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

**Minutes of the 18th meeting
held in Conference Room 1 of the Legislative Council Complex
on Wednesday, 17 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
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 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 CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon Wilson OR Chong-shing, MH
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

Members absent:

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon MA Fung-kwok, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon Andrew WAN Siu-kin
Hon SHIU Ka-chun
Hon CHEUNG Kwok-kwan, JP
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon YIU Chung-yim

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 TSE Chin-wan, 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-yee	Permanent Secretary for Home Affairs
Mr YEUNG Tak-keung	Commissioner for Sports Home Affairs Bureau
Ms Linda LAW Lai-tan	Principal Assistant Secretary for Home Affairs (Recreation and Sport) ²

Attendance by invitation:

Mr Julian VELLA	KPMG ASPAC Regional Head (Global Infrastructure)
Mr Alastair GRAHAM	KPMG Director (Infrastructure Advisory)
Mr Michael CAMERLENGO	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 Mandy LI	Council Secretary (1) ²
Ms Christina SHIU	Legislative Assistant (1) ²
Ms Christy YAU	Legislative Assistant (1) ⁷
Ms Clara LO	Legislative Assistant (1) ⁸

Head 703 – Buildings

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

The Chairman advised that the Subcommittee would continue to discuss PWSC(2017-18)2, which was an item carried over from the meetings of the Subcommittee on 6 and 10 May 2017.

2. The Chairman reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP") of the Legislative Council ("LegCo"), 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, Permanent Secretary for Home Affairs ("PSHA") briefed members on the supplementary information provided by the Home Affairs Bureau ("HAB") (LC Paper No. [PWSC162/16-17\(02\)](#)). The paper was tabled at the meeting for members' information.

Project cost

4. Mr LAU Kwok-fan asked whether the Administration was confident that if the Kai Tak Sports Park ("the Sports Park") project was taken forward under a "Design-Build-Operate" ("DBO") contract proposed by the Government, it could be completed within budget. Mr LAU was concerned whether the Administration would consider imposing a cap on the construction cost of the Sports Park.

5. PSHA advised that at present, the Administration did not see the possibility of cost overrun and additional funding. Among the estimated project cost of about \$31.9 billion, the respective provisions for price adjustment and contingencies were about \$8.1 billion and \$2.3 billion. If the tender exercise could be conducted in the third quarter of this year, the estimated tender price for the project would be about \$27 billion.

6. Ms Tanya CHAN asked whether the Administration would submit further funding request to the Subcommittee and the Finance Committee for the works of the facilities related to the Sports Park project in addition to the current funding proposal. Ms CHAN also enquired about the ways to handle the unused balance should the amount of project cost quoted by the successful tenderer together with the provisions for price adjustment and contingencies was less than \$31.9 billion.

7. PSHA advised that apart from the provision of about \$62 million previously obtained by the Administration for the pre-construction works of the Sports Park and the \$31.9 billion currently sought for fully financing the DBO project, the Administration did not envisage the need to seek further funding approval. The Commissioner for Sports, Home Affairs Bureau ("C for S/HAB") advised that according to the established practice for public works projects, all project costs would be reimbursed on an accountable basis. In the event that the actual project cost was lower than the approved estimate, the unused funding would be kept in the Treasury.

Procurement model

8. Mr CHAN Chun-ying noted that as pointed out by the Administration, three criteria should be taken into account when considering the procurement approaches to be adopted, namely a high degree of control over the Sports Park by the Government, the feasibility of transferring operating risks to the Contracted Party during the operational stage, and enhancing the vibrancy of the Sports Park. The DO→B approach (design and operate, then build) and the O→DB approach (appoint operator first, then design and build with operator input) both obtained high scores among the aforesaid three criteria. Mr CHAN Chun-ying asked why the Administration did not adopt these two procurement approaches in developing the Sports Park, and how the aforesaid three approaches compared in terms of the risk of project delay and cost overrun.

9. Mr GRAHAM, KPMG Director (Infrastructure Advisory), advised that under the DO→B approach, the operator might propose some expensive or extravagant options which would increase the risk of project cost overrun. Mr VELLA, KPMG ASPAC Regional Head (Global Infrastructure), pointed out that as compared with the other two approaches, the DOB approach had the advantage of bringing together a team of experts in design, construction and operation at the outset to provide an integrated solution for the Sports Park so that the design of the Sports Park could achieve its operation objectives. PSHA added that the DO→B and O→DB options could only serve as reference for the purpose of making a comparison of various models as the Government did not find any actual examples.

10. Mr CHU Hoi-dick noted that according to the information provided by the Administration, the Main Stadium, Indoor Sports Centre and Public Sports Ground were expected to have a surplus of \$12 million each year if they were directly managed by the Administration. Mr CHU urged the Administration to consider directly managing the facilities concerned so that members of the public could use the facilities more freely, which would in

turn enhance the vibrancy of the Sports Park.

11. PSHA said that a comparison between operating the Sports Park under the DBO approach and the DBG (design and build, then operate by Government) approach showed that the surplus expected to be made by the former would be 10 times of that by the latter. The surplus under the DBO approach could reach \$126 million. Moreover, given that the DBO approach did not require the Administration to cover the operating expenditure while giving it a high degree of control, the freedom to use the facilities in the Sports Park by members of the public was assured. In addition, the Administration would require the Contracted Party to open the Public Open Space of the Sports Park to the public 24 hours a day. The Administration and the Contracted Party, as the owner and manager of the Sports Park, would be subject to the monitoring of LegCo.

Bid incentives

12. Mr Alvin YEUNG noted that as advised by PSHA, there were examples of overseas major infrastructure projects with "bid incentives" provided by the government, including the Redevelopment Project of Convention Centre in New South Wales, Australia and the New Champlain Bridge Corridor Project in Montreal, Canada. Mr YEUNG sought supplementary information on the number of bidders in the aforesaid examples for which "bid incentives" were provided.

(Post meeting note: The above paper ([LC Paper No. PWSC168/16-17\(01\)](#)) was circulated to members on 22 May 2017.)

13. Mr Alvin YEUNG enquired about the difference in the number of bids submitted by bidders with/without the provision of "bid incentives" as estimated by the Administration.

14. PSHA responded that the Administration had gauged market interest before proposing the provision of "bid incentives". It was anticipated that one to two companies were capable and interested to submit bids. After proposing the provision of "bid incentives", the consultant noted that more companies were making preparation to form their own working team and expected that three to four companies would submit bids.

15. Mr CHAN Chi-chuen opined that the provision of "bid incentives" to unsuccessful bidders by the Administration was probably only aimed at ensuring a sufficient number of bidders for the tender exercise. Mr CHAN also enquired about the information required from the companies which were interested in submitting bids at the next stage for prequalification by the

Administration.

16. C for S/HAB advised that as the Administration would only provide a bid incentive of \$60 million or 50% of the actual cost incurred in the preparation of the tender, whichever was lower, to each unsuccessful bidder who had submitted a conforming bid at the tender stage, the companies participating in the tender exercise for the purpose of making up a sufficient number of bidders would not gain any actual benefit. Moreover, the companies concerned had to prepare for establishing their own working team and provide massive information and proof with respect to their experience in the three aspects of design, construction and operation to the Administration at the prequalification stage.

17. Mr KWONG Chun-yu enquired about the number of consortia that had expressed interest in submitting bids. PSHA advised that the briefing arranged by the Administration on 9 May 2017 was well received by companies. Nevertheless, many companies indicated that due to the high bid costs, they would not submit any bids if the Government did not provide the "bid incentives".

18. Ms Tanya CHAN enquired about the reasons for the Administration to set the "bid incentives" at a fixed amount or percentage (i.e. \$60 million or 50% of the actual cost incurred in the preparation of the tender) instead of adopting other criteria, such as a certain percentage of the total value of the works contract. Ms CHAN also enquired if there were other overseas projects of which the amount of "bid incentives" was calculated by using the method proposed by the Administration.

19. PSHA advised that the consultant estimated the cost incurred in the preparation of the tender on the basis of the man hours spent on tender preparation by the various professionals engaged by the contractor. Interested contractors were required to file an application for "bid incentives" specifying the actual cost incurred in the preparation of the tender when submitting their bids. Mr VELLA, KPMG ASPAC Regional Head (Global Infrastructure), added that similar bid incentive schemes had been introduced in other overseas projects to enhance competition in the tendering process. These incentive schemes allowed the tendering contractors to engage experts from various fields to draw up the best proposal.

20. Mr LAU Kwok-fan asked whether, given the controversial nature of the "bid incentive" arrangement, the Government would consider forgoing the arrangement and adopting the traditional tendering approach instead.

21. PSHA responded that given the high tendering cost, the

Administration might not be able to attract a sufficient number of high quality bids if "bid incentives" were not provided.

22. Mr WU Chi-wai enquired about the estimated market rental of the retail and dining facilities inside the Sports Park. Mr GRAHAM, KPMG Director (Infrastructure Advisory), advised that the estimated market rental of the facilities concerned was about \$840 per square metre.

23. Mr WU Chi-wai considered that the business sector would find the Sports Park project highly attractive as the retail and dining facilities to be developed in the park were expected to generate high market rental. Moreover, given that the construction of the Sports Park would be financed by the Administration, he questioned the proposition that the project might be lacking in bid returns if "bid incentives" were not provided.

Other tendering arrangements

24. Mr Michael TIEN asked whether the Administration would consider adjusting the marking scheme for assessing the bids for the Sports Park project by increasing the weighting of the minimum fixed payment to be made by the Contracted Party to the Government, so that the minimum fixed payment and the share of income would be at least at a proportion of 2:1.

25. PSHA advised that the Administration was examining the relevant marking scheme which should be approved by the Central Tender Board. The Administration would seriously consider Mr TIEN's suggestion.

26. Mr WU Chi-wai asked whether the Administration would let LegCo scrutinize in advance the details of the tender document of the Sports Park. C for S/HAB responded that the Administration would take into account Members' views as far as possible when preparing the tender document. It was not a usual practice to have LegCo pre-scrutinize a tender document.

Contractual arrangements

27. Mr KWONG Chun-yu enquired about the criteria based on which the Administration would select a maximum of four tenderers, and whether it would draw up contract terms to prevent poor performance and mismanagement by the Contracted Party.

28. PSHA advised that the Government would specify in the terms and conditions of the Sports Park contract the performance bond which the Contracted Party would be required to lodge, so as to ensure that the Contracted Party would make every effort to complete the contract. It was

initially suggested that the amount of the performance bond should be equivalent to the basic operating expenditure of the Sports Park for about nine months, totalling about \$200 million in the first five years, with the amount to be reviewed and increased regularly. Furthermore, provisions would be included in the contract specifying that the Contracted Party would be subject to warning and a fine should it fail to achieve key performance indicators ("KPIs"). Between 28 April 2017 and 30 June 2017, the Government invited interested companies worldwide to express interest in operating the Sports Park and submit information paper for the Government to conduct a prequalification exercise. The Government would select, among the Expressions of Interest received from the companies concerned, four submissions which best conformed to the prequalifying requirements, and invite these companies to submit tenders after obtaining funding approval from the Finance Committee for the project.

29. Mr LAU Kwok-fan enquired whether the Government would develop a set of clear standards to monitor the performance of the Contracted Party, including the possible penalties to be imposed by the Government when the performance of the Contracted Party was below par. Mr LAU also asked whether the Government would consider increasing the amount of the performance bond so as to ensure good performance of the Contracted Party during the operation stage.

30. PSHA advised that the contract would specify the operating requirements, KPIs and penalties to be imposed when the Contracted Party performed below par. The Government had yet to make a detailed calculation of the amount of the performance bond, and the amount required would be finalized when tenders were invited.

31. Mr Michael TIEN enquired whether the Government would consider increasing the amount of the performance bond to 5% of the project cost at the minimum, so as to ensure that the Contracted Party would maintain good performance during the operation stage. Mr TIEN also asked whether the Administration would consider extending the DBO contract period from the currently proposed "25 years plus 10 years" (the extended contract period) to "15 years plus two 10-year periods" to facilitate more effective monitoring of the performance of the Contracted Party.

32. PSHA pointed out that the projected profit margin of the Contracted Party in the Sports Park project was 2% to 3% with reference to the profit margins of normal public works projects. A performance bond pitched at 5% of the project estimate already exceeded the amount of profit that could be made by the Contracted Party from the entire project. Nevertheless, the Government would keep on examining different options, including a

guarantee by the Contracted Party's parent company, and introducing a monitoring mechanism such as a mid-term review. She further said that with the ongoing enhancement of the supporting facilities in the vicinity of the Sports Park, the income from operation of retail and dining facilities should increase in tandem and the Contracted Party would have sufficient incentives to operate the Sports Park on a long-term basis.

33. Mr Holden CHOW enquired that in case the Administration decided to introduce a mid-term review mechanism for the proposed 25-year contract period and the Contracted Party's performance was found to be below par in the review, whether the Administration could terminate the operation contract and whether it was required to compensate the Contracted Party.

34. In response, PSHA pointed out that if the Contracted Party underperformed in various aspects without making improvement, rendering it impossible for the Government to continue to work with it, the Government would trigger the termination clause in the contract without the liability for compensation. Should the Contracted Party be found liable for the situation, the Government might seek compensation from the Contracted Party.

35. Dr LAU Siu-lai enquired how the Government would address the situation under the DBO approach in the event that the operation of the Contracted Party was terminated by the Administration due to its poor performance or the Contracted Party ceased operation on its own initiative, as well as how it could ensure that the new Contracted Party could perform well after taking over such an "awful mess".

36. PSHA said that the Government could re-tender the contract for operating the Sports Park should the situation mentioned by Dr LAU arise. In the worst scenario, the selected Contracted Party might be responsible only for operating and managing the Sports Park with the Government covering the operating costs of the project. The mode of operation of the project would then be changed to "design and build, then operate by private company" ("DB→O").

The need to construct the Sports Park and the projected utilization

37. Dr KWOK Ka-ki asked whether the Administration would allow LegCo to scrutinize in advance the DBO contract for the Sports Park. Dr KWOK also enquired about the local sports events which required a Main Stadium with a seating capacity of 50 000 persons and the number of days per year for hosting such sports events.

38. PSHA advised that the relevant terms and conditions in the contract

were largely the same as those in the tender document. The Government would publish a tender notice in the Gazette to commence the tendering process. She supplemented that while Hong Kong was in great need of a Main Stadium with a capacity of 50 000 persons, the Hong Kong Stadium could not meet the local need for developing major sports events. The Hong Kong Stadium had a full house when major exhibition matches and the Hong Kong Sevens took place each year.

Achieving sports policy objectives through developing the Sports Park

39. Dr Fernando CHEUNG questioned why the Administration considered that the sports policy objectives could be achieved more effectively if the Sports Park was developed by a private contractor instead of the Government. In addition, he also asked how the Administration would facilitate the use of the Sports Park by disadvantaged groups, so as to achieve the policy objective of promoting sports in the community.

40. C for S/HAB advised that the public and private sectors had different strengths in promoting different policy objectives. The Government would make best use of private expertise to drive its policy objectives and enhance the vibrancy of the Sports Park.

Interfacing of the Sports Park and other sports facilities in Hong Kong

41. Miss Tanya CHAN enquired whether the Administration would take the opportunity of developing the Sports Park to redevelop the Wan Chai Sports Ground and the Hong Kong Stadium in parallel. The former would be demolished and converted to development use, while the latter would be redeveloped into a sports ground with athletics track to replace the Wan Chai Sports Ground. Moreover, as regards the 15 sports and recreation facility projects for which the Administration would carry out feasibility studies, she asked whether the Administration could provide a list on the development of these projects.

42. PSHA said that the Government had not considered the redevelopment plan of the Wan Chai Sports Ground when commencing the planning for the development of the Sports Park. However, it had taken into account issues such as the future positioning of the Hong Kong Stadium and whether it would be open for public use. The list of the 15 sports and recreation facility projects for which feasibility studies would be carried out were set out in the 2017 Policy Address.

Site safety

43. Mr HO Kai-ming enquired whether the Administration would step up site inspection during the construction of the Sports Park to ensure the safety of construction workers. C for S/HAB said that discussion would be held with the Labour Department on how to step up site inspection.

Motion on adjournment of further proceedings of the Subcommittee

44. At 9:54 am, when speaking on the item, Mr LEUNG Kwok-hung moved a motion pursuant to paragraph 33 of the Public Works Subcommittee Procedure to adjourn further proceedings of the Subcommittee.

45. The Chairman said that the Subcommittee would proceed forthwith to deal with the motion proposed by Mr LEUNG Kwok-hung. Each member could speak once on the motion, and the speaking time should not be more than three minutes.

46. Mr LEUNG Kwok-hung said that as there were still many unresolved issues concerning the Sports Park project, he considered that the funding proposal should not be further discussed for the time being. He also requested the Administration to take out the Main Stadium from the Sports Park project.

47. Dr LAU Siu-lai, Dr Fernando CHEUNG, Mr WU Chi-wai, Mr CHU Hoi-dick, Mr KWONG Chun-yu, Dr KWOK Ka-ki and Mr CHAN Chi-chuen spoke in support of the motion proposed by Mr LEUNG Kwok-hung. Mr Michael TIEN, Mr LAU Kwok-fan, Dr CHIANG Lai-wan and Mr Jeffrey LAM spoke against the motion.

48. At 10:29 am, members who had requested to speak on the motion on adjournment had all spoken. The Chairman advised that it was about time to close the meeting, the Subcommittee would not continue to deal with the motion on adjournment proposed by Mr LEUNG Kwok-hung.

49. The meeting ended at 10:29 am.