



West Kowloon Cultural Development

Public Private Partnership

1. HKIS supports in principle the idea of engaging the private sector in financing, planning, building, operating and maintaining the Development. By inviting submissions from private-sector proponents, Government will benefit from innovations and expertise which may not be readily available from Government organizations.
2. However, this must be considered against the background of the not-so-successful projects involving the private-sector where there was widespread perception - we underscore the word perception - that favouritism was given to developers during tender negotiation (the Cyberport) and at project implementation stage (the Ma Wan Park). A robust business plan is therefore absolutely essential. It must be carefully drawn up and explained to the industry and the general public.

The Project

3. The Development being planned is a mega scale project occupying 40 ha. of land. The following facilities are to be provided:
 - a theatre complex with three theatres of a total seating capacity of 3,200
 - an enclosed performance venue seating at least 10,000 people
 - a museum cluster with four museums of 75,000 square metres
 - an art exhibition centre of 10,000 square metres
 - a water amphitheatre for water and light shows
 - at least 4 piazza areas
 - an automated people mover
 - a fire station complex
 - a pier
 - commercial, residential and hotel blocks
 - a canopy covering the great majority of the arts and cultural facilities.
4. The proponent will structure a development plan which maximizes its return through a proper mix of the arts and cultural facilities with the commercial, residential and hotel provisions. For the Development as a whole to be financially viable, it is expected that a good portion of the revenue will be through sales and rental of commercial and residential properties.

Procurement Options

5. There are many options, and combinations of options, in procurement of facilities. A decision on the most suitable option is made relative to Government's attitudes towards commitment, risk and control. The key considerations are summarized in the following tables.

Option A Government (similar to New Town Development)

Option B Authority (similar to MTR)

Option C Private Agents, implementation by packages

Option D Single Private Agent

Option E Single Private Agent, implementation in phases

From Government's perspective, the pros and cons of the various options are summarized below:

Option	Initial Financing	Planning/ Design	Land and Legal	Implementation	Change in Market	Change in Demand for Facilities
A (Govt)	High Commitment	High Control	Low Risk	High Control; Low Risk	High Risk	Low Risk
B (Authority)	Medium Commitment	Medium Control	Low Risk	High Control; Low Risk	High Risk	Low Risk
C (Private, Multiple Packages)	Low Commitment	Low Control	High Risk	Low Control; Medium Risk	Medium Risk	Medium Risk
D (Private, Single Package)	Low Commitment	Low Control	Medium Risk	Low Control; High Risk	Low Risk	High Risk
E (Private, Single Package, in Phases)	Low Commitment	Low Control	Medium Risk	Low Control; Medium Risk	Low Risk	Medium Risk

The Good Practice

6. Nothing comes free. That Government appears to benefit from transferring risks to the project proponent does not change the simple fact that taxpayers will eventually pick up the bill. The procurement strategies must therefore be so devised to ensure the following:

- Government's baseline on project deliverables is clearly defined and communicated to the proponents.
- A systematic approach is adopted to ascertain Government's

affordability.

- The proponents' submissions are structured to permit evaluation against clear and distinct criteria, including whole-life costing.
- Risks should be borne by the party that is best able to manage them. They should be distributed between Government and the proponents so as to maximize value-for-money to the public.
- Government will not be held hostage to any post-contract changes, be they initiated by Government or the project proponent.

The Challenge

7. For a project as big and as complicated as the West Kowloon Cultural Development, the greatest challenge we face is the need on the one hand to establish Government's baselines for the purpose of inviting proposals and permitting evaluation of these proposals on an equal footing, and on the other hand to allow flexibility to encourage innovation and to cope with the changes that are bound to arise over the long lifespan of the project. The success of the Development depends on how these two fundamental but somewhat contradicting criteria are properly balanced.

Project Programme and Financial Arrangement

8. Key dates governing delivery of the core arts and cultural facilities are stipulated in the Invitation for Proposals. These facilities are expected to be operational from 2010 to 2012, i.e. within 4 to 6 years after commencement of the project in 2006. While it is acknowledged that by asking the proponent to deliver these core facilities upfront, Government will have a better control over the quality of the whole Development, we are concerned that the initial capital outlay will be very substantial. The investment risks will be so high that the Development may not be attractive to a proponent unless a high profit margin is allowed. We would propose the adoption of a more flexible approach of allowing "progressive financing" of those less profitable facilities by the more profitable facilities, thereby minimizing the risk exposure of the project proponent.

Land Matters

9. The proposed procedural land grant, i.e. Basic Terms Offer, followed by a Short Term Tenancy and then followed by a Land Grant conditions, is undesirable. Too much risk seems to be placed on the proponent who will commit a huge investment based on very loose terms. In the case of a dispute, Government will not be in a strong bargaining position, in view of the money and effort already committed, the long time for resolving the dispute, and the undesirable consequences of canceling the project agreement. For the same reason, the Building Covenant Clause seems superfluous.
10. For allocation of undivided shares for the core cultural and arts facilities,

common areas, GIC, etc. the ownership right is unsatisfactory. It is distinct if different land uses are subdivided into lot sections. Allocation of maintenance responsibility will be complex because of the different standards and services involved.

The Single Package Arrangement

11. Government holds the view that the single package is the best approach to an "integrated development". Balanced against this, as we have mentioned above, are the perception of favouritism to a large developer; the need for proper allocation of risks; the need to cope with the changes that are bound to arise over the project lifespan; and the likelihood of Government being held hostage to post-contract changes. From both contractual and technical points of view, we consider that the Development can be, and should be, broken down into a series of packages without necessarily compromising its integrated design and operation.
12. Government appears to be committing too much, too early through the single package arrangement. What will happen if several years into the project agreement there is a genuine need for Government to revise or re-appropriate the facilities, as a result of changes in the sociological, economical, or demographical environment?

HKIS Professional Expertise

13. We welcome the opportunity to comment on the procurement strategies for such a landmark project which will have a huge impact on the future of the HKSAR. Although our comments are focused around broad principles, we firmly believe that they are the fundamentals governing the success or otherwise of the Development. As the project is only in its inception phase, we believe all our comments, if acceptable to Government, can be easily incorporated into the subsequent phases of procurement.
14. HKIS are always at Government's disposal to provide professional advice, as well as to tap local and international talent / expertise on a wide range of subjects, such as risk management, affordability benchmarking, financial appraisal, output specification, tender assessment, due diligence audit, facilities management, life-cycle costing, etc.

The Hong Kong Institute of Surveyors
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