



香港特別行政區政府 The Government of the Hong Kong Special Administrative Region

渠務署署長 Director of Drainage Services

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13 May 2004

Public Accounts Committee,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong
(Attn : Ms Dora WAI)

Dear Ms Wai,

**The Director of Audit's Report on the
Results of value for money audits (Reports 42)**

Chapter 3 : Harbour Area Treatment Scheme Stage I

I refer to your letter of 10 May 2004.

DSD had not sought legal advice specifically on the possibility of lodging claims against the supplier of the mucking system. When the problem with the mucking system in Contract E was first revealed in late 1997, DSD was working closely with the Department of Justice and external legal advisors as a team on the arbitration with Contractor A and related problems arising from the completion contracts. The possibility of claiming against the supplier of the mucking system was not considered by the team because Government did not have a contract with the supplier and the cost incurred in replacing the mucking system could be claimed against Contractor A under the contract as part of the additional cost arising from the forfeiture of the contract. The claims were eventually settled with a significant sum successfully recovered from Contractor A as mentioned in paragraph 3.9 of the Audit Report.

Following the receipt of your letter, legal opinion has been sought on the possibility of lodging claims against the suppliers of the mucking systems now for their defects. The legal advice we just received suggests that such possibility is almost certainly no. Government has no contract with the suppliers. Any action would therefore have to be based on tort. Even assuming it were not time barred by the six year limitation period which has already expired, any claim in tort would be very difficult.

我們的**抱負**是要建立達至國際水準的渠務系統，以保障市民的健康及安全
Our **VISION** is to develop and maintain world-class drainage systems to keep our community healthy and safe



I would like to clarify that there was no delay in replacing the mucking systems. After receiving expert advice that the mucking system was not safe, Contractor E decided to replace the system in January 1998 and at the same time submit his claim. Purchase order for the essential components of the replacement system was placed in the same month. Our decision made in March 1998 on the claim submitted by Contractor E in January 1998 was to accept the financial consequence of the replacement and the consequential time extension and therefore had not caused any delay to the replacement activities. As for Contracts C and D, the contractors were notified of the mucking gantry problem at the time of contract commencement in January 1998 to avoid unnecessary delay. The decision to accept the financial and time extension consequences could only be made 2 months after receipt of the claim submitted by Contractor E because the assessment processes were technically and contractually complicated requiring expertise input.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R T K Cheung', with a horizontal line extending to the left from the start of the signature.

(R T K Cheung)
Director of Drainage Services

c.c. : Secretary for the Environment, Transport and Works
Director of Audit
Secretary for Financial Services and the Treasury (Attn.: Miss Amy Tse)