

立法會
Legislative Council

LC Paper No. PWSC196/16-17

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Ref : CB1/F/2/1(18)B

**Public Works Subcommittee of the Finance Committee
of the Legislative Council**

**Minutes of the 17th meeting
held in Conference Room 1 of the Legislative Council Complex
on Wednesday, 10 May 2017, at 8:30 am**

Members present:

Ir Dr Hon LO Wai-kwok, SBS, MH, JP (Chairman)

Hon Charles Peter MOK, JP (Deputy Chairman)

Hon Abraham SHEK Lai-him, GBS, JP

Hon Tommy CHEUNG Yu-yan, GBS, JP

Hon Jeffrey LAM Kin-fung, GBS, JP

Hon Starry LEE Wai-king, SBS, JP

Hon CHAN Hak-kan, BBS, JP

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Hon WONG Kwok-kin, SBS, JP

Hon Paul TSE Wai-chun, JP

Hon LEUNG Kwok-hung

Hon Claudia MO

Hon Michael TIEN Puk-sun, BBS, JP

Hon Steven HO Chun-yin, BBS

Hon Frankie YICK Chi-ming, JP

Hon WU Chi-wai, MH

Hon YIU Si-wing, BBS

Hon MA Fung-kwok, SBS, JP

Hon CHAN Chi-chuen

Hon CHAN Han-pan, JP

Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon Wilson OR Chong-shing, MH
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim
Dr LAU Siu-lai

Members absent:

Dr Hon Helena WONG Pik-wan
Hon HO Kai-ming
Hon SHIU Ka-chun
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, MH, JP

Public officers attending:

Mr Raistlin LAU Chun, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) ³
Mr HON Chi-keung, JP	Permanent Secretary for Development (Works)
Mr Michael WONG Wai-lun, JP	Permanent Secretary for Development (Planning and Lands)
Mr Donald TONG Chi-keung, JP	Permanent Secretary for the Environment
Ms Margaret HSIA Mai-chi	Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (Works)
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
Mr Michael Mak Sheung-ching	Senior Architect (Recreation and Sport) Home Affairs Bureau

Attendance by invitation:

Mr Michael CAMERLENGO	KPMG Director (Infrastructure Advisory)
Mr Alastair GRAHAM	KPMG Director (Infrastructure Advisory)
Mr Ramsey YU	KPMG Manager (Infrastructure Advisory)

Clerk in attendance:

Ms Sharon CHUNG	Chief Council Secretary (1) ²
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Staff in attendance:

Mr Raymond CHOW	Senior Council Secretary (1)6
Ms Christina SHIU	Legislative Assistant (1)2
Ms Christy YAU	Legislative Assistant (1)7
Ms Clara LO	Legislative Assistant (1)8

Action

Head 703 - Buildings

PWSC(2017-18)2 272RS Kai Tak Sports Park

The Chairman advised that the Subcommittee would continue the discussion on PWSC(2017-18)2, which was an agenda item carried over from the previous meeting of the Subcommittee on 6 May 2017.

2. The Chairman reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP") of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interests relating to the funding proposals under discussion at the meeting before they spoke on the proposals. He also drew members' attention to Rule 84 of RoP on voting in case of direct pecuniary interest.

3. At the invitation of the Chairman and with the aid of a powerpoint presentation, Mr CAMERLENGO and Mr GRAHAM, KPMG Directors (Infrastructure Advisory), (i.e. the Operations Consultant of Kai Tak Sports Park ("Sports Park")), provided members with supplementary information on the procurement model for the development of the Sports Park. Members were briefed on the analysis conducted when selecting the procurement model for the Sports Park, the rationale for adopting the Design-Build-and-Operate ("DBO") approach, and two enhancement measures to increase competition in the tendering exercise (i.e. the provision of "bid incentives" for unsuccessful bidders, and the award of a longer-term contract to the successful bidder ("Contracted Party")).

(Post-meeting note: A soft copy of the powerpoint presentation materials ([LC Paper No. CB\(1\)153/16-17\(02\)](#)) was circulated to members by email on 10 May 2017.)

Tendering arrangement—"bid incentives"

4. Mr LAM Cheuk-ting expressed that as the economic potential of the Sports Park project could already attract a sufficient number of bids, it was

unnecessary for the Administration to provide the "bid incentives". Mr LAM and Mr Wilson OR were also worried that "bid incentives", which were less commonly applied to works projects in Hong Kong, would arouse public concern.

5. In response, Permanent Secretary for Home Affairs ("PSHA") advised that having regard to the market feedback and the bid cost estimation made by the Operations Consultant, the Government believed that it might not be able to attract a sufficient number of quality bids without the "bid incentives".

6. Members noted that under the "bid incentive" clause, the Administration could use any of the intellectual property rights in the tender submission documents of the unsuccessful bidders. Mr CHAN Chun-ying asked who had the right to decide on the use of such intellectual property rights, and which government department would be responsible for verifying the actual expenses incurred in tender preparation as declared by the tenderers.

7. PSHA responded that the Government had the right to put forward requests and decide to use the information contained in the unsuccessful bids to improve the elements in the winning tender. The Home Affairs Bureau ("HAB") and its team of surveying consultants would jointly audit the actual expenses incurred in tender preparation as declared by the bidders in order to avoid abuses.

8. Mr Wilson OR and Mr LAU Kwok-fan queried why the Administration did not wait until the number of tenderers was known before deciding whether to offer the "bid incentives".

9. PSHA explained that in the event of tender failure due to an insufficient number of bids, it would take another 12 to 18 months for re-tendering. This would affect the works progress of the project and the international reputation of Hong Kong. Mr CAMERLENGO, KPMG Director (Infrastructure Advisory), added that as the Sports Park was a complicated project which had to involve professionals of various disciplines in the planning for its construction, design and operation, the tender costs were very high. According to the analysis made by KPMG, if the Government did not offer "bid incentives" for the Sports Park project, the number of bids to be received might not be sufficient. Mr OR requested the Administration to provide detailed information on the aforesaid analysis.

(Post-meeting note: The supplementary information provided by the Administration and the Operations Consultant was circulated to

members vide [LC Paper No. PWSC162/16-17\(02\)](#) on 17 May 2017.)

Number of bids

10. Mr Tommy CHEUNG enquired about the amount of economic loss based on the Administration's estimation in the event that the Sports Park facilities could not be open for public use as scheduled due to tender failure. Mr CHEUNG also enquired about the circumstances under which the Administration would re-tender the project, and the degree of discretion to be exercised by the Government in deciding on the successful tenderer.

11. Commissioner for Sports, Home Affairs Bureau ("C for S/HAB"), said that if the Sports Park project was delayed by about one year because of tender failure, the estimated project cost would increase by about 5%, or \$1.6 billion. PSHA added that the Government was responsible for the entire tendering process for the Sports Park. In general, there should be no fewer than four bids for a "Design-and-Build" public works project. In the case of the Sports Park project, re-tendering might be necessary if there were insufficient bids to ensure adequate competition.

Contract terms

12. Mr LEUNG Che-cheung asked whether the Administration would take over the operation of the Sports Park if the Contracted Party failed to complete the 25-year contract. Dr LAU Siu-lai and Mr Jeremy TAM expressed similar concerns. Mr Jeffrey LAM asked whether the Administration would consider having several Contracted Parties operate different facilities of the Sports Park, and stipulating in the contracts the criteria for evaluating their performance.

13. PSHA responded that if the Sports Park was managed by the Leisure and Cultural Services Department ("LCSD"), there would be more restrictions on the operation, such as on procurement. In addition, since quite a few facilities were shared among different venues in the Sports Park, if the operation contract was split among a number of Contracted Parties, it might easily give rise to disputes or lack of coordination among the Contracted Parties which would adversely affect the operation of the Sports Park.

14. Mr Michael TIEN expressed that the amount of minimum fixed payment proposed by a tenderer should be given a 30% weighting, while the proposed percentage of income to be shared with the Government should be given a 10% weighting, so as to ensure that the successful tenderer was

committed to operating the Sports Park. Mr GRAHAM, KPMG Director (Infrastructure Advisory), said that to ensure completion of the contract by the Contracted Party, the Government would require the Contracted Party to pay a performance bond, the amount of which should be determined carefully.

15. Mr Tommy CHEUNG requested the Administration to provide supplementary information on the minimum fixed payment to be made by the Contracted Party to the Administration, including the amount and its calculation method.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide [LC Paper No. PWSC162/16-17\(02\)](#) on 17 May 2017.)

16. Mr KWOK Wai-keung opined that the initial amount of performance bond suggested by the Administration, which was set at a level equivalent to the basic operating expenditure of the Sports Park for a period of six to nine months, was insufficient to prevent unilateral termination of contract by the Contracted Party too easily. He requested the Administration to raise the amount of performance bond.

17. PSHA responded that by setting the performance bond at a level equivalent to the basic operating expenditure for a period of six to nine months, the Government should be able to maintain the basic operation of the Sports Park while looking for another Contracted Party. The Government would provide relevant supplementary information after the meeting.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide [LC Paper No. PWSC162/16-17\(02\)](#) on 17 May 2017.)

18. Mr Steven HO asked how the Administration would monitor the performance of the Contracted Party during the contract period. C for S/HAB said that the contract would stipulate the performance indicators for the Contracted Party. Pursuant to the contract terms, should the Contracted Party fail to meet the key indicators, the Government could first issue a warning, then enforce the penalties, and even terminate the contract and forfeit the performance bond.

19. Mr KWOK Wai-keung asked whether the contract to be signed between the Administration and the Contracted Party would set out the number of days per year for which the Sports Park facilities had to be open

for public use, so as to ensure that members of the public had the opportunities to use such community facilities.

20. PSHA replied that the contract would stipulate that the levels of fees and charges for the sports facilities for public use in the Sports Park should be determined by reference to those for related facilities managed by LCSD, educational institutions and other non-profit-making organizations, and subject to HAB's approval. While the Indoor Sports Centre would be open to the public for sports activities for 200-odd days per year, the Public Sports Ground would be open for school and public use throughout the year.

Procurement model

21. Mr Steven HO requested the Administration to provide supplementary information on successful examples of other countries adopting the DBO approach in building a major stadium, and a comparison between the DBO approach of those projects and that of the Sports Park in terms of tendering process, operation, income, etc. PSHA agreed to provide relevant information after the meeting.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide [LC Paper No. PWSC162/16-17\(02\)](#) on 17 May 2017.)

22. Mr Alvin YEUNG asked whether the Administration had considered developing the Sports Park following the model of West Kowloon Cultural District. PSHA said that the Government had not considered establishing a statutory body to operate the Sports Park because the Sports Park was owned by the Government and it was most appropriate for HAB to directly monitor the operation of various facilities in the Sports Park.

23. Mr LAU Kwok-fan asked whether the Administration would only consider renewing the contract with the single DOB Contracted Party in future, rather than conducting an open tender exercise, in order to facilitate the operation of the Sports Park. PSHA responded that in considering whether it should renew the contract or invite tenders again upon expiry of the contract, the Government would take into account such factors as the past performance of the Contracted Party, and whether the Contracted Party would put in resources to enhance the facilities of the Sports Park.

24. Dr Junius HO requested the Administration to provide detailed supplementary information on how the DBO approach could help it transfer most of the risks incurred to the Contracted Party during the construction and operational stages. Dr HO and Mr Tommy CHEUNG also requested the

Administration to provide supplementary information comparing the pros and cons in respect of the transfer of risks to the Contracted Party under the nine procurement approaches analyzed by KPMG for the Sports Park project. PSHA undertook to provide the supplementary information after the meeting.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide [LC Paper No. PWSC162/16-17\(02\)](#) on 17 May 2017.)

25. By citing the models adopted in the construction projects of major stadia in the overseas, Dr YIU Chung-yim pointed out that the adoption of a fully government-funded DBO approach was uncommon.

26. PSHA advised that the Government had considered the examples of "joint venture" cited by Dr YIU, but having regard to market interest in financing the construction of such community facilities and infrastructures as the Sports Park, as well as the need to ensure that the contractor would pursue the policy objectives of sports development in its operation of the Sports Park, the Government had opted for the current government-funded DBO approach to develop the Sports Park.

Consultation with the industry

27. Mr LAU Kwok-fan and Dr LAU Siu-lai asked whether the Administration had duly consulted the stakeholders of the Sports Park, including local athletes and performing arts practitioners, to ensure that their views would be incorporated into the design of the Sports Park. Dr LAU Siu-lai requested the Administration to provide supplementary information on the target groups consulted on the Sports Park project and their views on the facilities of the Sports Park.

28. PSHA responded that the Government had consulted the sports sector through a working group under the Sports Commission of HAB, and incorporated their views into the design of some facilities. PSHA undertook to provide supplementary information after the meeting.

(Post-meeting note: The supplementary information provided by the Administration was circulated to members vide [LC Paper No. PWSC162/16-17\(02\)](#) on 17 May 2017.)

Project cost

29. Mr Alvin YEUNG, Dr Fernando CHEUNG and Dr KWOK Ka-ki expressed concern about the project cost which had exceeded the original

estimate. PSHA explained that the project cost was over \$31.9 billion in money-of-the-day prices, or about \$23.8 billion in September 2016 prices.

Promotion of local sports development by developing the Sports Park

30. Dr KWOK Ka-ki took the view that the Contracted Party would develop the Sports Park following the "profit first" principle which would not be conducive to achieving the Government's objective of promoting local sports development. Mr Steven HO asked how the setting of the levels of fees and charges for the Sports Park facilities would complement with the promotion of sports development.

31. In response, PSHA said that among the three major facilities of the Sports Park, both the Public Sports Ground and the Indoor Sports Centre would be open for public use on non-event days, and the multi-purpose Main Stadium would be used for non-sports events for only less than half of the estimated 30 event days per year, so as to meet the needs of the stakeholders outside the sports sector. The levels of fees and charges for the sports facilities available for public use in the Sports Park should be determined by making reference to those for related facilities managed by LCSD, educational institutions and other non-profit-making organizations, and subject to HAB's approval.

32. The Chairman said that the Subcommittee would continue to discuss this item at the next meeting. The meeting ended at 10:30 am.