

**2022**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE PERFORMANCE AUDIT REPORT: PROCUREMENT AND  
CONTRACTING ACTIVITIES FOR THE ACTON WATERFRONT PROJECT**

**Presented by  
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Chief Minister**

## Introduction

The Government thanks the Auditor-General for Report No 5 of 2022 – Procurement and Contracting Activities for the Acton Waterfront Project (the Report). This audit considers ACT Government agencies' management and administration of the procurement and contracting activities for the Acton Waterfront Project for the period 2014 to 2020. The Report was presented to the Speaker of the Legislative Assembly on 16 September 2022.

The Acton Waterfront Project involves the reclamation of approximately 2.8 hectares of lakebed from Lake Burley Griffin's West Basin and the creation of a similar-sized area of high-quality public open space along the foreshore, including Henry Rolland Park. The public space improvements will facilitate the planned development of an area of approximately five hectares for mixed residential and commercial use adjacent to the foreshore.

In 2014 the Acton Waterfront Project was identified as an important and necessary activity that should precede phased land release that was to commence by 2018-19.

In late 2014 the Land Development Agency issued a Request for Tender (RFT) for a contractor to undertake an estimated five hectares of public realm works for the purpose of the Acton Waterfront Project. The local civil engineering firm Chincivil Pty Ltd (Chincivil) won the tender. The tendered scope included the construction of Henry Rolland Park (already delivered), lake reclamation works and construction of the boardwalk (Stage 2 of the boardwalk is scheduled to open November 2022) and creation of the park on the reclaimed land. It should be noted that the City Renewal Authority (the Authority) has separately procured the design of, and intends to separately procure the construction of, the park.

In July 2017 the Authority was created and assumed responsibility for the project, including the work already underway on-site and management of the Chincivil contract.

In 2017-18 the Budget business case for the lake reclamation and boardwalk stage set out the scope, funding and value envelope for that stage of the project (excluding the park). Funding was secured in that Budget based on the business case and was allocated to the Authority. The business case also set out and confirmed the procurement method (that is, utilising the existing contract with Chincivil to prepare a Guaranteed Contract Sum proposal) ultimately executed by the Authority. The current project is operating within the approved business case envelope and scope. Prior to agreeing the Chincivil proposal for the Guaranteed Construction Sum (GCS 3), the Authority engaged a highly experienced quantity surveyor, Rider Levett Bucknell. They concluded that the GCS from Chincivil for the Phase 2 works was reasonable and provided the Authority with a good value for money outcome.

This project is a multi-year, staged redevelopment demonstrating excellence in design and quality in execution. Further stages, not yet contracted for construction, will include a new park as outlined above and the estate development.

In September 2021, the Auditor-General commenced the performance audit. The Report has the following two main conclusions:

- The audit found that publicly available information on the procurement and contracting activities of the Acton Waterfront Project has been limited.
- The audit found that ACT Government agencies' management of the procurement and the contract in the period 2014 to 2020 has been ineffective.

The Report has made seven recommendations, to which the Government agrees to six and agrees in-principle to one.

### **Overarching Comments:**

The Government welcomes the recommendations in the Report and the intent of those recommendations to assist with the continuous improvement of the Authority's procurements and contract management. The Government notes the commentary included in the report from other agencies including the Authority. The Government supports those remarks and recognises that this is a complex project and a significant city renewal initiative that has evolved as the Territory's expectations have also evolved, as is common for high-profile public works projects.

The Government remains committed to making the best use of public funds and requiring Territory agencies to focus on a thorough assessment of risk, the expected project outcomes, meeting contractual obligations and those related to market competition and due process, and the achievement of prudent commercial outcomes.

In its responses to the Auditor-General during the audit, the Authority noted the issues identified in relation to the original procurement activity, all of which were completed prior to the Authority's existence. When the Authority was established, the contractor was already on-site and the works under Guaranteed Contract Sum 1 and 2 were in progress. To have adopted a different methodology at that point would have introduced significant design and engineering risks due to the interrelated nature of subsequent works packages identified. Further, there was a requirement by the NCA for high quality finishes using bespoke materials and consistent design treatments in all works (throughout the boardwalk and future park) and supply chain issues to secure the required materials and quantity. These risks, in combination with an independent assessment of value for money, outweighed in the Authority's considered view, the merits of a return to market. The Authority has accepted that contemporaneous records of those considerations could have been better documented.

In relation to the assumption of the contract at the Authority's inception, it was concluded that it was reasonable to rely upon the active involvement of the Land Development Agency (LDA) and the Government Procurement Board (GPB) and the submission of the updated Business Case as providing sufficient external surety that the procurement activities,

including the variations to the contract performed to date, were appropriate and had properly followed all due processes.

The Authority has continued to test the delivery methodology for the remaining works as evidenced by the commitment to undertake an open market approach for future required works, as the risks relating to the inter-related nature of the works cease to be relevant. The business case established a value envelope of \$35m as discussed above. The total cost of the Acton Waterfront audited procurement is \$80 million, once complete. This includes Henry Rolland Park, reclamation of the lakebed and construction of the new lake wall and boardwalk.

## **Government responses to the Performance Audit Report's recommendations**

### **Recommendation 1: Public interest in the Acton Waterfront Project**

*The City Renewal Authority should improve the level of information publicly available in relation to the procurement and contractual arrangements for the Acton Waterfront Project by ensuring:*

*a) a complete account is available of the original procurement intentions (based on the RFT) as well as the Contract that eventuates; and*

*b) all subsequent variations are clearly identified and reported, including an explanation of their purpose.*

#### Government response

#### **Agree.**

The Authority will review and update information on its website and/or other ACT Government websites to ensure key facts from the commencement of the Acton Waterfront Project to 2022 are displayed. Moving forward, the Authority will ensure that any, and all, subsequent variations are appropriately described on the ACT Contracts Register and the Authority's website.

### **Recommendation 2: Variations and provisional sum processes**

*The City Renewal Authority Board should review its processes and controls for the management of Provisional Sums and the making of contract variations.*

## Government response

### **Agree.**

Following the appointment of Chincivil for the GCS 3 work package in April 2020, the Authority entered into a Memorandum of Understanding with Major Projects Canberra (MPC) in November 2020, in relation to supporting the delivery of the capital works program including the Acton Waterfront Project. This is consistent with infrastructure procurement processes undertaken by other parts of the ACT Government. The Authority and MPC established a formal relationship via a memorandum of understanding for MPC to manage the procurement and contract management of the Authority's capital works program, with the Authority remaining the delegate for its program of works and retaining ultimate accountability for that program of works.

An ACT Government Contract Management Guide (the Guide) is currently under development by Procurement ACT. The Authority will ensure compliance with the requirements and better practice guidance established in the Guide when it is released.

### **Recommendation 3: Value for money (VFM) drivers**

*As part of its procurement and contracting practices, the City Renewal Authority should document:*

- a) the key value for money drivers that a procurement proposal will rely on;*
- b) the intended purpose and operation of the driver in question (e.g. a Target Construction Sum in conjunction with a Guaranteed Construction Sum, design responsibilities and an incentive clause); and*
- c) the source of advice e.g. The Capital Framework or otherwise, procurement and contracting better practice, that informs the use of the value for money driver.*

## Government response

### **Agree.**

Since the appointment of Chincivil for the GCS 3 work package the Authority has worked with MPC consistent with government policy. The Authority and MPC established a formal relationship via a memorandum of understanding for MPC to manage the procurement and contract management of the Authority's capital works program. The assessment and documentation of the value for money assessment is part of this arrangement. The Authority remains the delegate for its program of capital works and retains ultimate accountability for that program of works.

The Authority and its board are comfortable that value for money has been achieved in the procurements to date.

#### **Recommendation 4: Assumption of legacy contracts**

*As part of due diligence following changes in administrative arrangements, ACT Government entities should conduct a risk-based assessment of the procurement and contracting arrangements supporting any legacy contracts that have been assumed by the entities. The assessment should provide:*

*a) assurance over the probity of the Government entity's administrative processes relating to the procurement prior to the letting of the contract; and*

*b) advice as to the remaining potential for price and time variations to the contract given the original intent of the procurement, in order to maintain the integrity of the agreed VFM consideration.*

#### **Government response**

##### **Agreed in principle.**

The Authority has no further legacy contracts to be dealt with.

The ACT Government Contract Management Guide (the Guide) is currently under development and will provide better practice guidance and tools for the management of contracts. The purpose of the Guide is to provide a clear and standardised approach to managing and administering contracts for goods, services and works across the ACT Government. The Guide will include a requirement to undertake risk-based, due diligence activities on active procurement contracts that are transferred to Territory entities following changes in administrative arrangements. This due diligence may include assurance of probity relating to the contract; however, it may not always be apparent whether price or time variations are required over the remainder of a contract's life at the time of transfer of a contract to a new entity and under the Procurement Framework, value for money must be assessed at the time of exercising any future variation to a contract.

##### **Recommendation 5: Retendering**

*As part of its procurement and contracting practices, the City Renewal Authority should periodically examine, particularly in advance of major variations to a contract, the merits of remaining with the incumbent versus alternative procurement options for delivery of a project. Options presented to decision makers (e.g. delegates, boards) should be accompanied by sufficient analysis to demonstrate these have been robustly investigated and assessed.*

## Government response

### **Agree.**

With the advice of MPC the Authority will ensure that decisions are well documented and provide specific advice to the Board, noting ultimate accountability in this respect resides with the Authority.

### **Recommendation 6: VFM consideration and review**

*As part of its procurement and contracting practices, the City Renewal Authority should, when contemplating contract variations, review and test the procurement's value for money with reference to prior consideration:*

*a) during procurement planning, up to and including the market response to the RFT; and*

*b) at contract execution, specifically with respect to whether any material departure has occurred due to negotiation and / or the passage of time and changing requirements.*

## Government response

### **Agree.**

Since the appointment of Chincivil for the GCS 3 work package the Authority has worked with MPC consistent with government policy. The Authority and MPC established a formal relationship via a memorandum of understanding for MPC to manage the procurement and contract management of the Authority's capital works program. The assessment and documentation of the value for money assessment is part of this arrangement. The Authority remains the delegate for its program of capital works and retains ultimate accountability for that program of works.

The Authority and its board are comfortable that value for money has been achieved in the procurements to date.

### **Recommendation 7: Briefings and advice to decision-makers and boards**

*As part of its procurement and contracting practices the City Renewal Authority should fully and completely brief decision makers, delegates and those exercising a statutory advisory responsibility (e.g. the Government Procurement Board) in order to ensure:*

*a) accuracy and balance is achieved;*

*b) assurances made are able to be supported with robust analysis;*

*c) previously reported advice is built upon;*

*d) salient facts are raised and reprised consistently; and*

*e) the timing of the matters raised leaves sufficient time for decision makers, delegates and advisors to contemplate alternatives.*

#### Government response

##### **Agree.**

With the advice of MPC the Authority will ensure that decisions are well documented and specific advice is provided to the Board, noting ultimate accountability in this respect resides with the Authority.

The Authority will provide a series of information sessions for staff covering effective and efficient procurement and transparent contract management practices.