with a copy of pamphlet about the handling of asbestos materials issued by the Department of Environmental Protection;

(e) Sample Orders/ Notices issued under sections 24, 26, 26A and 28 of the Buildings Ordinance and under section 105 of the Public Health and Municipal Services Ordinance with covering letters and attachments current for the duration of the Agreement;

(f) A copy of a set of standard letters (in English and Chinese) including compliance letters current for the duration of the Agreement;

(g) A copy of sample of Notice of Appeal;

(h) A copy of guidelines for the Removal of Typical Unauthorized Building Works and General Maintenance of External Walls;

(i) A copy of Advice to Building Owners – Appointment of Authorized Persons and Registered Contractors;

(j) A copy of Introduction on the Building Safety Improvement Loan Scheme to Owners;

(k) A copy of the latest version of the Manual for Inspection, Assessment and Repair of buildings;

(l) Other particulars or manuals issued by the Building Authority on the repair and maintenance to buildings and on the removal of UBW provided at the discretion of the Director's Representative.

**\*Note by Clerk, PAC:**

***The Sample Documents not attached.***

## **Annex III**

### **Organization and Duties of BD Staff in Supervising Outsourced Blitz UBW Clearance Operations (BUC)**

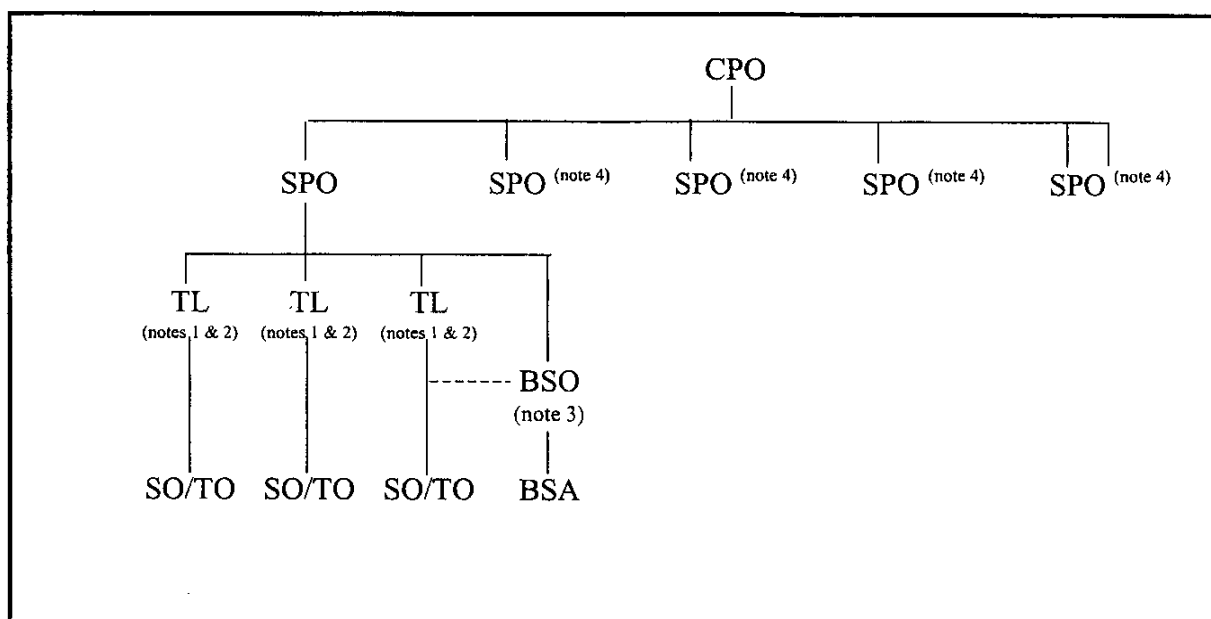
1. Outsourced BUC are managed by six District Teams of BD's Existing Buildings Division. Each Section manages 10 or 11 contracts under BUC 2001 and 5 contracts under BUC 2003.
2. In general, the Chief Professional Officer (CPO) in each section carries out the duties of the Director's Representative as stipulated in the contract. He certifies payment to the Contractor, endorses Contractor's performance report, reviews appeal cases and handle difficult cases. He is assisted by five Senior Professional Officers (SPO) who are in charge of the day-to-day operation of the contracts.
3. The SPO monitors the works progress and the contractor's performance. He endorses reports submitted by the Contractor and signs orders, notices and letters prepared by the Contractor. He signs letters relating to enquiries and complaints, as prepared by his subordinate. He handles appeal cases, attends hearing and meeting associated with appeal cases. He also personally attends to some complaints and meetings as necessary. He is assisted by two to three Team Leaders (TL) who may be Professional Officers (PO), Principle Technical Officers (PTO) or Principle Survey Officers (PSO).
4. The TL is responsible for most of the liaison work such as liaison with owners, other government departments and other sections of BD for synchronizing enforcement actions on the same target buildings. The TL also checks reports and documents submitted by the Contractor. He handles complaints and enquiries arising from the operation, processes loan applications and makes recommendation on the enforcement action including instigating prosecution actions or mobilizing the government contractor. Since November 2003, TL is also responsible for signing s.24 orders and their compliance letters.
5. A TL is assisted by a Survey Officer (SO) or a Technical Officer (TO). SO/TO retrieves information such as approved plans and documents for the

Contractor. He arranges for ownership checks, handles public enquiries, compiles statistics and situation reports, carries out audit checks on the factual accuracies in reports, orders and letters prepared by the consultant, coordinates and liaises with the contractor on daily work, performs site audits and conducts other administrative work as instructed by the TLs.

6. According to the organization structure of individual sections, Building Safety Officer (BSO) may work under the TLs or directly under the SPO in managing the contractors. BSOs are in general less experienced than the TLs. BSOs are assisted by Building Safety Assistants (BSA) whose work may be similar to an SO or TO.

7. A chart showing the organization of BD staff in a District Team in supervising outsourced BUC is at Appendix to this Annex.

**Organization of BD staff in a District Team**  
**in supervising outsourced Blitz UBW Clearance Operations (BUC)**



**Notes:**

1. TL may be a PO, PTO or PSO.
2. A SPO may be assisted by 2 or 3 TLs.
3. BSO may work under the TL or directly under the SPO depending on the organization structure of individual section.
4. Similar structure is adopted among units headed by SPOs. Hence, organization structure is not repeated in this chart.

**Legends:-**

CPO :	Chief Professional Officer	PSO	Principal Survey Officer
SPO :	Senior Professional Officer	SO :	Survey Officer
TL :	Team Leader	TO :	Technical Officer
PO :	Professional Officer	BSO	Building Safety Officer
PTO :	Principal Technical Officer	BSA	Building Safety Assistant