



Auditor-General for Australia



11 October 2019

Senator Glenn Sterle
Chair
Rural and Regional Affairs and Transport References Committee

By email: rrat.sen@aph.gov.au

Dear Senator Sterle

Importance of a viable, safe, sustainable and efficient road transport industry

The Australian National Audit Office (ANAO) has published the following performance audit reports that you may find relevant to the inquiry into the importance of a viable, safe, sustainable and efficient road transport industry.

- Report No. 23 of 2017–18 [Delivery of the Moorebank Intermodal Terminal](#)
- Report No. 38 of 2016–17 [The Approval and Administration of Commonwealth Funding for the WestConnex Project](#)
- Report No. 17 of 2015–16 [Design and Implementation of the First Funding Round of the Bridges Renewal Programme](#)

Information about what these 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 these matters, 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

Yours sincerely

Rona Mellor PSM
A/g Auditor-General

GPO Box 707 CANBERRA ACT
2601
19 National Circuit BARTON ACT
2601

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.

The ANAO identified the following key learnings for all Australian Government entities from this audit report:

- Governance and risk management
 - Accountable authorities should ensure that the coverage and scope of the probity management framework is commensurate with the nature and level of the risks involved. This framework should be established before market engagement commences, and should apply to all phases of the market engagement process.
 - Selection processes for probity advisers and probity auditors should be transparent.

- Concerns, findings and recommendations of probity advisers and probity auditors should be effectively addressed in a timely manner.
- The risks of contracted advisers having a conflict of interest with potential/actual market respondents should be fully considered and addressed.
- Procurement
 - Market engagement processes should objectively test potential partners' preparedness to accept preferred Australian Government positions.
 - Competition throughout the process of selecting a private sector project delivery partner plays an important role in obtaining, and being seen to obtain, value for money.
 - An evaluation plan should be established before market responses are sought.
 - Informing potential respondents of the evaluation criteria, and any weighting of those criteria, helps to promote competition as well as provide transparency.
 - Significantly increased risks exist when negotiations commence with a single respondent in advance of a binding offer having been received. Experience has shown that Australian Government entities find it difficult to implement planned risk mitigation strategies, and this should be carefully considered before deciding that the risks of entering into negotiations are acceptable.
 - Negotiations should retain a strong connection with the key elements of the successful proposal that supported the decision to proceed to direct negotiations.
 - Where a future privatisation process is envisaged, this can be assisted by structuring the transaction in a way that enables an efficient sale process.
 - Compliance regimes should be designed to be effective, and resourced appropriately.
- Records management
 - Good records should be created of the negotiations process including documentation that clearly identifies each meeting, the participants, agenda and outcomes.
 - Information assets should be effectively managed, including by ensuring that entities not party to the transaction do not hold confidential project-related information.

Report No.38 of 2016–17 *The Approval and Administration of Commonwealth Funding for the WestConnex Project* assessed whether appropriate steps were taken to protect the Commonwealth's interests and obtain value for money in respect to the \$3.5 billion in Commonwealth funding committed to the NSW Government for the WestConnex project. To form a conclusion against the objective, the ANAO adopted the following high-level criteria:

- Was the decision to make a financial commitment to the project informed by appropriate advice and made through the processes that have been established to assess the merits of nationally significant infrastructure investments?
- Were the decisions to approve the commitment of \$1.5 billion in direct funding, and make respective milestone payments to date, informed by appropriate advice?
- Was the decision to enter into a \$2 billion concessional loan arrangement for the WestConnex project informed by appropriate advice?
- Do the terms of the concessional loan arrangements represent value for money?

The audit concluded that:

- The Department of Infrastructure and Regional Development took a number of steps to protect the Australian Government's financial interests, particularly in relation to the risk of the concessional loan not being repaid. The upfront payment and approach to agreeing and adjusting milestones for later payments did not adequately protect the Australian Government's financial interests. Additionally, the provision of the concessional loan did not achieve the Australian Government's objective of bringing Stage 2 of the project forward by approximately two years.
- The WestConnex project had not proceeded fully through the established processes to assess the merits of nationally significant infrastructure investments prior to Australian Government funding being committed. This situation was identified in departmental advice to decision makers prior to decisions being taken.
- Funds have been paid in advance of project needs. Advice provided prior to the first payment (of \$500 million in June 2014) identified that a payment of that magnitude was not yet required. The ANAO estimates that as of November 2016, the total cost of amounts provided in excess of project needs since June 2014 has been approximately \$20 million.
- The May 2014 decision to make the \$500 million advance payment led to the project being approved without there being any documented analysis and advice to Ministers that the statutory criteria for giving such approvals had been met. Advice seeking the necessary approval for later payments (of \$250 million in June 2015, \$450 million in June 2016 and \$300 million in November 2016) addressed those criteria. But those three milestone payments were designed and administered in a way that did not adequately protect the Australian Government's financial interests. This was because, in order not to delay payments, milestones were agreed to after the respective event had already occurred or amended shortly before the payment was due to be made where NSW had not met the milestone.
- Departmental advice to Ministers focused on the benefits of providing a concessional loan to the WestConnex project. The key benefits identified were the:
 - lower net financial impact on the presentation of the Federal Budget of a loan compared with further grant funding (due to the differences in the accounting treatment of loans and grants, and because a loan would earn interest income and be later repaid);
 - increased construction activities between 2015–16 and 2016–17 from accelerating the second stage; and
 - potential to reinvigorate the private sector lending market in relation to demand risk toll roads.
- But the advice to Ministers did not adequately identify or quantify the costs and risks associated with providing a concessional loan. Key issues that detract from the loan providing value for money include:
 - there is evidence that the loan was not needed to accelerate the second stage of WestConnex and, in any event, the project has not been accelerated to the extent projected by DIRD (by up to two years); and
 - the interest rate on the loan was set well below comparable market rates with no margin included to cover the Australian Government's loan administration costs or risks.

The ANAO recommended:

The Department of Infrastructure and Regional Development improve the advice on any future loans for major infrastructure projects by:

- a. developing a more robust and tailored administrative framework to govern the possible provision of loans;
- b. clearly identifying, and quantifying the impact of, all key aspects of the proposed commercial arrangements; and
- c. providing Ministers with a range of options on the key terms for agreement on the parameters within which the Department is authorised to negotiate.

Report No.17 of 2015–16 *Design and Implementation of the First Funding Round of the Bridges Renewal Programme* assessed the effectiveness of the Department of Infrastructure and Regional Development's design and implementation of the first funding round of the Bridges Renewal Programme. To form a conclusion against this objective, the ANAO adopted the following high-level criteria:

- the application and eligibility checking processes promoted transparent and equitable access to the available funding;
- the merit assessment process identified and ranked in priority order those eligible applications that best represented value for money in the context of the programme objectives and desired outcomes;
- the Ministerial decision-maker was well briefed on the assessment of the merits of eligible applications, was provided with a clear funding recommendation, and the decisions taken were transparent;
- funding arrangements for approved projects were appropriate for effective ongoing management and also support a programme evaluation framework;
- the distribution of funding was consistent with the programme objectives and with funding being awarded on the basis of competitive merit; and
- programme planning and design was sound, outcomes oriented, met policy and legislative requirements, and supported efficient and effective programme administration.

The audit concluded that:

- The Department of Infrastructure and Regional Development continues to make improvements to its internal processes for the conduct of competitive funding rounds. But the design and implementation of the Bridges Renewal Programme took too long (14 months). This contributed to less than 20 per cent of approved projects commencing construction in 2014–15, despite the round's intended focus on construction-ready projects.
- There was mixed performance in terms of achieving the programme objectives. On a positive note, the results of the first round mean the programme is on track to deliver the desired investment of at least \$600 million.
- Critically, although the programme had both productivity and community access objectives, projects seeking to improve community access were disadvantaged in the application and assessment approach and so they were less successful in obtaining funding. In addition, notwithstanding the policy rationale for the introduction of a bridges renewal programme, the assessment approach did not include consideration of the applicant's relative need for

financial assistance, the condition of the existing bridge or urgency of its repair.¹ While the department had recognised the productivity benefits of bridge works, it otherwise lost sight of the Australian Government's intentions for a programme that would address the backlog of deteriorating local bridges that were beyond the financial resources of Councils to renew.²

The ANAO recommended that:

- When a funding arrangement is dependent on State/Territory agencies undertaking functions on behalf of the Commonwealth, the ANAO recommends that the Department of Infrastructure and Regional Development negotiate and agree roles and responsibilities with each agency during the design stage.
- For optimum outcomes, the ANAO recommends that the Department of Infrastructure and Regional Development link programme criteria and their application more clearly to the specific objectives of, and underlying policy rationale for, each funding programme.

¹ In this respect, paragraphs 2.41 to 2.45 and Figure 2.3 provide some analysis, including photographic examples, of old unsafe bridges from Council proposals that were awarded the lowest score possible against the outcomes-focused criteria and, as a result, were not considered by DIRD as candidates to be recommended for funding. In contrast, proposals to construct new bridges were more successful than those seeking to renew or replace an existing bridge.

² Two-thirds of the funding approved was for State government projects; the largest of which cost the same to fund as would the 159 smallest projects competing against it.