



Auditor-General for Australia
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12 July 2021

Mr John Alexander OAM MP
Chair
Standing Committee on Infrastructure, Transport and Cities

By Email: ITC.reps@aph.gov.au

Dear Mr Alexander

Inquiry into procurement practices for government-funded infrastructure

The Australian National Audit Office (ANAO) published the following performance audit reports that you may find relevant to the Infrastructure, Transport and Cities inquiry into procurement practices for government-funded infrastructure.

- Auditor-General Report No. 9 of 2020–21, [*Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport*](#)
- Auditor-General Report No. 34 of 2019–20, [*Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements*](#)
- Auditor-General Report No. 16 of 2019–20, [*Western Sydney Airport Procurement Activities*](#)
- Auditor-General Report No. 15 of 2019–20, [*National Broadband Network Fixed Line Migration — Service Continuity and Complaints Management*](#)
- Auditor-General Report No. 4 of 2019–20, [*OneSKY: Contractual Arrangements*](#)
- Auditor-General Report No. 23 of 2017–18, [*Delivery of the Moorebank Intermodal Terminal*](#)
- Auditor-General Report No. 9 of 2017–18, [*Management of the Pre-construction Phase of the Inland Rail Programme*](#)

Information about what the audits assessed, concluded and recommended is attached. The audit reports are available online at www.anao.gov.au.

Should the Committee require further information in relation to this matter, my office would be pleased to provide you with a briefing at a time convenient to you or appear as a witness at a hearing.

To arrange a briefing, please contact our External Relations area at external.relations@anao.gov.au.

Yours sincerely

Grant Hehir

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Auditor-General Report No. 9 of 2020–21, *Purchase of the ‘Leppington Triangle’ Land for the Future Development of Western Sydney Airport*, examined whether the Department of Infrastructure exercised appropriate due diligence in its acquisition of the Leppington Triangle land for the future development of the Western Sydney Airport.

To form a conclusion against this objective, the following high-level criteria were applied:

- Was an appropriate acquisition strategy developed?
- Was an appropriate approach taken to valuing the land?
- Were decision-makers appropriately advised?

The audit concluded that:

The Department of Infrastructure did not exercise appropriate due diligence in its acquisition of the Leppington Triangle land for the future development of the Western Sydney Airport. In the course of this audit it became clear that aspects of the operations of the department, both during and after the acquisition, fell short of ethical standards.

An appropriate acquisition strategy was not developed. While a strategy was documented and approved:

- it was focussed on incentivising an unwilling seller to dispose of their land some 32 years in advance of when it was anticipated to be needed for the airport expansion, an approach at odds with the department asserting that early purchase allowed it to capitalise on ‘goodwill’ from the landowner;
- the underlying analysis overstated the identified benefits, did not quantify costs and did not address risks; and
- the acquisition approach eventually employed departed from the approved strategy.

The approach taken by the Department of Infrastructure to valuing the Leppington Triangle was not appropriate. The approach inflated the value of the land, which in turn led to the Australian Government paying more than was proper in the circumstances.

Decision-makers were not appropriately advised on the land acquisition. Formal briefings omitted relevant information, such as: the purchase price; that the price exceeded all known market valuations of the land; and the method of acquisition. Advice from the department on value for money was inadequate and unreliable. Decision-maker approval was not evident for some of the actions taken. A subsequent departmental review of the acquisition process lacked rigour and did not provide a reasonable basis for concluding that the transaction was settled for an appropriate value.

The incomplete advice provided to decision-makers, and the inadequate response by the department when questions were raised by the ANAO, was inconsistent with effective and ethical stewardship of public resources.

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The report included three recommendations.

Recommendation No. 1

The Department of Infrastructure, Transport, Regional Development and Communications prepare comprehensive and balanced written analysis on the benefits, costs and risks of proposals to spend public money.

Department of Infrastructure, Transport, Regional Development and Communications response:
Agreed.

Recommendation No. 2

The Department of Infrastructure, Transport, Regional Development and Communications put in place meeting and communication protocols for when staff engage directly with individual landowners, developers or similar parties with heightened probity risks. The protocols should: include guidelines regarding suitable venues; require the presence of at least two departmental representatives; and require properly recorded minutes of meetings and conversations.

Department of Infrastructure, Transport, Regional Development and Communications response:
Agreed.

Recommendation No. 3

The Department of Infrastructure, Transport, Regional Development and Communications develop policies and procedures to govern its approach to obtaining purchase valuations.

Department of Infrastructure, Transport, Regional Development and Communications response:
Agreed.

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Auditor-General Report No.34 of 2019–20, *Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements*, assessed the effectiveness of the administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements in achieving policy objectives. To form a conclusion against the audit objective, the ANAO adopted the following high level audit criteria:

- Are participation target requirements for intergovernmental agreements being coordinated effectively?
- Are participation targets being effectively implemented in intergovernmental agreements?

The audit concluded that:

The administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements has been partially effective in achieving policy objectives. Entities are increasingly using Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements. While administration of participation targets is improving, entities need to improve reporting and assurance arrangements to be effective.

The Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure) and the National Indigenous Australians Agency (NIAA's) coordination of participation target requirements for intergovernmental agreements has become largely effective. Infrastructure, in consultation with NIAA and the Department of Education, Skills and Employment, established an appropriate Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA. This can be used as a model for other agreements that do not have appropriate frameworks, such as City and Regional Deals. NIAA has not implemented the Council of Australian Governments' commitment to report annually on the outcomes of jurisdictional procurement policies.

Infrastructure's and NIAA's implementation of participation targets in intergovernmental agreements is partially effective. Appropriate participation targets are being negotiated for agreements and there are early indications that entities are collaborating on supply-side strategies to support the achievement of targets. The 2019 Land Transport Infrastructure Projects NPA and Northern Territory Remote Housing NPA require more transparent reporting of outcomes. Further work is needed to establish public reporting mechanisms and appropriate risk-based assurance arrangements for agreements.

The report included three recommendations.

Recommendation No. 1

Department of Infrastructure, Transport, Regional Development and Communications finalise a framework, in consultation with the National Indigenous Australians Agency and other relevant entities, to support the implementation of Aboriginal and Torres Strait Islander participation targets in City and Regional Deals.

Department of Infrastructure, Transport, Regional Development and Communications response: Agreed.

National Indigenous Australians Agency response: Agreed.

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Recommendation No. 2

National Indigenous Australians Agency implement the Council of Australian Governments' commitment to publish jurisdiction-specific procurement policies and Aboriginal and Torres Strait Islander employment and business outcomes annually.

National Indigenous Australians Agency response: Agreed.

Recommendation No. 3

Department of Infrastructure, Transport, Regional Development and Communications and National Indigenous Australians Agency ensure appropriate risk-based assurance arrangements are in place for intergovernmental agreements with Aboriginal and Torres Strait Islander participation target requirements.

Department of Infrastructure, Transport, Regional Development and Communications response: Agreed.

National Indigenous Australians Agency response: Agreed.

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Auditor-General Report No.16 of 2019–20, *Western Sydney Airport Procurement Activities* examined whether WSA Co's procurement framework and procurement activities are achieving value for money. To form a conclusion against this objective, the following high-level criteria were applied:

- Was an appropriate procurement framework developed in a timely manner?
- Were the procurement activities open and competitive?
- Were value for money outcomes demonstrably obtained?

The audit concluded that:

WSA Co's procurement framework and procurement activities are largely achieving value for money.

WSA Co now has in place an appropriate procurement framework. The company was slow to develop a procurement framework, with significant procurement activity undertaken before a framework was in place. The company now has procedures and systems that support compliance with its procurement framework, having identified and addressed some early poor practices.

WSA Co's procurement activities have mostly been competitive and, particularly for the higher value procurements, conducted through open approaches to the market. In the early procurements, non-competitive processes were often used to engage and re-engage advisory firms due, to some extent, to the deadlines imposed on WSA Co during its establishment phase. Public disclosure of procurement outcomes has been limited.

Value for money outcomes were, in large part, demonstrated. Key to this was the adoption of selection processes that considered financial and non-financial costs and benefits, and WSA Co choosing candidates that had been assessed as best meeting the relevant evaluation criteria. Where value for money outcomes had not been demonstrated, for the highest value contract this was primarily the result of insufficient analysis being presented and for the remainder this was the result of poor record keeping practices.

The report included two recommendations.

Recommendation No. 1

To assist Government Business Enterprises obtain value for money from their procurement activities, the Department of Finance take steps to better enable those Enterprises to take advantage of coordinated and cooperative procurements, such as panel arrangements.

Department of Finance response: Agreed.

Recommendation No. 2

The Department of Finance require Government Business Enterprises to use the AusTender website to publicise procurement activities and report on procurement results.

Department of Finance response: Noted.

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Auditor-General Report No. 15 of 2019–20, *National Broadband Network Fixed Line Migration — Service Continuity and Complaints Management* assessed the effectiveness of NBN Co's service continuity operations relating to the migration of telecommunication services to the NBN. To form a conclusion against the audit objective, the Australian National Audit Office (ANAO) adopted the following high-level criteria:

- Has NBN Co implemented effective strategies to inform and educate telecommunication end-users about the connection process?
- Does NBN Co have effective processes to manage the risks to service continuity between an end user lodging a request to migrate to the NBN, and the end user having a fully operational telecommunication service?
- Does NBN Co effectively manage end user connection-related complaints and drive improvement?

The audit examined NBN Co's operations from 16 March 2018 until 28 March 2019 in order to assess its effectiveness against contemporary industry settings.

The audit concluded that:

NBN Co's operations to support service continuity in the migration of telecommunication services to the NBN are largely effective.

NBN Co's strategies to inform and educate end users about the connection process are effective. Communication structures, channels and products have been developed with the aim of maximising end user understanding and awareness of the migration process, and these products satisfy the requirements for public information contained in the Public Information on Migration Deed. Substantial qualitative and quantitative data is collected, analysed and reported to key stakeholders on a regular, ongoing basis to monitor and evaluate the effectiveness of communication activities.

NBN Co has established largely effective processes to manage service continuity between an end user lodging a request to migrate to the NBN, and the end user having a fully operational service. Structures and controls have been implemented to manage common service disruption issues during the connection and activation process, and frameworks have been established for ongoing operational engagement with retail service providers (RSPs). Clear processes have been established for the diagnosis, reporting, investigation and repair of faults, with ongoing work to increase the timeliness of fault resolution. NBN Co's risk framework is partly effective in supporting the management of service continuity risks at the operational level.

NBN Co is partly effective in managing end user connection-related complaints. Effective internal policies, guidance and quality assurance processes have been established for the receipt and management of complaints by NBN Co, however, public guidance established to assist end users in the lodgement of complaints requires updating for completeness and to ensure appropriate accessibility. Connection-related complaints are not being resolved in line with NBN Co's timeliness targets, and NBN Co has not established processes to conduct ongoing or systemic analysis of complaint causes to drive continuous improvement.

The report included three recommendations.

Recommendation No. 1

NBN Co formally reflect all risks, controls and ongoing monitoring processes for risks associated with the management of service continuity during migration of an end user's premises within the NBN Co centralised risk register.

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NBN Co response: Agreed.

Recommendation No. 2

NBN Co revise its Complaint Management Policy to align with the Telecommunications (Consumer Complaints Handling) Industry Standard 2018, and ensure that the policy document and associated processes are approved and appropriately accessible on the NBN Co homepage.

NBN Co response: Agreed.

Recommendation No. 3

NBN Co establishes a regular and ongoing process to use its complaint data to undertake root cause analysis of connection-related complaints, to inform continuous improvement internally and with complaints management stakeholders.

NBN Co response: Agreed.

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Auditor-General Report No. 4 of 2019–20, *OneSKY: Contractual Arrangements* assessed whether the contract for the acquisition of the Civil Military Air Traffic Management System demonstrably represents value for money. To form a conclusion against the audit objective, the ANAO adopted the following high-level criteria:

- Were required timeframes achieved for the replacement of existing systems?
- Is there adequate assurance that the price being paid is consistent with a value for money outcome for the capability being acquired?

The audit concluded that:

Important changes were made, after the successful tenderer was selected, to the timeframe for delivery, scope of work, type of contract and price. An appropriate governance framework was established to evaluate whether negotiations had resulted in contract terms that represent value for money. Shortcomings in the application of that framework mean that value for money has not been adequately demonstrated.

If the current contracted timeframes are achieved, there will be a more than ten year delay (from 2015 to 2026) in the replacement of the existing separate civil and military systems compared with the timeframe envisaged at the start of the procurement process. The capability baseline for the new combined system was established in advance of issuing the Request for Tender through appropriate engagement with industry. Delays with tender evaluation activities were exacerbated by even longer delays in the negotiation phase. Negotiations took so long that the offer submitted by the successful tenderer expired and the lives of the existing separate systems needed to be further extended. Negotiations also resulted in a late change in the contracting model from the one that had been presented to the market in June 2013.

There is inadequate assurance that the acquisition price is consistent with a value for money outcome:

- For the June 2016 offer, a comprehensive evaluation report was produced that included a clear conclusion that value for money had not been achieved. This was principally due to concerns about the \$1.449 billion estimated acquisition cost.
- Through further negotiations, changes were made to delivery timeframes, the scope of work and the contract model, leading to a September 2017 final offer (with an estimated target price of \$1.23 billion with the ceiling price to be 10 per cent higher) followed by further negotiation on scope, price and commercial terms. An evaluation report addressing each criterion, the expected total cost of ownership and whether the negotiated outcome represented value for money, was not prepared by the CMATS Review Board (CRB) and provided to the Airservices Board to inform the decision to sign the acquisition contract. Rather, the Board was provided with a report prepared by the Lead Negotiator, who was not authorised to and did not undertake a full evaluation of the offer. The records of the relevant Board meeting do not identify or discuss the provision of the February 2018 Lead Negotiator's Report, and do not outline the value for money considerations of the Board.

Price risk is dealt with in the terms of the acquisition contract.

No recommendations were made by the ANAO.

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Auditor-General Report No. 23 of 2017–18, *Delivery of the Moorebank Intermodal Terminal* assessed whether the contractual arrangements that have been put in place for the delivery of the Moorebank Intermodal Terminal (MIT) will provide value for money and achieve the Australian Government's policy objectives for the project. To form a conclusion against this objective, the following high-level criteria were adopted:

- Do the terms of the transaction represent value for money, including appropriate management of demand risk?
- Is non-discriminatory open access available within all aspects of the intermodal precinct?
- Does the project's governance framework support achievement of the Australian Government's policy objectives, including the planned future privatisation process?

The audit concluded that:

Value for money progressively eroded during the negotiation of the contractual arrangements. The contractual arrangements support the achievement of all or part of each of the policy objectives for the project.

The procurement process has resulted in contractual arrangements being negotiated for the private sector to develop and operate an IMEX terminal, interstate terminal, and associated warehousing. Negotiating directly with one respondent, rather than the original plan of maintaining competition during the second stage of the procurement process, gave rise to a number of risks. Those risks were recognised and mitigation strategies identified but those strategies were not implemented. This situation makes it difficult to conclude that value for money has been achieved.

It is not possible to provide assurance that non-discriminatory open access is likely to be available within all aspects of the intermodal precinct given:

- The contractual framework does not apply to all elements of terminal operations, partially applies to the rail shuttle service between Port Botany and the MIT and internal transfers within the terminal precinct, and does not apply to warehouse operations;
- most of the key detailed documents that are required for implementation of effective open access arrangements have yet to be developed; and
- significant non-compliance is permitted before enforcement action can be taken.

Clear policy objectives were established for the project. The contractual arrangements support the achievement of all or part of each of those objectives. This includes providing a level of assurance that a commercially viable intermodal precinct will be constructed and operated, and future privatisation will be able to occur.

No recommendations were made by the ANAO.

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Auditor-General Report No. 9 of 2017–18, *Management of the Pre-construction Phase of the Inland Rail Programme* examined whether value for money is being delivered by the Australian Rail Track Corporation's (ARTC's) management of the Inland Rail pre-construction program. To form a conclusion against the audit objective the Australian National Audit Office examined whether:

- governance arrangements were appropriate, and administration of grant funding was effective; and
- the Australian Rail Track Corporation's procurement activities provided value for money and were supported by Information and Communications Technology systems and appropriate policies and procedures.

The audit concluded that:

In managing the pre-construction phase of the Inland Rail programme, the ARTC could have had a greater focus on achieving value for money in procurement activities. The ARTC identified the need to improve existing business functions and procurement practices throughout the pre-construction phase, and commenced initiatives to strengthen administration. These initiatives need to be fully implemented to support the ARTC in effectively managing the full Inland Rail programme in coming years and delivering value for money.

Governance arrangements for the pre-construction phase of the Inland Rail programme were appropriate, although there was not timely implementation of the Minister's decision that a funding agreement be developed between the Department of Infrastructure and Regional Development and the Australian Rail Track Corporation. The Australian Government's longer term intent with regard to the delivery and full construction of the Inland Rail was appropriately considered, including through the administration of grant funding. There could have been more emphasis on achieving value for money in procurement and contracting activities, including for the ARTC's contracting of staff for the programme, and improved planning for the leasing of property.

Testing of a sample of 54 procurements for the Inland Rail programme found a lack of consideration given to competition in the early phase of the programme, where a considerable proportion of procurements (17 per cent of the sample) were sole sourced. Procurement activities improved during the sampling period, as new systems, processes and practices were implemented. The ARTC's established Information and Communications Technology (ICT) systems and procurement and document management processes and practices were well short of the needs of the Inland Rail programme. The ARTC is further reviewing its procurement policies and procedures and supporting business functions for the full construction of Inland Rail.

The report included three recommendations.

Recommendation No. 1

To improve the management of risk, the Australian Rail Track Corporation accelerates the implementation of a fit-for-purpose risk management system for the Inland Rail programme.

Australian Rail Track Corporation response: Agreed in principle.

Recommendation No. 2

To improve records management, the Australian Rail Track Corporation:

- a. revisits the scope and timeline of the Electronic Content Management review to incorporate the Inland Rail programme; and
- b. reviews and updates its records management policies and procedures.

Australian Rail Track Corporation response: Agreed in principle and underway.

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Recommendation No. 3

To support transparency and value for money in contracting arrangements for the construction of the Inland Rail, the Australian Rail Track Corporation:

- a. develops and implements policies and procedures that have suitable regard to Commonwealth procurement and contract management standards, recognising that the company is not bound by the Commonwealth Procurement Rules;
- b. implements full functionality and controls available in procurement and contract management systems modules; and
- c. monitors performance in procurement and contract management through increased internal audit activity and / or the implementation of a quality assurance process.

Australian Rail Track Corporation response: Agreed in principle with qualification.