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28 May 2010

Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Ms Becky Yu)

Dear Ms Yu,

329DS – Upgrading of Pillar Point sewage treatment works

Supplementary information

In considering the paper referenced LC Paper No. CB(1)1923/09-10(04) on the captioned project on 24 May 2010, the Panel on Environmental Affairs requested for supplementary information on the arrangements under the Design-Build-Operate (DBO) procurement mode for the captioned project in respect of the following issues :

- (a) Protection of Government's interest against non-performance of the Contractor in the operational phase of the project;
- (b) Factors affecting the adoption of DBO procurement mode for the upgrading of Pillar Point sewage treatment works (STW) and the construction of STW on Lamma Island.

We would like to provide the following information for Members' reference.

Protection of Government's interest against non-performance of the Contractor in the operational phase of the project

There are established administrative, financial and contractual arrangements in the procurement of public works construction and other services to protect the Government's interest against non-performance of the Contractor. The specific details of various measures applicable to the DBO Contract for the Pillar Point STW are outlined below.

Pre-qualification of Tenderers

We have adopted the pre-qualification approach to invite tenders only from a list of pre-qualified contractors that are considered to possess both the technical and financial capabilities for carrying out the works under the Contract. All interested contractors were welcomed to apply for inclusion in the list of pre-qualified prospective tenderers by providing documentary evidence that could demonstrate their capabilities. In determining whether an application should be accepted, we have thoroughly assessed the track record and experience of each applicant as well as its financial status, including adequacy of working capital employed. Given that the DBO contract spans over a longer duration than typical works projects and covers a wider scope, we have taken into account relevant information which include the applicant's past experience in STW operations and its financial projections.

Performance Bond

We shall require the successful Contractor to purchase a performance bond from a bondsman, usually a bank or financial institution as a condition of the contract. In case of default of the Contractor, the Government has the right to call in the bond from the bondsman pursuant to the terms of the bond agreement. In the subject DBO Contract, the Contractor will be required to maintain a performance bond amounting to a fixed percentage of 1.0% of the awarded tender prices throughout the construction and operation periods. Should the damages incurred exceed the value of the performance bond, the Government may take legal actions as appropriate with a view to recovering the excess amount from the defaulted party.

Parent company guarantee and joint undertakings

As a condition of the Contract, the successful Contractor will also be required to provide parent company guarantee (if it is a subsidiary company) and joint undertakings of unlimited liability whereby each participant of the Contractor's consortium is to be jointly and severally liable for the due performance of the Contract. The parent company guarantee and joint undertakings will ensure continuity of service be maintained even if an individual participant of the consortium encounters any unexpected problem. With such contractual provisions in place, the chance of the Contractor's failure to fulfill its contractual obligation could be minimised.

Contract administration in the operational phase

The Government will disburse payments for the operation and maintenance of the STW in accordance with the tender rates and the volume of effluent treated on a monthly basis.

In addition, we have plans to closely monitor the situation and performance of the Contractor through deploying an Employer Management Team to administer the Contract. Throughout the operational phase, we shall also employ independent surveyors to audit the maintenance and condition of the facilities at regular time intervals. Should the Contractor fail to comply with the pre-set performance criteria, the Government may deduct part of the monthly payments pursuant to the relevant provisions in the DBO Contract. If the Contractor continually fails to comply with the preset criteria or the general obligation requirements after warnings, the Government may also take further contractual and legal actions, including taking over the operation of the Pillar Point STW and terminating the Contractor's employment in accordance with the relevant provisions in the DBO Contract.

Factors affecting the adoption of DBO procurement mode for the upgrading of Pillar Point STW and the construction of STWs on Lamma Island

Yung Shue Wan STW and Sok Kwu Wan STW

As we mentioned in LC Paper No. CB(1)1443/09-10(03), our original plan was to adopt the DBO arrangement for the two STWs on Lamma Island funded by two PWP Items in Category A (230DS


“Outlying Islands sewerage, stage 1 phase 1 part 2 – Yung Shue Wan sewerage, sewage treatment works and outfall” and **234DS** “Outlying Islands sewerage, stage 1 phase 2 – Sok Kwu Wan sewage collection, treatment and disposal facilities”). The first tendering exercise was closed in November 2008 without receiving any bids from the four pre-qualified contractors. During the post-tendering feedback meetings, the pre-qualified contractors indicated that the uncertainty in market situation at that time was one of the major reasons for their withdrawal. Since the design capacity of each STW is only around 0.6% to 1.2% of that of Pillar Point STW, the relatively small scales of the two STWs may have also affected the tenderer’s interest. We subsequently conducted a review on the tendering arrangement and decided to switch over to the Consultant-Design-Contractor-Build approach in re-tendering the contract so as to attract more competitive tenders.

Pillar Point STW

The scale of Pillar Point STW is much larger. Tenderers could therefore attain higher cost-effectiveness in the STW’s operation by applying more advanced wastewater treatment technologies in the design through the DBO mode used in this project. Some may also consider participating in such a large-scale project as an opportunity to gain more experience in this domain. The wider development potential via DBO mode for this sewerage project may have contributed to tenderers’ stronger interest in bidding for this DBO contract.

I should be grateful for your kind assistance to distribute this letter to all Panel Members before the Public Works Subcommittee meeting to be held on 9 June 2010 please.

Yours sincerely,



(W Y Shiu)

for Director of Drainage Services

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