



THE HONG KONG INSTITUTE OF
SURVEYORS

31 January 2005

BY FAX & POST
#2121 0420

Your ref.: CB1/PL/PLW

Clerk to Panel
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attn: Ms Alice AU

Dear Sir

Panel on Planning, Lands and Works
Rescheduling of the special meeting on 6 January 2005

Thank you for your fax letter of 5 January 2005 and we are pleased to inform that our President, Mr T T Cheung and the Vice-Chairman of the Quantity Surveying Division, Mr Paul Ho will attend the special meeting of the Panel of Planning, Lands and Works on 31 January 2005 on the West Kowloon Cultural District Development (WKCD).

In relation to the presentation at the special meeting, we submit our comments on the WKCD for your reference. (The Chinese version will be submitted later). Should you require further information, please contact the undersigned on 2526 3679.

Yours sincerely

Gordon Ng
Secretary-General

Encl.



West Kowloon Cultural District Development Project

Introduction

1. The Hong Kong Institute of Surveyors (HKIS) supports the Government's idea of enhancing the provision of arts, recreational and entertainment facilities which will enrich Hong Kong's quality of life and fascinate tourists with Hong Kong's unique culture of blending Chinese and Western elements. Thus, HKIS supports the development of the southern part of the West Kowloon reclamation as a world-class arts, cultural and entertainment district.
2. It is noted from the Chief Secretary for Administration's reply to LegCo on 12 November 2003 that in August 2003, the Government published a document entitled "Serving the Community by using the Private Sector: An Introductory Guide to Public Private Partnerships (PPPs)" which clearly indicated that in face of major budgetary deficit, the Government planned to utilize the private sector in rendering cultural services in Hong Kong. In-principle, HKIS is also supportive of the Government's plan to engage the private sector in the development of West Kowloon Cultural District (WKCD) project¹.
3. By its letter dated 13 February 2004, HKIS submitted a paper to the Housing, Planning and Lands Bureau, identifying a number of critical issues for proper implementation of the WKCD development project. In that paper, HKIS strongly emphasized the need for the Government to put forward a proper "business case" and to justify value-for-money for the project. HKIS also clearly pointed out that the perception of favouritism had been a real cause for concern, which could not be dispelled unless the Government had assumed adequate control over the master layout plan of the scheme as well as its output specifications for various art and cultural facilities and services. On these premises, HKIS objected to the single package arrangement and proposed a multi-stage bidding process which would allow the Government to better structure its service and facility requirements and risks.
4. Most of HKIS's previous views and comments are still valid as evidenced from wide criticisms by the public and Legco members. In the current round of consultation, for the fairness to each proponent, it may not be appropriate to give specific comments on individual submitted proposals. In this paper, however, HKIS would like to address some broad but critical issues.

¹ HKIS has all along been supportive of a strong partnership between the public sector and private sector in the delivery of public services and facilities and has actively promoted the best practices of public private partnerships (PPPs) by organizing our 20th Anniversary Conference on Public Private Partnerships in May 2004.



Self-financing or Subsidized Cultural Project

5. While the public would generally accept the Government's good intention to develop a world-class, versatile and attractive cultural district, it is a matter of undeniable fact that the arts and cultural facilities and services of the WKCD development project cannot be run on a truly self-financing basis. The construction, use and operation of such arts and cultural facilities and services will be subsidized wholly or partly by the commercial land values to be generated from the 40 hectares of land. In effect, the Government indirectly uses taxpayers' monies for hypothecation through an integrated single package development approach. The UK's National Audit Office made the following comments in its audit report published in June 2003:

"The attractiveness of not having to find the money up front to meet the initial capital cost creates a strong incentive for departments to present their PFI deals as the preferred choice simply to get them to proceed. Departments may also be under pressure to choose the PFI² option so as to keep debt off the public sector balance sheet. These potential risks underline how important it is that the PFI route should be chosen only after a robust value for money assessment of all the options."

The above comments are particularly valid when choosing the mode of facility/service delivery for the WKCD project.

Transfer of Interests to Consortia

6. Apparently, the Government has been accused for transferring interests to big consortia. Whilst HKIS does not doubt Government's good faith, the current criticisms principally stem from the absence of a sound evaluation framework for ensuring value-for-money. In many developed countries (like the United Kingdom, Australia, United States and Canada) where private sector is engaged in providing substantial public facilities and services, the Governments normally prepare a sound "business case" comprising at least an output specification, public sector comparator (PSC) and cost-benefit analysis. Indeed, the document "Serving the Community by Using the Private Sector" published by the Government also suggests for the preparation of a public sector comparator as follows:

"the Public Sector Comparator (PSC) is the hypothetical, risk-adjusted, cost of the Government itself delivering the project output. The PSC is expressed in terms of the net present cost to the Government of providing the output under a public procurement, using a discounted cashflow analysis that adjusts the future value of the expected cashflow to a common reference date. This enables comparison with bids and makes allowance for the imputed cost of Government borrowing. The PSC provides a means of testing private party bids for value for money (p.31)."

² PFI means private finance initiatives.



7. According to the current Invitation for Proposals, the Government largely (if not wholly) relies on a set of published marking scheme to assess the relative merits of different proposals. Unfortunately, no matter how "objective" the said marking scheme may be, the assessment method simply cannot adequately demonstrate by itself that public interests will be properly protected. Indeed, it is not scientific at all as an "apple" can never be able to compare with an "orange". In the absence of a public sector comparator for benchmarking various consortia's proposals for value-for-money, it is inevitably that the public concludes their interests being damaged.

Limited Competition

8. The Government states that the competition is/will be fair and open, that no favour will be given for big consortia, and that ICAC will also be invited to participate in the assessment³. However, by developing the WKCD project as a single development package, the Government has effectively restricted the choice of bidders to few big consortia. Under such environments, the Government can hardly ensure that the three proposals submitted would be truly competitive. The Government unwittingly places itself in an unfavourable position in subsequent negotiation of the deal (including the land value and capital and operating costs of cultural facilities and services) with the profit-oriented consortia. In the absence of a public sector comparator and cost benefit analysis as aforesaid, the Government will not be able to demonstrate to the public that the submitted proposals are really value-for-money.

Master Layout Plan

9. While flexibility should be allowed to encourage innovation in design and operation, the Government should still retain a high degree of control over the master layout plan as well as the design and operation of each cultural facility and service. The temporary convenience that the Government appears to enjoy by not drawing up the master layout plan is offset by the difficulties that it will face in justifying value-for-money, in conducting a fair assessment of proposals, in negotiating the best deal and in dealing with post-agreement changes that are bound to arise over the long life-span of the project.

Cultural Facilities and Services

10. Although the Government has carried out, as it claims, a number of consultancy reports including the "Cultural Facilities: A Study on the Requirements and the Formulation of New Planning Standards and Guidelines (1999)", "Consultancy Study on the Provision of Regional/District Cultural and Performance Facilities in Hong Kong (2002)",

³ Speech by the Chief Secretary for Administration on the Motion on WKCD Development Project in the Legislative Council on 26 November 2003 refers.



and "Consultancy Study on the Mode of Governance of Hong Kong's Public Museums and the Hong Kong Film Archive (2003)" and many public consultations particularly with the arts and cultural community, the present Invitation for Proposals provides only some broadly defined requirements in respect of various arts and cultural facilities and services. While flexibility should be allowed as aforesaid, the required outputs are vague, ambiguous and uncertain. The Public Private Partnerships Programme Guide issued by the UK Treasury also provides some valid comments on this case:

"Without clear standards, the output specification will be open to wide misinterpretation in terms of the required facility provision and service levels, and therefore cost. Responses from bidders are more likely to be less consistent, making a fair evaluation difficult. //A lack of clarity in the output specification will also make it harder to build up the public sector comparator making value-for-money more difficult to establish (P. 7 of the Output Specifications for PFI Projects)."

Property Development or Cultural Project

11. As mentioned above, the WKCD development project will be subsidized by public land (premium). Inevitably, the public is concerned whether the WKCD development project will be a property development or cultural project. Whilst the plot ratio of 1.8 stated in the Invitation for Proposals is indicative only, the significantly higher plot ratios as now evidenced from the three proposals received may lead to the speculation that the Government did not have a sound "business case" of the project in the first place. Within a short time span after closure of Invitation for Proposals, the property environment has undergone substantial changes as a result of the sharp rise in land and property prices. Under such circumstances, there should be room for the three proponents to significantly adjust their proposed plot ratios more in line with the original objective of the project. While the public appears to benefit from the recovery of the property market, there is a bigger issue as to how the Government can assure that it will get the deal which reflects the best interest of the public for the remaining 30-year life of the project.

Current Consultation

12. In the current round of consultation, the public is invited to express views on the proposed "hard deliverables". There is little information about the "cultural" elements of the project, nor is there any information about the financial viability of the proposals available. HKIS is concerned that the public may be led into indicating preference for a proposal which, when taking into account other "soft" considerations, may not be the preferred option or even may not be financially viable.



The Way Forward

13. After reviewing the three proposals submitted and taking account of public opinions, the Government should determine what arts and cultural facilities and services would best serve the community. In this regard, the Government should draw up a master layout plan for the whole WKCD development site together with a revised scheme for arts and cultural facilities and services by "mix and match approach" based on the three shortlisted proposals (and possibly including the rejected proposals). The revised scheme should be subject to a further round of public consultation. Once a publicly accepted scheme is finalized, this will then form a common basis for a second round of tender, involving the shortlisted three and more proponents around the world.
14. Criticisms have been made against the Government in the handling of the WCKD development project not so much because of a lack of good faith on the part of the Government, but because of its inadequate transparency on the provision of necessary information to the public. HKIS suggests that the Government should follow some best international practices in implementing this public private partnerships (PPPs) project. In this regard, the Government should prepare its own "business case" comprising at least a Public Sector Comparator, cost benefit analysis, risk analysis and detailed output specifications based on a publicly accepted scheme as aforesaid. In some overseas countries, for controversial PPP projects, this kind of business case is also made available to the public to safeguard public interests. In doing so, the Government might not need to release detailed financial and other confidential information submitted by proponents. More importantly, the Government would be able to assess value-for-money for each proposal submitted and also to justify the amount of land values being used for subsidizing the arts and cultural facilities and services.

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