



## Supreme Prosecutors Office News Release

Released on: June 10, 2013

Released by: Special Investigation Division

---

The Special Investigation Division (“SID”) of the Supreme Prosecutors Office has completed its investigations regarding the complaint lodged by the Kaohsiung City Council to the Kaohsiung City Government that corruption and illegalities had been involved in the “Kaohsiung City Nanzi Sewerage BOT – Government Planned Project”. As no substantive facts or evidence have been found regarding suspected corruption or illegalities by the relevant personnel, the investigations have been concluded accordingly. The relevant investigation process is explained below:

### **I. Gist of Complaint Lodged by Kaohsiung City Council**

The Kaohsiung City Government had begun the “Kaohsiung City Nanzi Underground Sewerage BOT – Government Planned Project” in 2002. Subsequently the Kaohsiung City Council resolved to form a special investigative taskforce to investigate the suspected corruption and illegalities committed by relevant personnel as follows:

1. Controversy over change from the private-sector plan to the government plan

This is the first underground sewerage BOT project in Taiwan. On September 5, 2001, Kaohsiung City Mayor Frank Hsieh signed a letter of intent for investment with Singapore company Vivendi Water (“Vivendi”), and submitted a project concept with the Kaohsiung City Government pursuant to Article 46 of the Act for Promotion of Private Participation in Infrastructure Projects (also referred to as the “private-sector plan”). However, the aforementioned private-sector plan was found by a re-examination of the Kaohsiung City Government on September 15, 2003 to be non-conforming. While the

private-sector plan was being reviewed, the Kaohsiung City Government also submitted a “Kaohsiung City Underground Sewerage System Expansion and Construction Plan” (also referred to as “government plan”) and a Feasibility Evaluation & Preliminary Planning Report (“Feasibility Report”) to the Executive Yuan on August 8, 2003 for its consideration. They were approved by the Executive Yuan on December 12, 2003, and the Kaohsiung City Government held the first gazette invitation for tender on December 18, 2003, but the Kaohsiung City Government never provided any explanations during period of why the private-sector plan was converted into the government plan.

2. Controversy over Li ○ Construction Co., Ltd.’s (“Li ○”) participation in the tender, and Kaohsiung City Government’s examination process

Upon examining Kaohsiung City Government’s Feasibility Report as approved by the Executive Yuan and the project plan proposed by Li ○, there seemed to be no difference between the two. Furthermore, the fact that Kaohsiung City Government submitted the government plan for examination by the Executive Yuan even while the private-sector plan was still being reviewed seems to suggest unusual reasons were involved.

3. Bloating of budget and construction costs

The “Kaohsiung City Nanzi Underground Sewerage BOT – Government Planned Project” was contracted by Lu ○ Lin Developments Co., Ltd. (“Lu ○ Lin, with Li ○ being the representative applicant; it completed the establishment and registration as a specially licensed company on September 13, 2004). Based on proposal by Lu ○ Lin, the Kaohsiung City Government approved a total construction budget of NT\$7,262,260,000, of which total construction cost to be contributed by the private-sector investors was NT\$5,482,260,000, and items to be contributed by the government totaled NT\$1,780,000,000. However, the total construction costs of the private-sector investor under the original “investment plan” (i.e. Vivendi”) were only slightly more than NT\$4,678,000,000. A comparison of the two gives rise to suspicions that the construction cost budget had been bloated. After the

Ethics Office of the Kaohsiung City Government calculated the project, **the amount of overblown development cost was suspected to be more than NT\$2,329,000,000.**

4. The penalty of NT\$230,000 per day for delay in completing the project was not imposed in accordance with the contract, resulting in loss of public funds.

## **II. Summary explanation of SID investigation results**

### **1. Controversy over change from the private-sector plan to the government plan**

- (1) On January 28, 2003 the Premier of the Executive Yuan had instructed that the Ministry of the Interior study the manner for implementation of the underground sewerage construction, based on the “Review, Analysis and Recommendations on the Prevailing BOT Underground Sewerage Payment System” produced by the Taiwan Institute of Economic Research (“TIER”). The calculation of payment rate at 25.66/cubic meter adopted in this project appears to have taken reference from the aforementioned TIER recommendation report. Furthermore, the private-sector plan had been rejected by the Kaohsiung City Government upon examination due to “doubts about juristic person status of the private-sector applicant”, “omissions in the land use plan”, “omissions and incompleteness to contents of the construction and operations plan, and fundamental presumptions and structure of the financial plan”, “the financial institution letter of intent of financing did not attach evaluation comments”, “detailed planning in the investment plan are inconsistent with the policy requirements of the responsible authority” as well as many other reasons; one cannot find that abnormal fabricated factors had deliberate interfered with the process.

- (2) Based on the testimonies of witnesses, and cross-checking the minutes from the two meetings held by the Construction and Planning Agency of the Ministry of the Interior (“CPA”) to examine the Feasibility Report for the project, there was no irregularity to the examination process. Based on the aforementioned investigation results, there had

been no irregularity in Kaohsiung City Government's change of this major construction work from government plan to private-sector plan.

2. Controversy over Li ○'s participation in the tender, and Kaohsiung City Government's examination process

We have investigated Kaohsiung City Government's handling of the tender project, the process for selection of examination panel, and the panel's scoring process, but have found no irregularities or any deliberate attempts to assist any particular tenderer. We have also found no improper interaction, contact or fund transfers between Li ○ and the relevant public officials; there were also no illegalities in the procedures for Li ○'s investment in Lu ○ Lin. Therefore, one cannot find any error in Li ○'s participation in the tender, or Kaohsiung City Government's examination process.

3. Bloating of budget and construction costs

The Ethics Office of the Public Works Bureau, Kaohsiung City Government and the Kaohsiung City Council had accused the project of having bloated its budgets and costs, purely on the ground of having compared the terms of this contract with other tenders. However, in light of the Executive Yuan examination process, the meeting information and testimonies of witnesses, the Kaohsiung City Government had reasons for taking into account the conditions recommended and planned for by TIER, the "Table of Directorate-General of Budget, Accounting and Statistics, Executive Yuan Classes of Financial Standards – Detailed Standards in Mechanical and Equipment Class", and the minimum life stipulated in the "Water Pollution Prevention Equipment (Mobile)" in preparing its financial plans. One cannot consider that the relevant responsible public officials had any objective intention to bloat the budgets.

4. Penalty for delay in completing the project was not imposed in accordance with the contract, resulting in loss of public funds

Investigations show that in this BOT sewerage system project has already been issued with a test operation and completion certificate from an independent inspection, examination and accreditation institution (IV&V)

according to contract, with the exception of the “anaerobic digestion system” and the “sludge dewatering system”. As the sludge quantity produced from treatment of in-flowing waste water under current conditions did not meet the testing conditions for the anaerobic digestion system, it would take some days for Lu ○ Lin to complete the testing. Reference can be made to the sludge digestion (anaerobic digestion) system of Unit 12 of the Taichung Futian Waste Water Treatment Plant, which had had the similar situation of waste water quantity being insufficient for producing adequate sludge for test operation of the digestion tank unit; in April 2002 the contractor had issued a written guarantee and undertaking, and pledged a \$6,000,000 bond to permit provisional acceptance inspection, before test operation of functionality of the said sludge anaerobic digestion system was duly completed in October 2003. Therefore, one cannot find Kaohsiung City Government to be without cause or to have committed any violations in not imposing any penalties for this period against Lu ○ Lin.

**III. With regards to the complaint lodged by the Kaohsiung City Council regarding the “Kaohsiung City Nanzi Sewerage BOT – Government Planned Project”, as no substantive facts or evidence have been found regarding suspected corruption or illegalities by the relevant personnel, the investigations have been concluded accordingly.**