Audit Reports Summaries

Audit Report No. 10 1995-96

Summary

SALE OF THE MOOMBA TO SYDNEY GAS PIPELINE

Performance Audit

Objectives of the Sale

The sale of the Moomba to Sydney Gas Pipeline System to the Australian Gas Light Company (AGL) (51 per cent) and Gasinvest (49 per cent) was completed on 30 June 1994.

The sale was conducted by one of the Department of Finance's Task Forces on Assets Sales (TFAS) with policy input from the Department of Primary Industries and Energy (DPIE).

The Government's objectives in the sale were:

- to ensure that the pipeline system operated on a true commercial basis in a competitive environment;
- to achieve a fair price;
- to ensure fair and equitable treatment of Pipeline Authority staff, including preservation of accrued entitlements;
- to minimise its residual obligations and responsibilities with respect to the pipeline system; and
- to receive the proceeds by 30 June 1994.

Purpose of the Audit

The ANAO's objective in auditing the sale was to assess:

- the extent to which the Commonwealth's objectives were achieved; and
- the efficiency, administrative effectiveness and accountability of the sale process.

Elements of the Sale

The process involved a sale of the pipeline to East Australian Pipelines Limited (EAPL) and the sale of EAPL to AGL and Gasinvest. The sale objectives were addressed through a combination of contract negotiation and legislation.

Legislative elements were contained in the Moomba-Sydney Pipeline System Sale Act, which was given Royal Assent on 10 June 1994.

Contractual elements were contained in:

- a Deed of Release and Consent with AGL in consideration of $30 million, releasing the Commonwealth from its guarantees and contractual obligations to AGL;

- a Deed of Release and Consent with the Coopers Basin Gas Producers in consideration of $20 million, releasing the Commonwealth from its guarantees and contractual obligations to the Producers (some obligations were assumed by EAPL);
- the Gas Transportation Agreement (GTA) between EAPL and AGL governing pricing and access to the pipeline;
- the Easement Agreement between EAPL and DPIE governing access to and administration of the easements over which the pipeline travels; and
- the Shareholders Agreement between AGL and Gasinvest governing the nature of control to be exercised by the new owners.

The sale objectives were substantially achieved through these instruments.

Key Findings

A Defensible Price

The price received from the pipeline was within the range of indicative values independently determined by the Task Force's sale consultant.

A Constrained Sale

The special position of AGL required that the option of not proceeding with the sale had to be preserved until formal agreement had been negotiated with that company. This, in turn, limited the scope for making substantial progress on the sale until that agreement was reached.

The ANAO notes that international experience in privatisation indicates that it is good practice to establish an appropriate regulatory framework before entering into sales negotiations. The unique circumstances of this sale prevented that approach being taken.

Role of the Board

The Chairperson of The Pipeline Authority (TPA) expressed some dissatisfaction with the role that the Board was afforded in the sale. The management of TPA were not confident of their powers under the Pipeline Authority Act to perform certain activities that might have assisted in the sale process.

Selection of Consultants

The ANAO notes the need to ensure open competition for the engagement of consultants to provide assurance to all stakeholders that not only is the best advice seen to be obtained but there is reasonable confidence it has. The consultant selected for the initial evaluation and strategy contract was reappointed for the larger business advisory contract without further tendering. This approach, while resulting in a satisfactory outcome in this instance, does not provide assurance of open and effective competition and could impact adversely on the confidence of stakeholders in the sale outcome.

Consultant's Fee Structure

The ANAO suggests that future sales processes examine closely the scope for greater alignment of sales objectives and remuneration for consultants.

Planning and Reporting

Reporting of the sale was contained in press releases by the Minister for Finance and brief accounts in the Commonwealth agencies' Annual Reports. The ANAO suggests that a timely, comprehensive public report detailing the financial arrangements, the basis of compensation payments and an assessment of the extent of achievement of all sales objectives would considerably enhance accountability of the sale processes.

Recommendations

The ANAO made five recommendations all of which were accepted or accepted in principle by the Department of Finance. The Department of Primary Industries and Energy either accepted or agreed in principle with the three recommendations directed to that Department.

Overall conclusion

The sale of the Moomba to Sydney Gas Pipeline was in many ways unique, given the nature of contractual obligations and veto rights enjoyed by various parties. The sale objectives were achieved against a very difficult background of legislative and contractual obligations.

The Task Force completed its task by the specified deadline. The costs of the sale were less than one per cent of the gross proceeds, which is indicative of the sale process being managed efficiently.