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Translation

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22 June 2017

Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Ms Anita Sit)

Dear Ms Sit,

**Finance Committee
Supplementary Information on Kai Tak Sports Park Project**

At the Finance Committee meeting on 17 June 2017, some Members requested additional information relating to the Kai Tak Sports Park (the Sports Park) project. The relevant information is attached in Annex for Members' reference.

Yours sincerely,

(Original signed)

(Ms Linda Law)
for Secretary for Home Affairs

Supplementary Information on
the Kai Tak Sports Park (Sports Park) Project

- (a) Regarding the “Design-Build-Operate” (DBO) approach, please provide:
- (i) a copy of the intended contract to be signed with the Contracted Party by the Government and submit it upon completion of the draft (*requested by Hon YIU Chung-yim; time and date of the meeting: at 11:25:10 on 17 June 2017*);
 - (ii) the tender documents for the project or their drafts and the “capping” provisions (*requested by Hon HO Kwan-yiu, Junius; time and date of the meeting: at 12:47:50 on 17 June 2017*).

We are currently preparing the drafts of tender documents and the DBO contract for the Sports Park project, which are expected to be finished only before the launch of the tendering exercise in the third quarter of this year. Moreover, since quite a number of commercial terms will be involved in the relevant documents, it is not appropriate to disclose the content of both the tender and the contract to the public before the tendering exercise, with a view to maintaining procedural fairness during tendering and safeguarding the interests of the Government. As stated in Appendix 2 of LC Paper No. CB(2)1330/16-17(01) submitted to the Panel on Home Affairs on 4 May 2017 and in LC Paper No. PWSC205/16-17(01) submitted to the Public Works Subcommittee (PWSC) on 15 June, we will specify in the tender documents and the contract those terms on the monitoring regime, operational requirements, key performance indicators, performance bond, etc., for the Sports Park during the operational stage, which have been reported to the Legislative Council (LegCo).

The contract of the Sports Park will be based on the lump sum contract for public works in general with terms on price fluctuation. The Contracted Party is required to duly complete the Schedule of Proportions for contract price fluctuation by listing in detail the ratio between the expenses on labour and the materials to be used during construction, and submit it together with the bid. It will be specified in the contract terms that price fluctuation will be calculated based on the variations in the Index Numbers of the Costs of Labour and Materials provided monthly by the Census and Statistics Department. The Government will, based on the payment schedule included in 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.

In the Works Technical Circular No. 21/2003 (English only) of the Development Bureau, the contract price fluctuation system has already been set out for public works projects in general. The price fluctuation terms in the contract of the Sports Park will follow the requirements in the above circular. The relevant terms are extracted at **Appendix I**.

(b) Provisions (e.g. those in relevant agreements of international trade organisations) against bid-rigging in international trade (requested by Hon LEUNG Kenneth; time and date of the meeting: at 12:10:11 on 17 June 2017)

In June 1997, Hong Kong joined the Agreement on Government Procurement 1994 (GPA 1994) of the World Trade Organization (WTO). The Agreement on Government Procurement 2012 (GPA 2012) of the WTO also became applicable to Hong Kong in April 2014.

The objective of the GPA is to ensure open, fair and transparent conditions of competition in government procurement. To this end, the GPA prescribes a set of requirements regarding non-discriminatory treatment of goods, services and service suppliers, qualifications of suppliers, tendering procedures, tender specifications, challenge procedures, etc. The principles underlying the procurement system of the Hong Kong Special Administrative Region Government are in line with the spirit and objective of the GPA. The GPA is applicable to the tendering exercise for the Sports Park project.

Although the GPA does not contain any express provisions against bid-rigging practices in government procurement, the following requirements as stipulated in the GPA play a role in the regulation of and protection against such practices:

1. Paragraph 5 of Article XV of the GPA 2012 and paragraph 4(b) of Article XIII of the GPA 1994 permits a procuring entity to **cancel a tender in the public interest**. If a procuring entity finds that suppliers are involved in collusion when submitting a tender and considers that, having given due regard to the relevant circumstances of the case concerned, cancelling the tendering exercise can safeguard the public interest, the procuring entity may consider doing so in the public interest.
2. Paragraph 4 of Article VIII of the GPA 2012 provides that where there is supporting evidence, a contracting party, including its procuring entities, may exclude a supplier from engaging in procurement on grounds of bankruptcy or false declarations. Subparagraph (h) of Article VIII of the GPA 1994 also provides that nothing in the Article shall preclude the exclusion of any suppliers on grounds such as

bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of the GPA. The above provisions may be interpreted as allowing a procuring entity to include terms in tender documents to **exclude collusive suppliers** when there is evidence to substantiate their **bid-rigging practices**.

3. Moreover, paragraph 4(c) of Article IV of the GPA 2012 expressly provides that a procuring entity shall conduct procurement applicable to the GPA in a transparent and impartial manner that **prevents corrupt practices**.

Hong Kong already joined other international agreements on global trade which contain no express provisions against bid-rigging practices involved in government procurement. However, there are provisions to encourage competition and fight against anti-competitive activities in the closer economic partnership agreements/free trade agreements signed by Hong Kong with Chile, the Member States of the European Free Trade Association and New Zealand respectively. Apart from the above, the Competition Commission has been co-operating with other local regulatory bodies and its overseas counterparts to ensure effective law enforcement.

- (c) **Legislations on prevention of bribery against business practices of multinational enterprises outside Hong Kong (such as legislations in the United States or the United Kingdom) (requested by Hon LEUNG Kenneth; time and date of the meeting: at 12:10:11 on 17 June 2017)**

The tendering procedures for the Sports Park project are regulated by the Laws of Hong Kong. It is explicitly provided in section 6 of the Competition Ordinance (Cap. 619) that anti-competitive agreements, concerted practices and decisions of an association of undertakings are prohibited (the First Conduct Rule). The First Conduct Rule is applicable to the conduct that will damage competition in Hong Kong. According to section 8 of the Competition Ordinance, even if the conduct involved took place outside Hong Kong, or any parties involved in the conduct were outside Hong Kong, the First Conduct Rule is still applicable. If the tenderer is an enterprise outside Hong Kong, it should comply with not only the Laws of Hong Kong, but also the relevant legislations of its corporate domicile as appropriate. As for provisions against bid-rigging, section 2(2) of the Competition Ordinance provides a definition to determine whether a certain act is bid-rigging in relation to serious anti-competitive conduct. However, bid-rigging in breach of the First Conduct Rule may not be restricted only to the conduct defined in section 2(2) of the Competition Ordinance. A distinction should be drawn between bid-rigging and legitimate joint tendering (e.g. through joint arrangements by enterprises).

According to online information, examples of legislations on prevention of bribery against offshore business practices of multinational enterprises include the Foreign Corrupt Practices Act in the United States and the Bribery Act 2010 in the United Kingdom. These legislations mainly target at the practices of bribing employees of foreign governments by individuals or companies (the United Kingdom Act also covers the practices of offering bribes to any persons). They were enacted under the request of the Organisation for Economic Co-operation and Development. The relevant legislations in other countries include the Corruption of Foreign Public Officials Act in Canada. In addition, examples of criminal legislations against collusive arrangements include the Sherman Act 1890 in the United States, the Enterprise Act 2002 and the Enterprise and Regulatory Reform Act 2013 in the United Kingdom. These legislations cover collusive arrangements which may include bid-rigging.

- (d) **The calculation basis for setting the bid incentive at \$60 million to be provided to an unsuccessful tenderer and its detailed breakdown (requested by Hon LEUNG Kenneth; time and date of the meeting: at 12:10:11 on 17 June 2017)**

As mentioned in the supplementary information submitted to the PWSC on 16 May 2017, in view of the scale, complexity and uniqueness of the Sports Park project, the consortia participating in the tendering exercise are required to gather a team of professional firms and experts comprising a wide spectrum of expertise ranging from design to construction and operation of large-scale sports and commercial facilities. In the light of the market feedback on the cost of preparing a bid, the expenditure calculated by the Operations Consultant using man-day rates and the cost¹ of pre-construction consultancy studies incurred by the Government, it is estimated that the cost of participating in the tendering exercise for the project is in the region of \$100 million to \$200 million.

A table on the tender cost estimate prepared by the Operations Consultant using man-day rates is detailed at **Appendix II**. The estimate is worked out based on the experience of the Operations Consultant. In preparing

¹ A total of some \$110 million has been incurred by the Government for conducting pre-construction works for the Sports Park project, including the appointment of (a) an Operations Consultant to provide advice on procurement strategies, business plans, financial projections, operational requirements, etc.; (b) a Technical Services Consultant to provide reference designs and technical specifications; (c) a Legal Services Consultant to advise on the drafting of the operations part in the tender documents; (d) a Quantity Surveying Consultant to advise on the costing and compilation of the design and construction part in the tender documents; (e) a Traffic Impact and Environmental Impact Assessment Consultant; and (f) a Planning Consultant to assist in the submissions to the Town Planning Board. It is expected the bidding consortia will have to incur a similar, if not higher, amount in preparing their bids.

the table on cost estimate, the Operations Consultant assumed that the tender period would last for six months and tenderers would draw up their bids by engaging different people (e.g. local, overseas and internal experts, professional consultants, etc.) and using various resources. The actual tender cost incurred by each tenderer may vary, mainly depending on (a) the company and organisational structure of the tenderer; (b) the quality of the bid; (c) the level of details about the design in the bid; (d) the level of engagement of professional consultants in the bid; and (e) the quality of and the fee charged by consultants. Based on the estimate made by the Operations Consultant using man-day rates, a tenderer will be required to put in about \$187 million for preparing a quality bid. We propose to provide each unsuccessful tenderer a bid incentive capped at \$60 million, an amount equivalent to about 32% of the estimated tender cost. In other words, each unsuccessful consortium and its members will still be required to bear the tender cost of about \$127 million.

- (e) **The development of successful examples of overseas major stadia adopting the DBO principle as mentioned in paragraph 5 of the supplementary paper on the project (LC Paper No. PWSC162/16-17(02)) submitted by the Government to the PWSC on 17 May 2017, and the relevant information on consultancy studies commissioned by the Government (*requested by Hon YIU Chung-yim; time and date of the meeting: at 12:37:07 on 17 June 2017*)**

In response to the question raised by Hon YIU Chung-yim at the Finance Committee meeting on 17 June, the Operations Consultant provided supplementary information at **Appendix III**. We would like to emphasise that all examples mentioned in the supplementary information submitted to the PWSC on 16 May have adopted a DBO procurement approach and most of the design and construction costs were borne by governments (through payments made at the pre-construction stage, in phases or upon completion of construction works). Except that no relevant information is available for the example of the York Community Stadium, contractors of other examples are required to bear all the operating expenditure. This is similar to the DBO approach that we are going to adopt for the construction of the Sports Park.

- (f) **Names and hyperlinks of all consultancy reports on the project (*requested by Hon WONG Pik-wan, Helena; time and date of the meeting: at 12:43:20 on 17 June 2017*)**

The Operations Consultant completed the Report on Stakeholder Engagement at the end of 2016 and uploaded it to the Sports Park project website (www.kaitaksportspark.hk) for public information. The Operations Consultant also conducted a study on procurement arrangements, business plans, financial projections and operational

requirements. Findings of the study have been submitted to the Legislative Council, including financial projections made by the Operations Consultant in accordance with business plans, the proposed operational requirements and the monitoring framework as detailed in the supplementary information submitted to the Panel on Home Affairs (LC Paper No. CB(2)1330/16-17(01)) on 4 May 2017. The supplementary information submitted to the Public Works Subcommittee (LC Paper No. PWSC162/16-17(02)) on 16 May also included the detailed comparison of different procurement options for the project made by the Operations Consultant.

In addition, part of the findings of the Operations Consultant's study has been incorporated into the prequalification document as appropriate. The Consultant's study is still on-going and its findings and recommendations will also be incorporated as appropriate into the tender documents being prepared for the Sports Park project. Therefore, we are not able to provide the Consultant's report at this stage. When the Consultant has completed the report, we will upload the relevant information to the Sports Park project website for public information.

The planning application prepared with the assistance of the Planning Consultant and the Environmental Impact Assessment Report prepared by the Traffic Impact and Environmental Impact Assessment Consultant are also available on the Sports Park project website for public information.

- (g) Among the successful examples adopting the DBO principle for development as mentioned in paragraph 5 of the LC Paper No. PWSC162/16-17(02), are there any “capping” provisions in the agreement of the York Community Stadium (*requested by Hon HO Kwan-yiu, Junius; time and date of the meeting: at 12:47:50 on 17 June 2017*)?**

Since the contract is not an open document, we are not able to advise whether there are “capping” provisions in the agreement of the York Community Stadium.

- (ii) a company, to the registered office in Hong Kong of such company, or
 - () by leaving such notice at the Contractor's last known place of business or, in the event of the Contractor being
 - (i) a firm, at the last known place of residence of the owner or any of the partners thereof, or
 - (ii) a company, at the registered office in Hong Kong of such company, or
 - () by posting a copy in a conspicuous position upon the Site.
- (2) Any notice to be given to the Supervising Officer under the provisions of the Contract may be served by post to or leaving such notice at the office of the Supervising Officer.
- (3) Any notice to be given to the Employer, as distinct from the Supervising Officer, under the provisions of the Contract may be served by post or leaving such notice at the appropriate management office of the Employer.
- (4) Notice may be served by facsimile only if the recipient has previously notified the other party and the Supervising Officer in writing that it is prepared to accept service of notices in that manner. It shall in any event be a condition of valid service by facsimile that the hard copy is subsequently sent forthwith to the recipient in accordance with sub-clauses (1), (2) or (3) of this Clause.

DEFAULT OF THE EMPLOYER

88. (1) In the event of the Employer failing to pay to the Contractor any sum certified in accordance with Clause 79 within 28 days after the same shall have become due under the provisions of the Contract the Contractor may give 14 days' notice in writing to the Employer to make payment of the sum due. Such notice shall make express reference to this Clause. In the event of failure by the Employer to make such payment within such 14 day notice period, the Contractor shall be entitled to terminate the Contract.

Default of the Employer

(2) So long as no notice pursuant to Clause 81(1) is given to the Contractor either before or during the 14 days' notice period provided in sub-clause (1) of this Clause, on expiration of that 14 days, the property in all Constructional Plant and temporary buildings brought upon the Site by the Contractor shall thereupon re-vest in him and he shall with all reasonable despatch remove the same from the Site.

(3) Nothing in this Clause shall prejudice the right of the Contractor to exercise, either in lieu of or in addition to the rights and remedies in this Clause specified, any other rights or remedies to which the Contractor may be entitled.

FLUCTUATIONS

89. (1) The sum payable in any interim or final payment certificate certified by the Supervising Officer as being due (other than sums due under this Clause) shall be increased or decreased in accordance with the provisions of this Clause if there shall be any changes in the Index Figures listed in the "Index Numbers of the Costs of Labour and selected Materials used in Public Sector Construction Projects" ^(April 2003 = 100) compiled by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region and applicable to those items included in the "Schedule of Proportions".

Contract price fluctuations

(2) The net total of such increases and decreases shall be given effect to in determining the Final Contract Sum.

(3) For the purpose of this Clause:

- () "Index Figure" shall mean any Index Figure appropriate to sub-clause (1) of this Clause.
- () "Base Index Figure" shall mean the appropriate Index Figure applicable to the date 42 days prior to the date for the return of tenders.
- () "Current Index Figure" shall mean the appropriate Index Figure to be applied in respect of any interim or final payment certificate by the Supervising Officer and shall be the appropriate Index Figure applicable to the date 42 days prior to:—
 - (i) the due date (or, as the case may be, extended or revised date) for completion of the Works, or

- (ii) the date of completion of the Works certified pursuant to Clause 53, or
 - (iii) the last day of the period or milestone to which the payment certificate relates,
- whichever is the earliest.

Provided that in respect of any work the value of which is included in any such certificate and which work forms part of a Section for which the due date (or, as the case may be, extended or revised date) for completion has passed without completion pursuant to Clause 53 being achieved, the Current Index Figure shall be the Index Figure applicable to the date 42 days prior to the due date (or, as the case may be, extended or revised date) for completion of that Section.

() The "Effective Value" in respect of the Works or any Section of the Works shall be the difference between:

- (i) the sum, exclusive of any increases or decreases made in accordance with this Clause, which in the opinion of the Supervising Officer is due to the Contractor under Clause 79, before deducting retention and before deducting previous payments on account, less all sums in respect of items based on actual cost or current prices and Plant and materials for any work under a Variation order that is to be valued on the basis of actual cost or current prices ; and
- (ii) the sum calculated in accordance with (i) above and included in the last preceding interim payment certificate issued by the Supervising Officer.

Provided that in the case of the first certificate the Effective Value shall be the sum calculated in accordance with (i) above.

(4) The increase or decrease in the sums otherwise payable in an interim or final payment certificate pursuant to sub-clause (1) of this Clause shall be calculated by multiplying the Effective Value by a Price Fluctuation Factor which shall be the net sum of the products obtained by multiplying each of the calculated proportions given in column 4 of the "Schedule of Proportions" by a fraction the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which is the relevant Base Index Figure.

Provided that if any appropriate Current Index Figure has not been published at the time of issue of any payment certificate, the increase or decrease in the sum payable in respect of that certificate will be provisionally calculated and added to or deducted from the sum payable in the certificate by the Supervising Officer using the latest published Current Index Figure and shall be corrected in the next Supervising Officer's certificate following the publishing of the relevant Current Index Figure.

(5) The "Schedule of Proportions" shall (irrespective of the actual constituents of the work) be "the Schedule of Proportions" to be used in calculating the Price Fluctuation Factor" submitted with the Tender and with the calculations duly completed.

HEIGHT RESTRICTIONS

Airport height
restrictions

90. The Contractor shall comply with all height restrictions contained in the Hong Kong Airport (Control of Obstructions) Ordinance, Cap. 301 as if the same applied to all Constructional Plant, machinery and other structures used or erected by the Contractor.

Table on tender cost estimate based on man-day rates by the Operation Consultants

General Comments	This tender cost estimate is worked out based on the experience of Operations Consultant.													
	The cost per day is based on market rate. Overhead and on-cost cover expenditures such as office accommodation, allowances, insurance, MPF, etc. and is based on market norm of 40% on top of the cost per day.													
	The fees are blended rate for manpower of each area of expertise, as the services would be provided by persons of varying seniority.													
Resource schedule and fee														
Area of Expertise	Main Stadium	Indoor Sports Centre	Public Sports Ground	Dining Cove	Retail	Landscape	Precinct -wide	Total Team Size	No. of man-day	Cost per day (HK\$)	Overhead & on-cost (HK\$)	Charge per day (HK\$)	Total Cost (HK\$)	Assumptions
Consortium leadership team														
Consortium leader							1	1	120	12,500	5,000	17,500	2,100,000	Assumed to be an in-house executive with experience delivering projects of this nature. It may require international recruitment if these skills are not available in Hong Kong.
Consortium team members	2	2	1	1	1		1	8	120	5,500	2,200	7,700	7,392,000	Assumed to be all in house mid-level staff provided by the lead party or a combination of representatives from consortium parties.
Specialist Consultants														
Façade design specialist							4	4	120	5,000	2,000	7,000	3,360,000	Total cost is worked out based on a blended rate for persons of varying seniority and experience, and the duration of work and types of consultancy services provided by the members of the consortium.
Crowd management consultant							2	2	40	5,000	2,000	7,000	560,000	
Sports & facade lighting specialist							5	5	40	5,000	2,000	7,000	1,400,000	
Fire engineering specialist							1	1	40	5,000	2,000	7,000	280,000	
Catering consultant							1	1	20	5,000	2,000	7,000	140,000	
Security consultant							3	3	60	5,000	2,000	7,000	1,260,000	

Area of Expertise	Main Stadium	Indoor Sports Centre	Public Sports Ground	Dining Cove	Retail	Landscape	Precinct-wide	Total Team Size	No. of man-day	Cost rate per day (HK\$)	Overhead & on-cost (HK\$)	Charge rate per day (HK\$)	Total Cost (HK\$)	Assumptions
Universal accessibility consultant							2	2	20	5,000	2,000	7,000	280,000	Total cost is worked out based on a blended rate for persons of varying seniority and experience, and the duration of work and types of consultancy services provided by the members of the consortium.
Signage and wayfinding consultant							2	2	40	5,000	2,000	7,000	560,000	
Specialists (Information & Communication Technology (ICT), Acoustics etc.)	2	1	1				1	5	100	5,000	2,000	7,000	3,500,000	
Sustainability consultant							2	2	80	5,000	2,000	7,000	1,120,000	
Planning consultant							2	2	60	5,000	2,000	7,000	840,000	
Turf specialist							2	2	120	6,250	2,500	8,750	2,100,000	
Furniture and Equipment (F&E) specialist							1	1	60	5,500	2,200	7,700	462,000	
Architecture team														
Architect	3	3	3	2	3	4	3	21	120	5,000	2,000	7,000	17,640,000	Services provided by relevant local and international architectural firms - this could be provided by a consortium member or as an independent service. Fee is worked out based on a blended rate for persons of varying seniority and experience.
Sports venue architect	5	2	2					9	120	5,000	2,000	7,000	7,560,000	
Technical support staff							10	10	120	3,500	1,400	4,900	5,880,000	
Engineering team														
Structural, civil and geotechnical engineer	5	3	3	2	1		3	17	120	5,000	2,000	7,000	14,280,000	Fee for consultant engineer services is based on a blended rate.
Retractable roof engineer	3							3	80	5,000	2,000	7,000	1,680,000	

Area of Expertise	Main Stadium	Indoor Sports Centre	Public Sports Ground	Dining Cove	Retail	Landscape	Precinct -wide	Total Team Size	No. of man-day	Cost rate per day (HK\$)	Overhead & on-cost (HK\$)	Charge rate per day (HK\$)	Total Cost (HK\$)	Assumptions
Engineers for studies/ researches on environment/traffic/noise etc.							2	2	60	5,000	2,000	7,000	840,000	Fee for consultant engineer services is based on a blended rate.
Mechanical electrical plumbing engineer	5	5	2	1	1		3	17	120	5,000	2,000	7,000	14,280,000	
Technical support staff							10	10	120	3,500	1,400	4,900	5,880,000	Supporting staff to the specialists mentioned above.
Operations team														
Facilities management team	1				1		2	4	80	6,500	2,600	9,100	2,912,000	Services provided by relevant local and international firms - this could be provided by a consortium member or as an independent service. Fee is worked out based on a blended rate for persons of varying seniority and experience.
Sports operations consultant (international)	1						2	3	120	6,500	2,600	9,100	3,276,000	
Sports operations consultant (local)		1	1					2	80	3,500	1,400	4,900	784,000	
Retail operations consultant (including carpark and F&B)				1	3			4	80	6,500	2,600	9,100	2,912,000	
Sports marketing agency - content, events, ticketing and sponsorship	2	1					2	5	80	6,500	2,600	9,100	3,640,000	Fee for the advisory service is based on a blended rate for persons of varying seniority and experience.
Construction team														
Construction director							1	1	120	9,000	3,600	12,600	1,512,000	Services provided by the contracting party within the consortium. Fee is worked out based on a blended rate for persons of varying seniority and experience.
Senior construction manager	1	1	1	1	1	1		6	120	8,000	3,200	11,200	8,064,000	
Construction planning engineer							2	2	120	5,500	2,200	7,700	1,848,000	
Site E&M coordination senior engineers/engineer	2	1	1				2	6	120	5,500	2,200	7,700	5,544,000	
Site Civil coordination senior engineers/engineer	2	1	1				2	6	120	5,500	2,200	7,700	5,544,000	

Area of Expertise	Main Stadium	Indoor Sports Centre	Public Sports Ground	Dining Cove	Retail	Landscape	Precinct-wide	Total Team Size	No. of man-day	Cost rate per day (HK\$)	Overhead & on-cost (HK\$)	Charge rate per day (HK\$)	Total Cost (HK\$)	Assumptions
Quality assurance personnel							2	2	120	5,500	2,200	7,700	1,848,000	Services provided by the contracting party within the consortium. Fee is worked out based on a blended rate for persons of varying seniority and experience.
Site safety and environment officer	2						2	4	120	5,000	2,000	7,000	3,360,000	
Project coordinating officer	2						1	3	120	4,500	1,800	6,300	2,268,000	
Technical and site activities staff	2	1	1				2	6	120	4,500	1,800	6,300	4,536,000	
Tendering and procurement manager	2	1	1				2	6	120	4,500	1,800	6,300	4,536,000	
Other services														
Legal (external advisors) - for sports event, commercial, sub-contracting and tenancy								5	60	12,600	5,040	17,640	5,292,000	Services provided by external legal advisors. Fee is worked out based on a blended rate for persons of varying seniority and experience.
Quantity surveyor	3	3	2	1			2	11	120	5,500	2,200	7,700	10,164,000	Services provided by an external firm. Fee is worked out based on a blended rate for persons of varying seniority and experience.
Financial advisory team								5	60	12,600	5,040	17,640	5,292,000	Services provided by an accountancy firm. Fee is worked out based on a blended rate for persons of varying seniority and experience.
Internal risk management - for design, construction and operation issues													1,000,000	Multiple organisations within a consortium will require risk and legal review. This is an assumed cumulative charge for all parties of a bidding consortium.

Area of Expertise	Main Stadium	Indoor Sports Centre	Public Sports Ground	Dining Cove	Retail	Landscape	Precinct-wide	Total Team Size	No. of man-day	Cost rate per day (HK\$)	Overhead & on-cost (HK\$)	Charge rate per day (HK\$)	Total Cost (HK\$)	Assumptions	
Legal (internal) - for procurement risk and contractual issues													1,000,000	Multiple organisations within a consortium will require risk and legal review. This is an assumed cumulative charge for all parties of a bidding consortium.	
Systematic risk management & construction design management							2	2	40	5,000	2,000	7,000	560,000	Services provided by an external firm. Fee is worked out based on a blended rate for persons of varying seniority and experience.	
Building Information Modelling (BIM) - Leader							2	2	120	5,000	2,000	7,000	1,680,000		
BIM technical support team							4	4	120	3,500	1,400	4,900	2,352,000	Supporting staff to the specialists mentioned above.	
Independent Checking Engineer (ICE)/Authorised Person (AP)							4	4	60	5,000	2,000	7,000	1,680,000	Services provided by an external firm. Fee is worked out based on a blended rate for persons of varying seniority and experience.	
Other expenses															
Disbursements and travelling expenses													7,000,000	Expenditures are worked out based on the fees for multiple visits to Hong Kong (flights, hotels, sustenance), relocations of staff to Hong Kong etc.	
Miscellaneous costs (i.e. administrative, production, printing etc.)													5,000,000	Fee for the office space for relocated staff, administration costs, printing of documents, information technology etc.	
													Total	186,998,000	

Successful examples of overseas major stadia adopting DBO principles for development and the relevant information provided under the study commissioned by the Government

Background

- At the Public Works Subcommittee meeting on 10 May 2017, members requested information be provided in relation to examples of sports projects in the international markets that had followed the Design-Build-Operate (DBO) procurement model. The Government provided four examples in the supplementary information given on 16 May for Members' reference.
- At the Finance Committee meeting on 17 June 2017, Hon YIU Chung-yim raised the following questions on three of the examples:
 1. The procurement model for Moncton Arena¹ project in Moncton of the Canada was in fact "Design, Build, Short-term Finance and Operate" instead of DBO.
 2. The contracted parties of Rogers Place² project in Alberta of the Canada and Sun Trust Park³ project in Atlanta of the United States also contributed a portion of the construction costs.
 3. A member of the contracted party of York Community Stadium⁴ in York of England exited the contracted party during the course of project, resulting in an "uncompleted" project.

Our response to Hon YIU's questions is set out below:

Model comparison

In commenting on the comparability of the examples provided, it is necessary to provide detailed explanations on two aspects: (i) the procurement model; and (ii) the funding model.

Procurement model

- The key feature of the DBO procurement model is that it involves a contract between a government and **one single contracted party**, in which the contracted party is granted the rights to **design, build and operate** a project for a defined period.
- As elaborated on further below, DBO projects are not defined by their funding structure, as DBO projects can be funded in a variety of ways.
- Moncton Arena, Rogers Place, Sun Trust Park and York Community Stadium are all developed through DBO procurement model, that is, the Government commissioned **one single contracted party to design, construct and operate the project**.

¹ Global News, "Moncton Votes to build Downtown Event Centre", <http://globalnews.ca/news/2163183/moncton-votes-to-build-downtown-event-centre>, accessed on 20 June 2017

² City of Edmonton, "Roger's Place – The Agreement", https://www.edmonton.ca/projects_plans/rogers_place/the-agreement.aspx, accessed on 20 June 2017

³ Liberty Braves Group, "Investor Day Presentation – April 2016", [http://files.shareholder.com/downloads/ABEA-4CW8ZW/0x0x887114/F4E1E31C-97E1-41BA-8F3E-3083F8E04A05/Liberty Braves Investor Day 2016 Webcast.pdf](http://files.shareholder.com/downloads/ABEA-4CW8ZW/0x0x887114/F4E1E31C-97E1-41BA-8F3E-3083F8E04A05/Liberty%20Braves%20Investor%20Day%202016%20Webcast.pdf), accessed on 20 June 2017

⁴ York City Football Club, "Club to operate new stadium" <http://www.yorkcityfootballclub.co.uk/news/article/club-to-operate-new-stadium-1884308.aspx>, accessed on 20 June 2017

Funding model

- Although the procurement model and funding model for a project are closely related, these concepts can be considered separately. Therefore, as a procurement model, the definition for DBO does not depend on the underlying funding structure.
- Indeed, the funding model for DBO contracts can vary slightly, depending on the fiscal policy and landscape of the local government and other policy considerations. Some DBO projects are fully publically funded and some involve a volume of private sector funding. Because of the range of funding models that can be adopted for DBO projects, the definition for DBO does not depend on the underlying funding structure.
- The funding model and financial arrangement for the three DBO examples quoted by the government consultant are set out below for comparison:

The funding model and financial arrangement adopted in the example	Comparison with Kai Tak Sports Park (the Sports Park)
<p>Moncton Arena⁵</p> <ul style="list-style-type: none"> • The local government reimburses the contracted party for the costs of design and construction through a lump-sum payment at the completion of construction. Therefore, the contracted party needs to source short term financing to meet payments to suppliers and sub-contractors during the design and construction period. • The contracted party is responsible for funding all operating costs. • During operations, the contracted party is to provide the government the higher of a minimum annual fixed payment or a percentage of net operational income. 	<ul style="list-style-type: none"> • The Moncton Arena example involves the government paying the design and construction costs in full, as is the case for the Sports Park. • The only difference is that under the Sports Park project, the contracted party will receive payments in phases during the course of construction, rather than a lump-sum payment at the end of construction. This payment arrangement reflects the established practice for the public works projects in Hong Kong.
<p>Rogers Place⁶</p> <ul style="list-style-type: none"> • The local government funds C\$464 million (m) of upfront costs (including land, capital expenditure, connecting and civil infrastructure) and has also elected to raise debt to fund a portion of this, rather than fully funding from the government budget. • In this example, the contracted party will fund approximately C\$20 m of the remaining upfront costs of design and construction, and the government still bears most of the design and construction cost (about 96%). • The contracted party is responsible for funding all operating costs. • The government will receive fixed payments totalling approximately C\$113 m over 35 years from the contracted party, and a ticket surcharge income stream. Other than the above income streams, government will not receive other financial return. 	<ul style="list-style-type: none"> • The Hong Kong government will fund the design and construction costs for the Sports Park, with the contracted party providing upfront funding for some equipment and as the start-up costs for operating the Sports Park, which is estimated to be in the range of HK\$300m to 400m in total. • It is common in the Rogers Place and the Sports Park projects that the vast majority of funding for the upfront capital costs of each project rests with Government.
<p>Sun Trust Park⁷</p> <ul style="list-style-type: none"> • The local government funded most of the upfront design and construction costs of the Stadium (US\$ 392m⁸), and also elected to raise debt to fund the capital expenditure of the project. • The contracted party made a payment of US\$230m towards the project, to secure the usage of the venue in the 30 years' operating period as the home venue for the baseball team, the Atlanta Braves. The contracted 	<ul style="list-style-type: none"> • Although the funding models for Sun Trust Park and the Sports Park vary (as in the former case, the contracted party has contributed part of the construction cost due to some commercial considerations), the underlying delivery of the each project remains the same – each is structured as a DBO contract to be delivered by a contracted party and the contracted party bears all the operating costs.

⁵ City of Moncton, Request for Proposal #RFP14-005",

http://www.moncton.ca/Assets/Business+English/Downtown+Centre_ENG/RFP.pdf, accessed on 20 June 2017

⁶ City of Edmonton, "Roger's Place – The Agreement", https://www.edmonton.ca/projects_plans/rogers_place/the-agreement.aspx, accessed on 20 June 2017

⁷ Liberty Braves Group, "Investor Day Presentation – April 2016", [http://files.shareholder.com/downloads/ABEA-4CW8ZW/Ox0x887114/F4E1E31C-97E1-41BA-8F3E-3083F8E04A05/Liberty Braves Investor Day 2016 Webcast.pdf](http://files.shareholder.com/downloads/ABEA-4CW8ZW/Ox0x887114/F4E1E31C-97E1-41BA-8F3E-3083F8E04A05/Liberty%20Braves%20Investor%20Day%202016%20Webcast.pdf), accessed on 20 June 2017

⁸ Atlanta Journal-Constitution, "Cobb Commissioners approve Braves stadium deal", <http://www.ajc.com/news/cobb-commissioners-approve-braves-stadium-deal/R8wHdIF19OGvj4dYW27sAM/> accessed on 20 June 2017

The funding model and financial arrangement adopted in the example	Comparison with Kai Tak Sports Park (the Sports Park)
<p>party agreed to bear part of the construction cost because its members included the baseball team who would be the end-user of the venue with ticket income as its major income source. Moreover, the contracted party was also granted the right to develop an adjacent commercial precinct (Battery Atlanta), thereby providing an additional incentive to share the construction cost. Government receives a fixed annual payment of US\$ 6.1m from the contracted party.</p> <ul style="list-style-type: none"> • The contracted party is responsible for funding all operating costs. 	

Risks of contracted party member exit

- In all construction projects there is a risk of contracted party members exiting (including construction partner) which may be due to project delays, financial difficulties of the member concerned and other reasons unrelated to the projects.
- In the York Community Stadium example, it was noted that during the construction period, the construction partner ISG⁹ withdrew from the contracted party mainly due to the project delay caused by a judicial review. A local competing cinema operator filed the judicial review to object the local government's decision to approve plans for a larger cinema alongside the Stadium than was originally proposed. Therefore, the construction partner's decision to withdraw from the project was not due to the DBO procurement model, but due to external factors outside the control of the contracted party and its construction partner.
- It should be noted that from the government's perspective, the DBO model can better deal with the situation where a member of the contracted party exits as it transfers the responsibility of delivering the facilities to the contracted party. As such, if the construction partner were to exit the contracted party of the Sports Park project, it would be the responsibility of the contracted party to find a suitable replacement, not Government. Indeed, in the York Community Stadium example, the responsibility for replacing the construction partner rested with the contracted party lead GLL, not the Government. The judicial review concerned ended in January 2017, with the local government winning the case. GLL has been finding the replacement of its construction partner, and expect to complete the construction works of the Stadium in 2018.

Conclusion

- Adopting DBO procurement model does not necessarily mean that the government funds the capital expenditure in full. Indeed, the contracted party of the Sports Park needs to provide upfront funding for some equipment and as the start-up costs for operating the Sports Park, which is estimated to be in the range of HK\$300m to 400m in total.
- The major feature of the examples provided is that each project is delivered by a single private sector group responsible for designing, building and operating the project in a total package solution. On the premise that the DBO procurement model is adopted for the projects, the funding and payment arrangements can vary slightly, which could depend on the fiscal policy and landscape of the local government and other policy considerations.

⁹ York Press, "ISG pulls out of York Community Stadium project – GLL seeking replacement", http://www.yorkpress.co.uk/news/14946494.Main_construction_partner_pulls_out_of_York_Community_Stadium_project/?ref=mac, accessed on 20 June 2017