

立法會
Legislative Council

LC Paper No. FC208/17-18

(These minutes have been
seen by the Administration)

Ref : FC/1/1(25)

Finance Committee of the Legislative Council

Minutes of the 51st meeting
held at Conference Room 1 of the Legislative Council Complex
on Saturday, 17 June 2017, at 10:56 am

Members present:

Hon CHAN Kin-por, BBS, JP (Chairman)
Hon Michael TIEN Puk-sun, BBS, JP (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki

Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon LAU Kwok-fan, MH
Hon Jeremy TAM Man-ho
Dr Hon YIU Chung-yim
Dr Hon LAU Siu-lai

Members absent:

Hon James TO Kun-sun
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Alvin YEUNG
Hon HO Kai-ming
Hon Tanya CHAN

Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Nathan LAW Kwun-chung

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public officers attending:

Ms Elizabeth TSE Man-ye, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Carol YUEN, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Alfred ZHI Jian-hong	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Mr LAU Kong-wah, JP	Secretary for Home Affairs
Mrs Betty FUNG CHING Suk-ye, JP	Permanent Secretary for Home Affairs
Mr YEUNG Tak-keung, JP	Commissioner for Sports, Home Affairs Bureau
Ms Linda LAW Lai-tan	Principal Assistant Secretary for Home Affairs (Recreation and Sport) 2

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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Staff in attendance:

Mr Derek LO	Chief Council Secretary (1)5
Ms Ada LAU	Senior Council Secretary(1)7
Mr Raymond SZETO	Council Secretary (1)5
Mr Frankie WOO	Senior Legislative Assistant (1)3
Miss Yannes HO	Legislative Assistant (1)6

Action

**Item No. 2 — FCR(2017-18)14
RECOMMENDATION OF THE PUBLIC WORKS
SUBCOMMITTEE MADE ON 31 MAY 2017**

**PWSC(2017-18)2
Head 703 — BUILDINGS
Recreation, Culture and Amenities — Sports facilities
272RS — Kai Tak Sports Park**

The Finance Committee ("FC") continued with the deliberation on item FCR(2017-18)14.

"Design-Build-Operate" ("DBO") approach

2. Mr LEUNG Yiu-chung, Ms Claudia MO and Mr Andrew WAN criticized the Administration for compelling FC to examine the controversial item of Kai Tak Sports Park ("KTSP") by putting it before other livelihood-related items. They could not see any urgency in the present item. Expressing doubt about the Administration's rationale that the project costs would increase further if the present item was not approved expeditiously, these members urged the Administration to consider inviting separate tenders for the "design" and "build" elements of KTSP, as well as operating KTSP directly. Mr LEUNG considered that the Administration's proposal to develop the mammoth KTSP project through the DBO approach had effectively reduced the number of qualified tenderers, which had entailed the need to introduce a bid incentive in order to promote competition. This was the main reason for the high project costs of KTSP.

3. Ms YUNG Hoi-yan enquired about the reasons for the Administration to bundle the design, building and operation of KTSP into one tender. She considered that given the long operation period of 25 years, the Administration could consider conducting a separate tendering exercise for the operation of KTSP.

4. Mr LEUNG Kwok-hung criticized the Administration for adopting the DBO approach as it would only bring benefits to major foreign enterprises. He also took the view that examples of DBO development in overseas countries had mostly failed. Referring to the successful overseas examples of building a major stadium through the DBO approach as cited in paragraph 5 of the supplementary paper provided by the Administration to the Public Works Subcommittee ("PWSC") on the present item on 17 May 2017 (LC Paper PWSC162/16-17(02)), Dr YIU Chung-yim strongly queried that their approaches were significantly different from that proposed by the Administration for KTSP in terms of implementation and financing. He requested the Administration to provide a paper to elaborate the state of development of those examples, as well as the relevant information in the Government's consultancy study. Dr YIU also pointed out that the example of York Community Stadium in York of England had actually fallen through.

5. Expressing support for the item, Dr Junius HO was concerned whether the project could be completed on time and within budget. He wondered whether there were provisions on "capping" the project costs in the agreement for the York Community Stadium in York of England, which might serve as reference for the present item to ensure the proper use of public funds.

6. In response, the Secretary for Home Affairs ("SHA") pointed out that the DBO approach should be applied in a way that catered for the actual situation of Hong Kong. To prevent the project from falling through, the Government would demand an undertaking from the Contracted Party to provide a performance bond and a financial guarantee totalling about \$900 million, as well as set up a Kai Tak Sports Park Advisory Committee ("the Advisory Committee") to monitor its operation. The contract of the present project would be based on the lump sum contract for public works in general with terms on price fluctuation. The Government would, based on the terms and conditions of the contract, make payment of works cost and reimbursement of the amount for price fluctuation (if applicable) to the Contracted Party in phases subject to the progress of the project.

[*Post-meeting note:* Supplementary information provided by the Administration was issued to members vide LC Paper No. FC193/16-17(01) on 22 June 2017.]

7. Dr Pierre CHAN asked whether the Administration had any projected figure on the profits to be made by the Contracted Party from the construction of KTSP.

8. The Commissioner for Sports ("C for S") replied that according to the consultant commissioned by the Government, generally speaking, the estimated profit rate of construction projects was about 2% to 3%, or 5% at most in some cases.

9. Dr Helena WONG requested the Administration to provide the names and hyperlinks of all consultancy reports on the project.

[*Post-meeting note:* Supplementary information provided by the Administration was issued to members vide LC Paper No. FC193/16-17(01) on 22 June 2017.]

Monitoring mechanism

10. Dr Fernando CHEUNG criticized the project for only serving the interests of major consortia because arrangements were made to bring profits to the operator, with the Government fully funding the construction costs and granting bid incentives to unsuccessful tenderers. Moreover, given its mercenary nature, KTSP would neglect the needs of local athletes and the disadvantaged. He sought an undertaking from the Administration that the project would not incur cost overruns and that the Administration would not seek FC's funding approval for this project again.

11. Dr Helena WONG and Mr WU Chi-wai were concerned about the possibility of the project incurring cost overruns during the construction and operation stages. Noting that the Contracted Party would operate KTSP for as long as 25 years and with the option of extending the DBO period for 10 more years, Dr Helena WONG enquired about the mechanism to be put in place by the Administration to monitor KTSP's operation.

12. Dr Helena WONG noted that the Administration had set aside \$12.7 billion in the funding application for building works. She questioned that with the Administration capping the cost of building works even before the design of KTSP was finalized, the Contracted Party would be prompted to deliver inferior works at lower prices, which would de facto undermine the construction design and quality of KTSP.

13. Mr Andrew WAN was concerned whether the commercial elements of the project might distract the Contracted Party from the operation of KTSP. Mr WU Chi-wai was worried that the Contracted Party's operation of KTSP was bound to be beset by clashes between commercial and public interests. He asked how the Administration and the Advisory Committee would handle that issue.

14. In response, SHA pointed out that KTSP was constructed to serve Hong Kong people. To enhance oversight of the project's implementation, the Government had heeded PWSC's view and decided to set up the Advisory Committee to exercise continuous oversight of KTSP's operation. Separately, a mid-term review would be conducted in the tenth year after the commencement of operation of KTSP to ensure that KTSP's operation could meet its performance indicators, and that KTSP had engaged in proactive planning in response to market changes and users' feedback. Moreover, the agreement to be entered into between the Government and the Contracted Party would set out clearly the respective responsibilities of both parties in case of cost overruns.

15. Mrs Regina IP enquired about how the Administration would ensure that the Contracted Party would not be preoccupied with optimization of profits. Dr KWOK Ka-ki requested the Administration to cap the profit margins.

16. Mr LEUNG Che-cheung was concerned about the execution of the DBO approach and asked whether the Administration had the capability and confidence to take over and operate KTSP in case the Contracted Party could no longer continue to operate KTSP to the satisfaction of the Government. Mr WU Chi-wai also expressed concern about the manpower arrangement for taking over KTSP in case of such an eventuality.

17. SHA and C for S replied that taking into account the experience of developing similar sports venues in the past, as well as the in-depth studies conducted by the consultant for the project, the Government came to the view that KTSP, given its mammoth scale, should best be delivered with the DBO approach. Under the DBO approach, the Contracted Party could ensure that the design and construction of KTSP could dovetail with its mode of operation, thus realizing the full potential of KTSP as a multi-purpose stadium. Moreover, while government departments might not have the expertise to operate KTSP commercially, entrusting the operation of KTSP to the Contracted Party could enhance its responsiveness to market needs, thereby achieving optimal benefits. Separately, the Government would stipulate the relevant guidelines and requirements when designing the tender documents, so as to prevent the Contracted Party from solely going after profits. Furthermore, the Advisory Committee would be established to provide advice on KTSP's operation.

18. The Permanent Secretary for Home Affairs ("PSHA") supplemented that the Government would not cap the profit margins. However, price was also a competitive factor in tendering. Separately, if the Contracted Party could no longer continue to operate KTSP, the Government might take over KTSP's operation temporarily. But in the long run, given the commercial elements of KTSP, the Government would identify another operator to continue operation.

19. Expressing support for the item, Mr MA Fung-kwok enquired about the composition and functions of the Advisory Committee, as well as how the Advisory Committee could exercise effective restraints on the Contracted Party.

20. SHA replied that the Advisory Committee would comprise representatives from the sports sector as well as people from different sectors including retired athletes, representatives from the entertainment sector, professionals experienced in management and marketing, Legislative Council Members and members of relevant District Councils, so that various stakeholders could have the opportunity to give views. Moreover, the Government was planning to introduce a mid-term review system to further examine the operational performance of the Contracted Party. The mid-term review would be conducted in the tenth year after the commencement of operation of KTSP. The Government considered that given the current conducive atmosphere for sports development, it was an opportune time to implement the KTSP project.

21. Mr LEUNG Che-cheung highlighted the need for ancillary facilities to support KTSP's operation, so as to attract patronage and create profits for the Contracted Party. He was worried that the Administration might need to allocate additional resources for the provision of ancillary facilities. PSHA replied that in the Government's view, KTSP was conveniently located with easy access by public transport services, with the MTR station of the Sha Tin to Central Link in the vicinity. With the provision of a good number of retail and dining outlets inside KTSP, its operation should be sustainable by these commercial elements.

Tendering arrangement and bid incentive

22. Mrs Regina IP and Ms YUNG Hoi-yan expressed concern about the details of the bid incentive arrangements.

23. Mr SHIU Ka-chun sought information from the Administration as to how the \$60 million cap on bid incentive was set. Mr Kenneth LEUNG requested the Administration to provide the calculation basis for setting the bid incentive for an unsuccessful tenderer at \$60 million and its detailed breakdown.

[Post-meeting note: Supplementary information provided by the Administration was issued to members vide LC Paper No. FC193/16-17(01) on 22 June 2017.]

24. Mr CHAN Chi-chuen said that in principle, he understood the rationale for providing the bid incentive as it could facilitate the submission of bids by enterprises of a smaller scale. But given the mammoth scale of KTSP, small and medium enterprises would generally lack the ability to bid for the project. As such, the bid incentive could only benefit large enterprises and possibly give rise to bid-rigging.

25. SHA stressed that the bid incentive could help increase competition and possibly lower the project cost. Moreover, under the bid incentive arrangement, the Government could use any of the intellectual property rights in the tender submission documents of the unsuccessful bidders, and combine the best of every individual bid. PSHA supplemented that according to the consultant, the preparation of a tender submission document would involve dozens of areas of expertise and last about six months, with an estimated cost in the region of \$150 million to \$200 million. In other words, the capped bid incentive would only account for 30% to 40% of the tender cost, and the bidder would be required to bear the remaining cost.

26. Regarding the concern about bid-rigging, SHA pointed out that bid-rigging was unlawful and had nothing to do with the bid incentive.

27. Mr Kenneth LEUNG requested the Administration to provide information about the provisions (e.g. those in relevant agreements of international trade organizations) against bid-rigging in international trade, as well as the legislations on prevention of bribery against offshore business practices of multinational enterprises outside Hong Kong (such as legislations in the United States or the United Kingdom).

[Post-meeting note: Supplementary information provided by the Administration was issued to members vide LC Paper No. FC193/16-17(01) on 22 June 2017.]

28. Ms Claudia MO said that on the one hand, the Administration firmly maintained that the KTSP project should be implemented through the DBO approach to ensure the integrity of its development and management. On the other hand, with the Administration intending to acquire, through the bid incentive, the intellectual property rights of the design of the unsuccessful bidders and incorporate the same in KTSP's final design, the integrity of KTSP's design would be undermined. She thus queried that such a move was self-contradictory.

29. Mr Jeremy TAM said that notwithstanding the Civic Party's support for the provision of sports infrastructure, it objected to the bid incentive arrangement under the project. He pointed out that while the Administration had acceded to the request of PWSC members and reduced the total amount of bid incentive from \$180 million to \$120 million (i.e. the total amount was reduced by \$60 million as the number of prequalified tenderers would be reduced from a maximum of four to a maximum of three), the total project cost had not been reduced correspondingly. He enquired about the whereabouts of the reduced amount of bid incentive.

30. PSHA replied that the provision for bid incentive was included in the project's contingency provision which was generally about 10% of the project cost. Hence, the reduced amount of bid incentive would be subsumed under the contingency provision, with the amounts of both the contingency provision and total project estimates remaining the same.

31. Ms YUNG Hoi-yan noted that prequalification of tenderers would be conducted, and only prequalified tenderers would be invited to submit bids for the project. She enquired about the detailed arrangements as well as the relevant requirements for prequalification. Mr Kenneth LEUNG also raised similar concerns.

32. Mr MA Fung-kwok enquired about the Administration's fallback plan in case no conforming bids were received (e.g. the tender prices of all bids were too high, or no tenderer could meet all the requirements set by the Administration). He was concerned that the progress of the project might be impeded as a result of such a situation.

33. PSHA and C for S replied that as far as the tendering arrangement was concerned, the Government would like to see sufficient competition during tendering and hence, the bid incentive was provided. In case the number of bids received was too small, the Government might opt for re-tendering. The Government's present target price was estimated on the basis of the consultant's reference design with the price of the costs determined by quantity surveyors. The project estimates had also been reviewed by the Project Cost Management Office under the Development Bureau. The Government was confident that the funding provisions sought under the present item would be sufficient for the purpose. Nonetheless, if the tender prices of all the bids received by the Government were eventually higher than the estimated price, the Government would conduct further negotiations with the successful tenderer on the tender price under the existing mechanism, such as making concessions on certain non-essential items. Of course, if no consensus could be reached after such negotiations, the Government might need to re-tender the project according to the relevant procedure.

34. Dr YIU Chung-yim queried that the provision for price adjustment in the present funding application would not be accounted for in the actual expenses incurred. He asked whether the Administration would demand the Contracted Party to include the provision for price adjustment in its building contract, or allow the Contracted Party to make its own decision. In case of the latter, he asked whether the Administration could undertake that regular reports would be made to the Legislative Council on the actual expenses incurred for the project. He also requested the Administration to provide FC with a copy of the contract intended to be signed with the Contracted Party by the Government after the contract had been drafted. Expressing similar queries, Dr KWOK Ka-ki opined that as the amount of price adjustment provision was made known, it would only prompt the big consortia to boost their tender price further in order to earn more public money.

35. In response, C for S pointed out that under the DBO approach, the Contracted Party would be fully responsible for the design, construction and future operation of KTSP. The contract to be signed between the Contracted Party and the Government would be based on the contract for public works in general with terms on price fluctuation. As the contract was still being drafted, the Government could not provide the relevant part of the contract to FC. PSHA added that when tender was invited for the project, an announcement would be made by the Government as appropriate.

Provision of sports facilities inside Kai Tak Sports Park

36. Noting that the estimated number of event days for the Main Stadium per year was 30 only, Mr WU Chi-wai was concerned whether KTSP would be open for public use on non-event days.

37. Dr KWOK Ka-ki questioned that KTSP was not aimed at promoting local sports development. For instance, according to the project's consultancy study report, among the 30 event days in the Main Stadium per year, a considerable number of which might be used to host events not related to local sports such as concerts, Mainland football matches or National Day celebrations.

38. In response, SHA said that the KTSP project was developed after lengthy consultation and had the unanimous support of the sports sector. PSHA added that among the 30-odd event days in the Main Stadium per year, more than half of those days would be used for local sports events (such as football and rugby matches) while only less than half of such event days would be used for other activities.

39. Dr Pierre CHAN expressed concern about the insufficient provision of indoor 5-a-side football pitches which met international standards in Hong Kong. He asked whether additional provision of such venues would be made in KTSP to facilitate Hong Kong's bid for hosting international tournaments.

40. C for S replied that both the Main Stadium and the ancillary sports hall of KTSP were multi-purpose venues that could be configured to hold indoor 5-a-side football matches. While Hong Kong was host to the FIFA Futsal World Cup some 20 years ago, the Government would hold discussions with the Hong Kong Football Association in future on whether Hong Kong would bid for hosting that international tournament again.

41. Given that the Main Stadium and the ancillary sports hall of KTSP were both multi-purpose venues, Dr Pierre CHAN asked whether it meant the use of plastic floor markings for demarcation of pitches when hosting indoor 5-a-side football matches.

42. C for S replied that there were different ways to convert a multi-purpose venue into indoor 5-a-side football pitches, and suggestions on the specific arrangements would be made by the Contracted Party.

Other matters

43. Mrs Regina IP expressed support for the item. She said that after Hong Kong's return to China, Hong Kong had nurtured a number of internationally renowned athletes, and KTSP could help promote sports development in Hong Kong. She was concerned that the lack of golf courses in Hong Kong might impede the development of golf, and hoped that the Administration could elaborate on its measures to support the development of golf and provide members with information on the provision of golf driving ranges in Hong Kong.

44. SHA stated that with nine golf courses in Hong Kong at present, the provision of golf courses might not be sufficient. In the next five years, the Government would study the development of other sports in Hong Kong, including the proposal to build another sports park in Pak Shek, Sha Tin.

45. Dr CHIANG Lai-wan expressed support for the item. She said that as the project had been discussed for over a decade, its construction should commence as soon as possible, and the Administration should try its best to avoid cost overruns. Dr CHIANG asked whether a swimming pool could be provided inside or in the vicinity of KTSP to serve the residents in the Kai Tak New Development Area and its neighbourhood.

46. PSHA replied that the Government understood the demand for a swimming pool in the Kai Tak New Development Area, and a nearby site had been reserved for the provision of a swimming pool to serve local residents. The Government would consult the Kowloon City District Council on the project in future.

47. Mr SHIU Ka-chun enquired about how the Administration would promote sports in the community. He urged the Administration to consider introducing measures to enable schools to open up their sports grounds for public use after school hours.

48. SHA stated that the Government was committed to promoting sports in the community, and the construction of KTSP was part of the initiatives.

Close of meeting

49. At 12:52 pm, the Chairman declared the close of the meeting.

50. The meeting ended at 12:52 pm.

Legislative Council Secretariat

28 March 2018