The Auditor-General
Auditor-General Report No.9 2018–19
Performance Audit

Procurement Processes and Management of Probity by the Moorebank Intermodal Company

Moorebank Intermodal Company

Department of Finance

Australian National Audit Office

ISSN 1036–7632 (Print)
ISSN 2203–0352 (Online)
ISBN 978-1-76033-390-4 (Print)
ISBN 978-1-76033-391-1 (Online)

Senior Executive Director
Corporate Management Branch
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:
communication@anao.gov.au.

Canberra ACT

11 October 2018

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Moorebank Intermodal Company and the Department of Finance. The report is titled *Procurement Processes and Management of Probity by the Moorebank Intermodal Company.* Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — http://www.anao.gov.au.

Yours sincerely

Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7300
Fax: (02) 6203 7777
Email: ag1@anao.gov.au

Auditor-General reports and information about the ANAO are available on our website:
http://www.anao.gov.au

Audit team

Amy Willmott
Tessa Osborne
Joe Keshina
Meg Byrne
Danielle Page
Brian Boyd

Contents

Summary and recommendations

Background

1. The Moorebank Intermodal Company (MIC) was established in December 2012 under the *Corporations Act 2001*. It is responsible for the delivery of the Moorebank Intermodal Terminal (MIT) project in south western Sydney. In December 2017, the Australian National Audit Office (ANAO) completed an audit of the contractual arrangements for the delivery of the MIT (referred to herein as the first performance audit of MIC).[1]

2. MIC is governed by a board of directors, currently comprising six directors. Three of the directors, including the Chair, have been directors since MIC's establishment in December 2012.

3. MIC's first substantive Chief Executive Officer (CEO) was selected for the role in mid-2013, and resigned in April 2018. MIC's current Interim CEO joined the company in a consulting capacity in January 2018 and was announced by the MIC Chair as the Interim CEO on 11 April 2018.

Rationale for undertaking the audit

4. During the conduct of the first performance audit of MIC, the ANAO observed a number of practices in respect of MIC's operations and procurement activities that merited further examination. Under the *Auditor-General Act 1997*, as a Government Business Enterprise, performance audits of MIC can only be undertaken at the request of the Joint Committee of Public Accounts and Audit (JCPAA). A request from the JCPAA was received in December 2017.

Audit objective, criteria and scope

5. The objective of the audit was to assess MIC's achievement of value for money and management of probity in its operations and procurement activities.

6. To form a conclusion against the objective, the ANAO adopted the following high-level criteria:

- In its procurement of consultants and advisers, has MIC employed open and effective competition, demonstrably achieved value for money and managed any conflicts of interest?
- Has MIC effectively managed and controlled the use of credit cards and reimbursement of staff expenses for official purposes?
- Are the risks associated with accepting and providing hospitality, gifts or benefits effectively managed?

7. The evidence and data collected by the ANAO during the fieldwork phase of this audit was for the period from MIC's establishment in December 2012 to February 2018. This audit does not examine the procurement process through which MIC selected the Sydney Intermodal Terminal

1 Auditor-General Report No.23 of 2017–18, *Delivery of the Moorebank Intermodal Terminal*, 19 December 2017. Available from https://www.anao.gov.au/work/performance-audit/delivery-moorebank-intermodal-terminal

Alliance (SIMTA)[2] as its private sector delivery partner. This process was examined in the first performance audit of MIC.

Conclusion

8. It is not evident that MIC has obtained value for money in its procurement of advisers and consultants. The company's management of probity risks associated with conflicts of interest and gifts and hospitality has not been effective.

9. MIC has engaged a range of advisers and consultants to assist it to deliver on its purpose. Open and effective competition has not been a feature of MIC's procurement practices. This has contributed to the company being unable to demonstrate that value for money has been achieved through its procurement activities. Probity risks (including conflicts of interest) have not been well managed.

10. MIC has not had in place an appropriate and effective framework to manage and control the use of corporate credit cards and reimbursement of staff expenses.

11. MIC has not effectively managed the risks associated with accepting and providing hospitality, gifts or benefits. Initially this was due to the absence of relevant policies and guidance. Subsequent to the development of policies and guidance, poor compliance and ineffective governance arrangements resulted in the acceptance of offers that should have been declined under MIC's policy framework.

Supporting findings

Procurement

12. MIC has no overarching procurement strategy and was slow to develop its procurement policies and procedures. The procurement policy was documented and approved by MIC's CEO in June 2014 in response to an internal audit recommendation that it be documented. This was some 18 months after MIC was established and after the company had conducted 19 procurements with future payments totalling $27.8 million. It was also subsequent to the development and board approval of various other corporate policies. An additional 'Selection and Management of Consultants' procedure was developed in June 2016 for procurements specifically related to the MIC Funded Works package (under the contractual arrangements with the SIMTA).

13. MIC's procurement framework does not appropriately emphasise the important role that effective competition can play in obtaining value for money. MIC's procurement framework is also internally inconsistent. Specifically, one policy requires open tender processes for procurements over $100,000 whereas a more recent procedure prescribes a process of select tendering and is silent on the need to achieve value for money.

14. MIC has not conducted any open tender processes when procuring advisers and consultants. Rather:

2 SIMTA was a joint venture between Qube Holdings and Aurizon from 2012 to July 2016, when Aurizon announced the sale of its shares in SIMTA to Qube. The sale took effect from 24 January 2017, leaving SIMTA a wholly owned Qube entity.

- 68 per cent of procurement processes were sole source engagements worth $11 million; and
- 32 per cent involved limited competition (seeking a proposal or quote from two to 10 respondents) worth $21 million.

15. MIC's identification and management of conflicts of interest in its procurement activities has been ineffective. Relationships (long-term business and/or personal associations) with MIC staff were often (51 per cent of the time) the preferred basis for the sole sourcing of service providers or inviting them to participate in tender processes. While relationships with service providers were disclosed between MIC employees, there was no evidence of any formal consideration of conflicts of interest. Additionally, MIC's corporate policies contain limited guidance on conflicts of interest. No definition is provided, nor are any contextual examples of conflicts of interest articulated. This situation makes it difficult for staff to identify inappropriate practices. Situations were also identified where employees had used their position to promote their external associates to Qube and to assist associates in securing employment by MIC.

16. MIC's identification of potential candidates by way of personal or business referrals combined with its extensive use of non-competitive procurement processes significantly diminished the value for money that might have otherwise been obtained. Many of MIC's procurements have been urgent, unplanned or reactive. This inherently increases the risk of paying more. It was also difficult to be assured that there was a genuine business need for a number of MIC's procurements — particularly where the original proposal was initiated by the service provider. MIC typically has not revisited or negotiated on price, even when the opportunity has presented itself.

Credit cards and staff expenses

17. Travel expenses and studies assistance are the primary areas of focus for MIC's expenses policies. MIC was timely in the development of its expenses policy (May 2013), but slow to develop its studies support policy (April 2015). There are gaps in the policy framework with work needed to adequately address expenditure by MIC on entertainment, telephones and professional memberships.

18. MIC's credit card policy provides an appropriate framework for the issue, use and cancellation of credit cards. The first version of the policy was approved in May 2013 and had undergone few changes until June 2018. The updated June 2018 policy addressed a range of deficiencies in earlier versions of the policy relating to the separation of duties and acquittal processes.

19. MIC's controls have been ineffective in assuring compliance with its policies.

Gifts and benefits

20. MIC did not have a policy or supporting gifts and benefits register until September 2014. This was approved some 21 months after MIC was established. The policy would be significantly enhanced if it explicitly identified procurement and contracting activities as a high-risk area for the acceptance of gifts and benefits. Amendments to the policy in February 2018 have weakened controls by allowing MIC's CEO to both accept and approve his or her own receipt of gifts and benefits.

21. MIC's recording of gifts and benefits has been inaccurate and incomplete. Key factors in this situation have been:

- the lag in the development of MIC's policy material, which meant that staff were not required to record such offers until late 2014;
- poor understanding of the requirements of the policy, resulting in only three items (rather than at least 63) being recorded on the register until November 2015;
- MIC's recording only of gifts and benefits that were accepted and not those refused (evidence is that few offers have been refused) prior to February 2018; and
- poor consideration of the application of the policy towards MIC board members.

22. Where records exist, MIC has accepted most offers of hospitality, gifts or benefits. From MIC's establishment to April 2018, there were at least 43 organisations that made at least 138 offers of gifts, benefits or hospitality with an estimated total value of $20,928 to MIC's staff. Four of these organisations accounted for 56 per cent of the quantity and 65 per cent of the total value of these offers. These entities were MIC's three key advisers and Qube. MIC accepted all but eight of these offers.

23. MIC has, on occasion, provided entertainment or hospitality to its paid consultants and Qube. It has been less common for MIC to provide gifts or benefits. Since it was established, MIC has provided a total of $56,250 in donations or sponsorships to six different entities. Two of these predated the development of MIC's policy and the remaining four were not approved in accordance with the policy.

24. MIC has not adequately considered the risks involved in providing or accepting offers of hospitality, gifts or benefits. This has resulted in the acceptance (and provision) of gifts, benefits or hospitality that, had the risks been properly considered, should have been declined.

Summary of entity responses

25. The proposed report was provided to MIC and the Department of Finance (Finance). Finance provided a summary response, set out below. Full responses from MIC and Finance are provided at Appendix 1.

Department of Finance

> Finance notes the recommendation of the Report. Finance will provide the key learnings to Government Business Enterprises and consider the key learnings when reviewing the *Commonwealth Government Business Enterprises–Governance and Oversight Guidelines*.

Recommendations

Recommendation no.1 **Paragraph 4.37**	The Moorebank Intermodal Company promptly implement the recommendations made in its June 2018 internal reviews in a way that addresses both the findings of those reviews and the findings of this ANAO performance audit. **Moorebank Intermodal Company response:** *Agreed*

Key learnings for all Australian Government entities

26. Below is a summary of key learnings, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other entities.

Governance and risk management

- For newly established entities, priority should be given to the development and approval of those policies and procedures that are essential to delivering on the organisation's purpose. For corporate government entities, the *Public Governance, Performance and Accountability Act 2013* and associated guidance provides a sound framework which can be used to develop these policies.
- When engaging consultants and advisers, entities should put in place mechanisms to ensure, where possible, competitive processes are used to maximise value for money. In addition, entities should identify and actively manage probity risks, including conflicts of interest.
- Entities should ensure that their policies include effective processes for identifying the gifts and benefits offered and/or accepted by its employees. The maintenance of a central register may assist entities in implementing these policies and meeting their accountability and transparency obligations. These aspects would be further enhanced by the publication of entity gifts and benefits registers on the internet.

Procurement

- Obtaining value for money through open and competitive procurement processes is aided by the early development of an overarching procurement strategy, the scope of which includes the engagement of advisers and technical consultants and enables adequate planning for tender processes.
- Public disclosure of the planned scope and timeframe of procurement activities, and providing capacity for potential candidates to register their interest, assists to maximise competitive pressure in selection processes and, consequently, with achieving value for money for taxpayer funds.

Audit findings

1. Background

Introduction

1.1 The Moorebank Intermodal Company (MIC) was established in December 2012. It is responsible for the delivery of the Moorebank Intermodal Terminal (MIT) project in south western Sydney. In December 2017, the Australian National Audit Office (ANAO) completed an audit of the contractual arrangements for the delivery of the MIT (referred to herein as the first performance audit of MIC).[3]

1.2 MIC is a Commonwealth company that was established under the *Corporations Act 2001*. It is classified as a Government Business Enterprise (GBE). MIC's sole shareholder is the Australian Government, which is represented by two Shareholder Ministers: the Minister for Finance and the Minister for Infrastructure and Transport.

1.3 MIC is governed by a board of directors, currently comprising six directors. Three of the directors, including the Chair, have been directors since MIC's establishment in December 2012. The Corporations Act governs the fiduciary duties of directors in Commonwealth companies.

1.4 MIC's first Interim Chief Executive Officer (CEO) was appointed shortly thereafter and was in this role until June 2013. The substantive CEO was selected for the role in mid-2013, and resigned in April 2018. MIC's current Interim CEO joined the company in a consulting capacity in January 2018 and was announced by the MIC Chair as the Interim CEO on 11 April 2018. The first Interim CEO was appointed for a three year term as non-executive director of the MIC board in May 2016.

Audit rationale and approach

1.5 During the conduct of the first performance audit of MIC, the ANAO observed a number of practices in respect of MIC's operations and procurement activities that merited further examination. Under the *Auditor-General Act 1997*, as a GBE, performance audits of MIC can only be undertaken at the request of the Joint Committee of Public Accounts and Audit (JCPAA). A request from the JCPAA was received in December 2017.

Audit objective, criteria and scope

1.6 The objective of the audit was to assess MIC's achievement of value for money and management of probity in its operations and procurement activities.

1.7 To form a conclusion against the objective, the ANAO adopted the following high-level criteria:

- In its procurement of consultants and advisers, has MIC employed open and effective competition, demonstrably achieved value for money and managed any conflicts of interest?
- Has MIC effectively managed and controlled the use of credit cards and reimbursement of staff expenses for official purposes?

---

3 Auditor-General Report No.23 of 2017–18, *Delivery of the Moorebank Intermodal Terminal*, 19 December 2017. Available from https://www.anao.gov.au/work/performance-audit/delivery-moorebank-intermodal-terminal

- Are the risks associated with accepting and providing hospitality, gifts or benefits effectively managed?

1.8 The evidence and data collected by the ANAO during the fieldwork phase of this audit was for the period from MIC's establishment in December 2012 to February 2018. This audit does not examine the procurement process through which MIC selected the Sydney Intermodal Terminal Alliance (SIMTA) as its private sector delivery partner. This process was examined in the first performance audit of MIC.

1.9 While the audit focussed primarily on the operations and procurement activities within MIC, the audit scope also included the Department of Finance (Finance). This is because, prior to the establishment of MIC in December 2012, Finance — through its Moorebank Project Office (MPO) — was responsible for the initial major procurement process to select a consortium of external consultants to develop the project's Detailed Business Case. A number of these consultancies transitioned from advising the MPO to advising MIC after it was established.

1.10 The audit was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of $433 000.

Internal review commissioned by MIC in March 2018

1.11 The ANAO notified MIC on 10 January 2018 that this performance audit had commenced pursuant to section 17 of the *Auditor-General Act 1997*.

1.12 On 14 March 2018, MIC engaged its internal auditor to conduct a 'Business Integrity Review'. This engagement was not included in the annual internal audit work program for the period beginning 1 July 2017 to 30 June 2018, which was endorsed by MIC's Audit and Risk Committee on 23 August 2017.

1.13 There was a high degree of similarity between the objective of the internal review and the ANAO's criteria, as outlined at paragraph 1.7. MIC informed the ANAO of the review in May 2018, and advised that:

> Early this year MIC's Chair and the Audit and Risk Committee requested that [MIC's internal auditor] be engaged to assist MIC in undertaking a business integrity review of the company's systems in light of the ANAO report in December 2017 (and the key learnings) and the current performance audit criteria, as detailed on the ANAO's website, to assist MIC in identifying areas for improvement.

1.14 On 25 June 2018, MIC advised the ANAO that it had been undertaking a range of work to address some of the early findings from the audits. As part of this advice, MIC provided the ANAO with copies of:

- updated policies and supporting documentation, including:
  - a draft procurement policy (dated May 2018);
  - a draft conflict of interest policy (dated June 2018)[4];
  - an approved records management policy (approved by the board in May 2018); and

4 MIC advised the ANAO in August 2018 that its board approved both the draft procurement policy and draft conflicts of interest policy on 28 June 2018.

  - an approved expenses policy (approved by the Interim CEO in June 2018); and
- the two reports (each dated 25 June 2018) from the internal review.

1.15 The review made eight high, 26 moderate and seven low-risk findings along with 79 recommendations. In August 2018, MIC advised the ANAO that:

> MIC agrees to fully implement the recommendations from [MIC's internal auditor]'s Business Integrity Review. MIC will engage a compliance and governance officer to oversee the implementation. This is timely in light of a new CEO commencing with MIC in coming months.

2. Procurement practices

Areas examined

The ANAO examined whether the Moorebank Intermodal Company (MIC) employed open and effective competition, demonstrably achieved value for money and managed any conflicts of interest in its procurement of consultants and advisers.

Conclusion

MIC has engaged a range of advisers and consultants to assist it to deliver on its purpose. Open and effective competition has not been a feature of MIC's procurement practices. This has contributed to the company being unable to demonstrate that value for money has been achieved through its procurement activities. Probity risks (including conflicts of interest) have not been well managed.

Area for improvement

Following the commencement of this ANAO performance audit, MIC commissioned a consultant to undertake a review of the company's procurement framework and probity protocols, including opportunities to better align with the Commonwealth Procurement Rules (see Appendix 2). The ANAO has recommended that MIC fully implement the recommendations from that review.

Was MIC timely in developing its procurement policies and procedures?

MIC has no overarching procurement strategy and was slow to develop its procurement policies and procedures. The procurement policy was documented and approved by MIC's Chief Executive Officer (CEO) in June 2014 in response to an internal audit recommendation that it be documented. This was some 18 months after MIC was established and after the company had conducted 19 procurements with future payments totalling $27.8 million. It was also subsequent to the development of 20 other corporate policies. An additional 'Selection and Management of Consultants' procedure was developed in June 2016 for procurements specifically related to the MIC Funded Works package (under the contractual arrangements with the Sydney Intermodal Terminal Alliance (SIMTA)).

2.1 Following MIC's establishment in December 2012, its board of Directors (MIC board) immediately commenced monthly board meetings. Initial priorities for the company involved securing a physical office space, registering its trading name, on-boarding staff and procuring key advisers to assist it with its upcoming major procurement process. By the end of its first three months, MIC had on-boarded eight staff[5], including its Interim CEO, tendered for legal services and moved into its Sydney central business district (CBD) office.

2.2 At the 24 May 2013 meeting, the MIC board considered and approved MIC's first three corporate policies. These were the: Corporate Credit Card Policy; Expenses Policy; and Financial Delegation of Authority. The next three policies to be considered by the board were provided and approved in February 2014 (detailed by Figure 2.1). When doing so, the board was also asked to

5 Including five contracted staff, of which four continued to work for MIC beyond their originally contracted end dates. Additionally, three Department of Finance staff from the predecessor Moorebank Project Office were seconded to MIC for a short period. These staff returned to Finance in March 2013.

note a list of further policies and procedures that MIC's management had identified for development. The list identified 21 separate and common policies under the categories 'finance' and 'human resources', but did not include a procurement policy.

2.3 The absence of a procurement policy on the list was inconsistent with the February 2014 recommendation[6] that had been agreed between MIC's management and its internal auditor. Specifically, the internal auditor had noted the absence of a procurement policy and recommended, amongst other things, that MIC:

> Formally document the procurement policy and/or procedures. This policy should address the following at a minimum:
>
> - Value for money, such as a requirement for quotes to be received or a tender performed for goods and services above a specified dollar value amount.
> - The requirement for all payments to be supported by a purchase order or contract, which is raised and approved based on the Delegations of Authority, prior to the commitment of expenditure.
> - The requirement to keep written records for openness and transparency.
> - Ethics and fair dealing guidelines, as well as processes to ensure open and fair competition.
> - An approval process for exemptions to the above processes, if required.

2.4 MIC agreed to the recommendation, commenting: '(w)e note the need to document the finance procedures and the procurement policy'. The agreed action plan was for MIC's Finance Director to document the procurement process by the target date of end of June 2014.

2.5 The '*Policy and procedure for the purchase of goods and services*' (referred to herein as the corporate procurement policy) was documented by the Finance Director and 'reviewed' by the CEO in June 2014.[7] By this stage, MIC had been operating for some 18 months and had already signed contracts in relation to four of the five procurements that would have warranted open tender processes had the policy been in place (open tender requirements are discussed from paragraph 2.15). The corporate procurement policy remained unamended and in force during the period in which audit fieldwork was conducted.

2.6 MIC provided to the ANAO a draft version of its new consolidated procurement policy on 26 June 2018 (see paragraph 1.14). MIC advised the ANAO in August 2018 that it 'has taken steps to implement changes with the revised procurement policy'.[8]

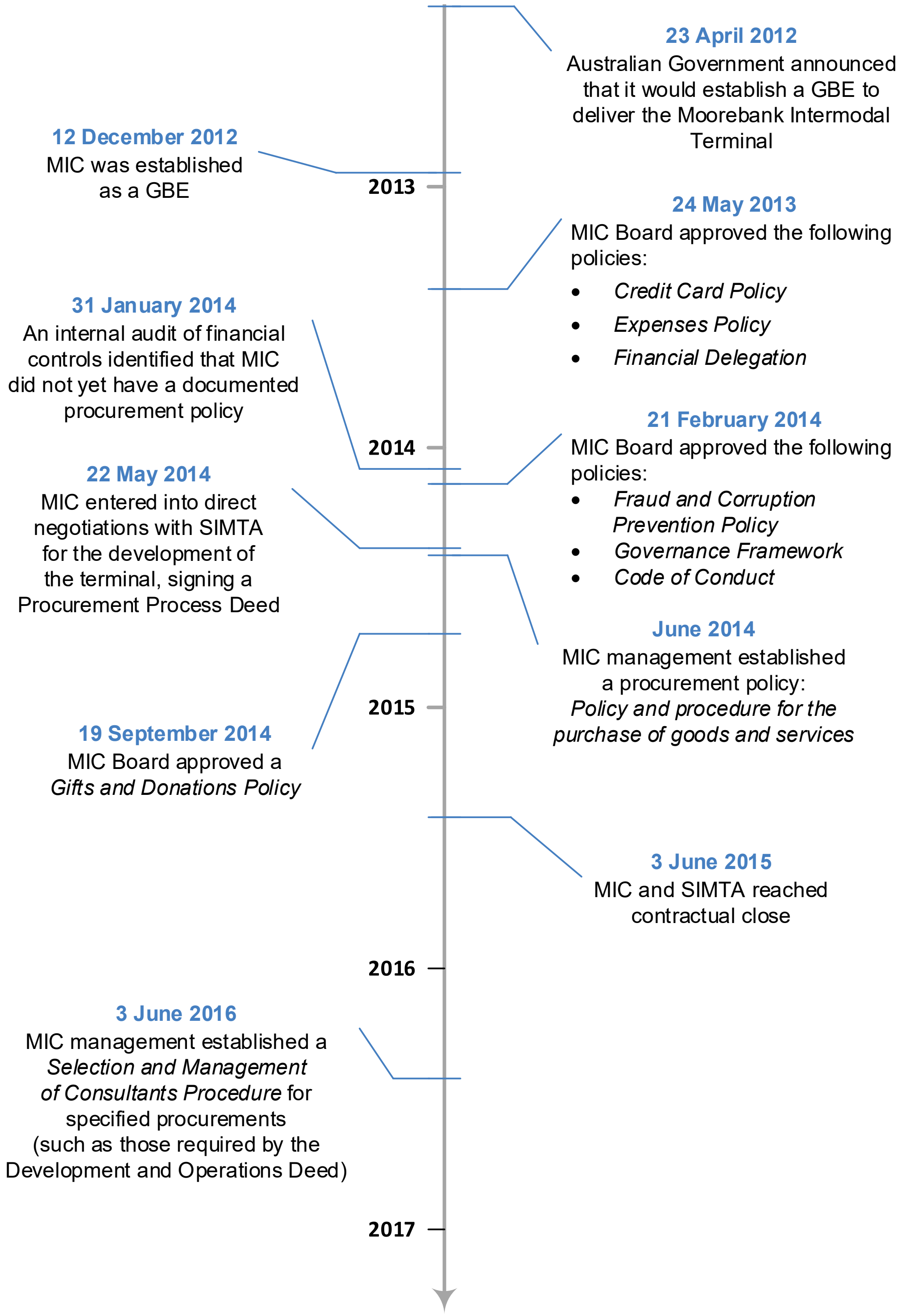
---

6 The internal audit was of MIC's 'Financial Controls'. It was conducted and finalised between November 2013 and January 2014. The related findings and recommendations were considered by MIC's Audit and Risk Committee (ARC) in February 2014, prior to the board meeting that month.

7 The approval section of the document remained incomplete. There is no record of the policy having been approved by MIC's board or any of its sub-committees (for example, the ARC).

8 The revised procurement policy was approved by the MIC board on 28 June 2018.

Figure 2.1: Approval of MIC's initial corporate policies and procedures



Source: ANAO analysis of MIC records.

2.7 By the end of May 2016, MIC had developed a Project Management Plan (PMP) to guide its management of the terminal development and operations following the execution of the Development and Operations Deed (the deed) in June 2015. The deed and its attachments are MIC's contractual arrangements with the Sydney Intermodal Terminal Alliance[9] (SIMTA).

2.8 The PMP was to be supported by a series of 12 procedures documents.[10] MIC documented the first of these in June 2016, the: '*PMP001—Selection and Management of Consultants*' procedure (SMC procedure).[11] The procedure was for procurements specifically related to monitoring the delivery of the MIC Funded Works[12] package, as defined by the deed. By the time the SMC procedure was documented, each of the four advisers identified by the deed had been engaged.

2.9 Figure 2.2 illustrates the timing of the development of MIC's procurement policies as compared to the timing of the engagements of its service providers. Specifically, 19 procurements with future payments totalling $27.8 million were conducted by MIC before it had either of its procurement policies in place.

---

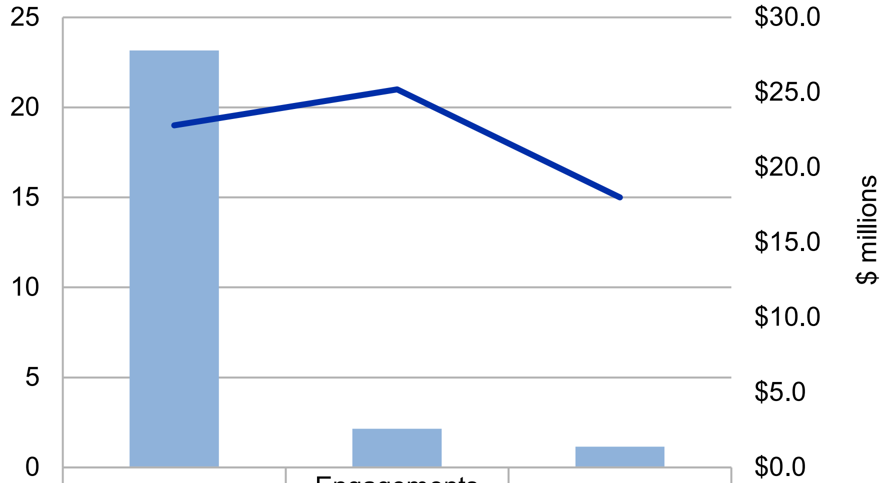
9 SIMTA was a joint venture between Qube Holdings and Aurizon from 2012 to July 2016, when Aurizon announced the sale of its shares in SIMTA to Qube. The sale took effect from 24 January 2017, leaving SIMTA a wholly owned Qube entity.

10 As of February 2018, seven of these were yet to be drafted. Specifically, these were the: Quality Audit Procedure; Precinct Master Plan Review Procedure; Forecasting and Budget Management Procedure; Biodiversity Agreement Management; Expansion Master Plan Review Procedure; Approved Tenant Review Procedure; and Open access Review Procedures.

11 MIC intended that this procedure would coexist with and be complementary to its corporate procurement policy.

12 The MIC Funded Works include the: rail access to both the IMEX and interstate terminals; site remediation and land preparation works on the Commonwealth-owned land; and upgrade or relocation of Moorebank Avenue.

Figure 2.2: Timing of MIC's procurement policy development as compared to the engagement of advisers and consultants



	Engagements pre-2014 policy [a]	Engagements between June 2014 and June 2016 [b]	Contracts post-June 2016 policy [c]
Total value ($ million)	$27.8	$2.6	$1.4
Number of engagements	19	21	15

Note a: MIC's financial data suggests that at least seven of these 19 advisers were either still ongoing or had been re-engaged by MIC prior to February 2018 (when this financial data was captured by the ANAO).

Note b: Similarly, at least seven of these 21 advisers were either still ongoing or had been re-engaged by MIC prior to February 2018.

Note c: At least 10 of these 15 contracts were still ongoing in February 2018. Therefore the total value of these contracts are likely to increase over time.

Source: ANAO analysis of MIC records.

Are MIC's procurement policies and procedures appropriate?

MIC's procurement framework did not appropriately emphasise the importance of obtaining value for money, including the role that effective competition can play. MIC's procurement framework was also internally inconsistent. Specifically, one policy required open tender processes for procurements over $100,000 whereas the more recent procedure prescribed a process of select tendering and was silent on the need to achieve value for money.

2.10 MIC is a Government Business Enterprise (GBE) and is wholly owned by the Australian Government. It is not a prescribed corporate Commonwealth entity under section 30 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), and therefore is not expressly required to comply with the Commonwealth Procurement Rules (CPRs). Nonetheless, the PGPA Rule outlines that all Commonwealth entities' (including GBEs') accountable authorities must govern entities 'in a way that promotes the proper use and management of public resources for which the authority is responsible'.[13]

13 *Public Governance, Performance and Accountability Act 2013*, section 15(1). Available from https://www.legislation.gov.au/Details/C2017C00269 [accessed 20 August 2018].

2.11 MIC depends on a wide range of advisers and consultancies to assist it to deliver on its purpose, as outlined by its constitution.

Corporate procurement policy

2.12 The first section of MIC's 2014 corporate procurement policy outlines its scope, purpose and the principles that should underpin MIC's procurement activities. Among other things, the policy outlines that:

- procurement activities are carried out in a way that achieves value for money outcomes;
- open and effective competition will be used to achieve efficiency, choice and to provide probity to the MIC procurement process;
- accountability and transparency will be applied to ensure that all decisions in the procurement process can be clearly explained and evidenced; and
- responsible financial management must be applied to all MIC procurement activities.

2.13 A key contributing factor in achieving value for money through a procurement process is the extent of competition within and market testing conducted as part of the process. Generally, the more competitive the procurement process, the better placed an entity is to demonstrate that it has achieved value for money.[14] MIC's corporate procurement policy prescribes particular requirements for its procurements according to a set of financial thresholds. These thresholds dictate the extent to which MIC must test for value for money. Table 2.1 outlines the requirements for each threshold.

Table 2.1: Financial thresholds applying to MIC's procurement processes

Value of total procurement		Requirement	Procurement process employed
1	$0 to $10,000	One oral quotation	Sole source
2	$10,001 to $25,000	One written quotation	Sole source
3[ac]	$25,001 to $50,000	Two written quotations	Request for quotation
4[abc]	$50,001 to $100,000	Three written quotations	Request for quotation
5[b]	$100,001 and above	Open tender required	Open tender

Note a: MIC's policy is silent on the process through which quotes must be assessed under the third and fourth thresholds.

Note b: 'Detailed specifications' are required for purchases over $50,000, but the policy does not define this phrase.

Note c: Purchase orders are required only for procurements over $25,000.

Source: ANAO analysis of MIC's corporate procurement policy.

2.14 Of particular note is that the thresholds do not require any testing of value for money for procurements below $25,000. The policy allows the CEO to approve departures from the market testing requirements for 'justifiable reasons'[15], but is silent on any further approval requirements

14 Competition in a procurement process encourages respondents to submit more efficient, effective and economical proposals. It also ensures that the purchasing entity has access to comparative services and rates, placing it in an informed position when evaluating the responses.

15 The policy provides examples of potential justifiable reasons, including where: the need is extremely urgent and there is insufficient time to seek quotations; there is a sole source of supply for the goods or services; and the purchasing officer has valid evidence of the source of best value and is certain that obtaining quotations would not be cost effective.

where the CEO is the officer conducting the procurement. Given that the CEO is also responsible for enforcing the policy, there is no independent oversight of departures from the policy by the CEO. The ANAO's analysis was that this situation had occurred on at least nine occasions.

Open tender requirements of the policy

2.15 An open tender involves publishing an open approach to market and inviting submissions. This includes multi-stage procurements, provided the first stage is an open approach to market. The major procurement process undertaken by MIC in selecting SIMTA as its private sector delivery partner is an example of a multi-stage open tender process.[16] Conversely, a limited tender involves approaching one or more potential suppliers to make submissions.

2.16 MIC's policy outlines the requirements for the open tender process that must be employed for procurements over $100,000. These are outlined by Table 2.2.

Table 2.2: Key obligations of MIC's tender process

Part of the tender process	Requirement
Planning	Establish selection criteria that: contain the critical factors to be used in the evaluation of tenders; are consistent with the proposed contract requirements; and aim to identify the supplier offering the best value for money.
Issuing the tender	Include in the tender documentation provided to tenderers the selection criteria that proposals will be assessed against (and their weightings, if applicable).
The tender period	Provide all tenderers with the same documentation; and ensure that tenderers lodge their tender by the closing date in the form and manner provided by the tender documentation.
Evaluation	A tender committee is to evaluate tender documents fairly and objectively according to the selection criteria.
Throughout the tender process	Follow appropriate probity and ethical behaviour at all stages of the tender process. No information provided by a tenderer relating to the tender should be divulged to another tenderer at any stage during the process or after it has concluded.

Source: ANAO analysis of MIC's corporate procurement policy.

2.17 Specific requirements for the membership of tender evaluation committees are also set out in the policy. These are that:

- committees should comprise the employee initiating the procurement plus one or two other suitably qualified staff;
- where the value of the tender is greater than $1 million the members of the committee make a written probity declaration that they are free from any conflict of interest; and
- where the value of the tender being evaluated is greater than $5 million the committee should include one board member.

2.18 In this latter respect, the ANAO notes that MIC's policy is expressly limited in its application to MIC employees and contractors. This means that its board members are not bound by the terms

16 This process was the subject of Auditor-General Report No.23 of 2017–18, *Delivery of the Moorebank Intermodal Terminal*, 19 December 2017. MIC's corporate procurement policy was developed following its decision to enter into direct negotiations with SIMTA for the development of the terminal.

of policy when undertaking the evaluation. The policy also does not require conflict of interest disclosures by any staff members involved in procurement, except to the extent that they are evaluation panel members and the procurement has a total value of more than $1 million. Based on actual expenditure[17], this requirement would have applied to only five procurements (excluding the process through which SIMTA was selected) of the 55 advisers and consultants MIC had engaged between January 2013 and January 2018.

Scope of application for the SMC procedure

2.19 Consistent with the PMP's scope, the SMC procedure only applied to a subset of MIC's procurements. Specifically, it applied to those for the engagement of specialist expertise to apply scrutiny and due diligence to SIMTA's (or in practice, Qube's) delivery of the MIC Funded Works. It was also to be applied to procurements related to other aspects of the project deemed to be of 'high' or 'extreme' risk. Examples of the specialist advice that may be required were provided in the PMP.[18] It also noted that each proposed specialist would be determined as the project develops. The SMC procedure only applies to procurements with total contract values of more than $100,000.

2.20 The PMP also notes that MIC planned to adopt the principles in the SMC procedure for the selection of the jointly appointed consultants required by the deed. These consultants were to be selected either by MIC or together by MIC and SIMTA.

Inconsistency between MIC's procurement policies

2.21 The SMC procedure is more prescriptive than MIC's corporate procurement policy. It specifies how the procurement process is to be undertaken and documented. It is also supported by a checklist to record compliance with the procedure. The corporate procurement policy lacks detailed guidance, particularly in respect to the assessment of proposals for procurements of less than $100,000. The more prescriptive detail available in the SMC procedure provides no support in this respect because it does not apply to procurements of this value.

2.22 Conversely, the policies overlap when addressing high-value procurements (with values over $100,000). Each provides differing requirements concerning open tender processes. As outlined by Table 2.1, MIC's corporate procurement policy requires an open tender process to be adopted for all high-value procurements. In contrast, the SMC procedure — which only applies to procurements of high-value — is silent on open tender processes, instead describing a process of select tendering or issuing requests for proposals to selected bidders. In particular, the procedure identifies that MIC will:

- 'select potential bidders' by identifying potential bidders 'through market research, prior experience on other projects and recommendations';
- shortlist bidders by:
  - determining and documenting an internal review and culling process to select the shortlisted bidders. The process is to be approved by the CEO and include, at a minimum: 'nominated bidders, phone or face to face interviews and criteria such

17 That is, MIC would have needed to identify that each of these contracts' values were to be in excess of $1 million before enacting the requirement for evaluation panel members to disclose any conflicts of interest.

18 Examples include: WHS and rail safety; planning approvals; cost and quantity estimation; construction; site remediation; geotechnical works; and rail engineering.

as availability of personnel, level of project knowledge, appropriate experience of key personnel, relevant experience and referees';

– undertaking the approved review and culling process;

– obtaining CEO approval of the proposed bidders; and

- issue a Request for Proposal (RFP) or Request for Tender (RFT) to the shortlisted bidders.

2.23 In practice, MIC has adopted processes consistent with the SMC procedure for its high value procurements. This occurred despite the SMC procedure not being in place at the time the vast majority of consultants were selected.[19] Unlike MIC's corporate policy, the SMC procedure makes no references to achieving value for money.

Have advisers and consultants been engaged through open and competitive procurement processes?

MIC has not conducted any open tender processes when procuring advisers and consultants. Rather:

- sixty-eight per cent of procurement processes were sole source engagements worth $11 million; and
- thirty-two per cent involved limited competition (seeking a proposal or quote from two to 10 respondents) worth $21 million.

2.24 An open tender process involves an entity notifying the market of its requirement for particular expertise or services and its intent to purchase. In practice, this notification is usually communicated via an entity's website.

2.25 During the period examined by this audit (January 2013 to February 2018), MIC engaged 60 consultants and advisers across a wide range of specialities[20] to assist it to deliver on its purpose. The total value of the payments that have been made to these providers as of February 2018, is $32 million. MIC's approach to selecting these providers has involved:

- sixty-eight per cent of procurement processes being sole source engagements worth $11 million; and
- thirty-two per cent involving limited competition (seeking a proposal or quote from two to 10 respondents) worth $21 million.

2.26 MIC did not undertake any action to inform the market of these opportunities.

19 The SMC procedure was endorsed by the CEO in June 2016. Of the 62 procurements conducted by MIC during the timeframe examined by this audit, 10 were conducted subsequent to the procedure's approval. Of these 10, there has only been one provider that has invoiced in excess of $100,000. MIC's initial estimation for this procurement was no more than $30,000. As of February 2018, MIC had paid this provider $698,000. This was for work conducted in addition to the original scope for the services.

20 These included, but were not limited to: commercial; legal; engineering; communications; geotechnical; freight demand; freight line capacity; land valuation; recruitment; probity; community engagement; remediation; and negotiation skills advice.

Lack of open procurement processes

2.27 In comparing the individual values[21] of MIC's procurements with the requirements of the corporate procurement policy[22], the ANAO's analysis was that MIC should have conducted 19 open tender processes (see Table 2.3 and Figure 2.3). Instead, MIC sole sourced nine of these providers and conducted select tenders or requested quotations for the remainder (involving approaching 10 potential providers for one role and between two and five potential providers for the remainder). Of these 19 procurements, 14 providers were engaged before MIC's policy was developed (in June 2014). MIC had paid an approximate total of $29.8 million to these service providers up until February 2018. Three of these procurements were for MIC's lead commercial, legal and technical adviser roles, each engagement worth over $7 million.

21 That is, the total amount paid under each of the contractual arrangements established with service providers. This amount was used in the absence of a contract management system (recording contract values) or any whole-of-life costing estimations conducted by MIC during the respective procurement processes.

22 Although the policy was not formally recorded until June 2014, MIC's internal auditor noted in its January 2014 audit report (on MIC's financial controls) that MIC had been following an undocumented procurement procedure.

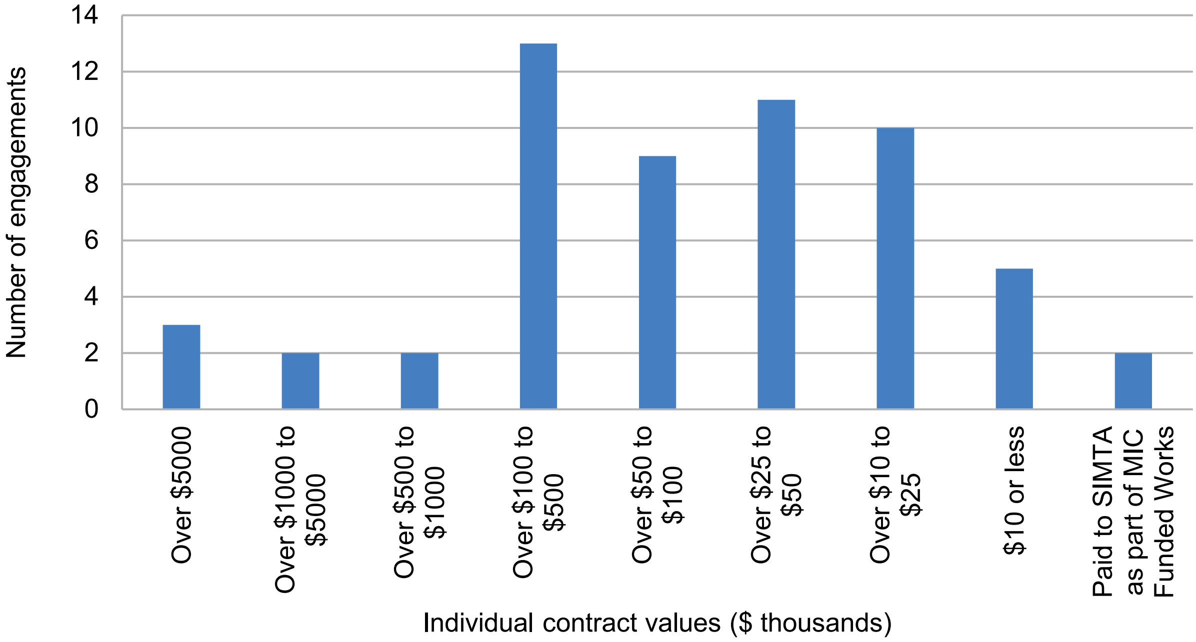
Table 2.3: Summary of the value and spread of MIC's contracts with consultants and advisers by procurement threshold

Procurement threshold	% total cost	% of contracts	No. of contracts	Total cost	Procurement requirements under MIC's corporate procurement policy		Processes adopted
Over $5 million	75.2%	5.3%	3	$23,890,272	Open tender	Evaluation committee to include a board member; and written probity declarations required.	Two select tenders and one sole source.
Over $1 million to $5 million	9.0%	3.5%	2	$2,845,906	Open tender	Evaluation committee with two to three members; and written probity declarations required.	Two select tenders.
$500,001 to $1 million	3.9%	3.5%	2	$1,238,130	Open tender	Evaluation committee with two to three members; and written probity declarations required.	One select tender and one sole source.
$100,001 to $500,000	8.0%	22.8%	14	$2,548,033	Open tender	Evaluation committee with two to three members; and written probity declarations required.	Eight sole source, four select tenders and two quotation processes.
$50,001 to $100,000	2.0%	15.8%	9	$633,107	Three quotations	Written quotations; and a purchase order.	Four sole source, three select tenders and two quotation processes.
$25,001 to $50,000	1.4%	19.3%	12	$438,632	Two quotations	Written quotations; and a purchase order.	One select tender and 11 sole source.
$10,001 to $25,000	0.54%	17.5%	11	$170,233	One quotation	Written quotation. No purchase order required.	One select tender and 10 sole source.
Up to $10,000	0.06%	8.8%	5	$18,483	One quotation	Oral quotation. No purchase order required.	Five sole source.
Invoiced by Qube for MIC Funded Works[a]	N/A[a]	3.5%	2	N/A[a]	N/A[a]	N/A[a]	Qube conducted these processes.
		Total	**60**	**$31,782,795**			

Source: ANAO analysis of MIC records.

Note a: Had MIC's SMC procedure been in place at the time of procurement for these contracts, it would have applied to these procurements. In its absence, the corporate procurement policy required open tender processes because the services were likely to cost in excess of $100,000. Qube includes these costs in its invoices to MIC.

Figure 2.3: MIC's individual contracts with consultants and advisers by total value



Source: ANAO analysis of MIC records.

2.28 Limited tender procurement processes were adopted for the selection of providers for the key roles of commercial (Macquarie Capital) and legal (Herbert Smith Freehills) advisers during the first half of 2013. For both processes, evaluation panels were established, with committee membership being predominantly made up of board members.[23] Probity declarations were not completed by the evaluation panel members. Probity adviser services were procured for MIC's major procurement process for the selection of the intermodal terminal delivery partner, but not for the procurement of the lead legal, commercial or technical advisers (probity issues and conflicts of interest are discussed further from paragraph 2.36).

2.29 Five legal and 10 commercial advisory firms were identified to be invited to submit proposals. Rationales for the selection of the candidates were not recorded. Given the important role of board members and MIC staff in identifying the candidates, it would have been appropriate for conflict of interest disclosures to be made before that time. Such disclosures were not made and so no consideration was given as to whether any management of associated risks was required. A month later, all board members signed general 'director's standing notice of interest' disclosures (which have since been renewed annually), but the same process was not undertaken for staff.

2.30 During the evaluation of proposals for its commercial adviser in 2013, MIC was required to consider proposals with both capped fee structures and those including additional 'incentive fees'. Specifically, of the two shortlisted contenders, one (Macquarie Capital) had proposed a $5 million (excluding GST) fee plus one per cent of the private sector funds raised above $500 million. The

23 Specifically, the evaluation panels for both procurement consisted of two board members and the Interim CEO.

other proposal was for a total fee of $6.75 million. MIC selected Macquarie's proposal for a number of reasons, including its 'lower overall transaction fee and certainty of total fees'.[24]

2.31 The incentive aspect of the fee was inherently uncertain at the time of evaluation. MIC records outline that there were significantly different expectations about the size of the variable fee between it and Macquarie, with MIC nominating $2.5 million and Macquarie seeking a cap of $4 million as late as 6 June 2013. This difference remained unresolved at the time the parties signed the contract, which is not dated, but appears to have been signed on or around 7 June 2013. Instead, MIC signed a contract requiring future 'good faith' negotiations towards an uncapped incentive fee to be paid at contractual close (in addition to $5 million in milestone payments to be reduced by the sum of $100,000 monthly retainer payments that had been paid or were payable).

2.32 The contract provided that the 'performance criteria and quantification for the incentive fee will be agreed within 30 days of the Moorebank board approving the project procurement strategy.' The MIC board agreed to this procurement strategy at its 24 October 2013 meeting but MIC did not take substantive steps to agree and finalise the incentive fee until the middle of 2014 (by which time it had entered into direct negotiations with SIMTA).

2.33 To address concerns about the 'optics' of a multi-million dollar incentive fee being paid, MIC agreed to pay a GST exclusive 'completion fee' of $1.05 million ($1.155 million including GST) and to increase other contract payments, as follows:

- the $5 million in milestone payments were changed from being GST inclusive in the contract to GST exclusive, thereby adding 10 per cent to each payment ($500,000 in total); and
- the requirement that the monthly retainer fee be offset against milestone payments was removed, adding approximately $1.98 million to the contract payments.

2.34 A sole source approach was taken towards the engagement of the lead technical adviser (Parsons Brinckerhoff).[25] This approach was adopted because of the adviser's prior experience and knowledge of the project as an adviser to the Department of Finance (Finance) prior to MIC's establishment. This approach contrasts with the approach taken towards the commercial adviser role. Similarly, KPMG had been undertaking the commercial adviser role for Finance for a number of years. Rather than maintaining this arrangement, MIC decided to explore alternatives. In this respect, a board member advised MIC's Procurement Director that accounting firms, with the exception of KPMG (to be invited 'out of courtesy'[26]), not be invited to submit proposals. By doing this, MIC effected a shortlisting process before having determined potential candidates' willingness and availability to tender. This reduces competition and limits MIC's ability to compare alternate rates and proposals.

---

24 Based on the announcement by Shareholder Ministers on 4 June 2015 that 'SIMTA will provide up to $1.5 billion in private investment for the project', the ANAO estimates that MIC would have needed to pay Macquarie a variable fee of $10 million to add to the $5 million in fixed fees — $15 million in total.

25 Interests in Parsons Brinckerhoff were declared in a 'Director's standing notice of interest' form signed by one of MIC's directors on 31 May 2013. This was on the basis that the director was employed (through their private consulting company) by Parsons Brinckerhoff. The contract between MIC and Parsons Brinckerhoff was executed on 16 May 2013.

26 Specifically, the board member advised MIC's Procurement Director: 'I would advise NOT asking any accounting firm except KPMG and that only from courtesy. I hope they do not respond.' [emphasis as per original]

Lower value procurements

2.35 The processes adopted by MIC for lower value procurements (those with total values less than $100,000) represented greater compliance with the corporate procurement policy. This is predominantly because MIC's policy allows for sole sourcing and simple quotation processes. Further, it does not contain any guidance for assessing quotations or verifying that they offer value for money. The approaches adopted by MIC for identifying potential tenderers for these processes are discussed from paragraph 2.41.

Have conflicts of interest been identified and managed?

> MIC's identification and management of conflicts of interest in its procurement activities has been ineffective. Relationships (long-term business and/or personal associations) with MIC staff were often (51 per cent of the time) the preferred basis for the sole sourcing of service providers or inviting them to participate in tender processes. While relationships with service providers were disclosed between MIC employees, there was no evidence of any formal consideration of conflicts of interest. Additionally, MIC's corporate policies contain limited guidance on conflicts of interest. No definition is provided, nor are any contextual examples of conflicts of interest articulated. This situation makes it difficult for staff to identify inappropriate practices. Situations were also identified where MIC employees had used their position at MIC to promote their external associates to Qube and to assist associates in securing employment by MIC.

2.36 As a wholly owned Commonwealth company that is heavily engaged in procurement and contracting, MIC must be alert to its exposure to probity-related risks to meet expectations with respect to ethical behaviour (see paragraph 2.10). A common way to communicate these issues to staff is through relevant organisational policies. To this end, MIC's code of conduct has been in place since February 2014, and was extensively updated in April 2016. It is a principles-based document that covers a range of behaviours expected from staff. With regard to conflicts of interest, the code states (among other things):

- actual and perceived conflicts of interest must be declared and managed;
- personal interests must not unduly influence professional judgement in making decisions;
- staff should declare:
  - the nature of relationships (including prior business dealings, friendships) with persons and companies when undertaking tender processes, engaging contractors or suppliers, or undertaking recruitment; and
  - employment or business interests that may pose an actual or perceived conflict of interest; and
- all decisions should be made in the best interests of MIC.

2.37 Codes of conduct typically set out organisational principles and are intended to set an overall tone for the conduct of an entity's employees. They are typically supported by more detailed conflict of interest policies and procedures. MIC drafted a 'Conflicts of Interest Policy' in February 2014 that was never finalised and later archived. The finalisation of this policy would have provided MIC's staff with a definition of a conflict of interest, as well as practical guidance in respect of identifying conflicts of interest. On 25 June 2018, MIC provided the ANAO with a June 2018 revised draft conflicts of interest policy and a May 2018 draft procurement policy and accompanying conflicts of interest declaration form.

MIC's framework for identifying conflicts of interest

2.38 Shortly after MIC was established, its board commenced an ongoing process for the declaration of director's interests. This commenced with initial declarations being signed by each board member in February 2013. The declaration process is focussed on members' personal financial interests by way of share holdings in or employment by other companies (public and proprietary) and other trading entities. These declarations are a standing agenda item at board meetings and have been updated (in writing) on at least an annual basis.

2.39 A process for the declaration of staff conflicts of interest was undertaken by MIC in January 2014.[27] The conflicting interests required to be declared through this process were specific[28] to MIC's major open procurement process, for which the formal expression of interest process had commenced in mid-December 2013. Since instituting this process, MIC has had new staff sign declarations, but has not required ongoing staff to review or update their original declarations.[29] No other mechanisms have been put in place for staff to declare any conflicts of interest in other areas of MIC's operations, such as for general procurement activities. Also, while MIC has a risk management plan and a risk register, conflicts of interest are not identified within either of these as risks that need to be managed.

2.40 In April 2017, MIC advised the ANAO that in relation to its current role (monitoring Qube's delivery of the precinct), 'the only potential conflict of interest would relate to advisers who are contracted to Qube'. MIC's approach to managing these is conducted at the board level. This process is focussed on monitoring the engagement of advisers and consultants by Qube. Through the monthly reporting Qube is required to provide under the deed, MIC is able to table a list of Qube's current advisers for consideration at MIC's monthly board meetings. MIC does not table this list at its board meeting every month. Rather, it has been considered by the board at 68 per cent of meetings since October 2014 (the meeting at which the list first tabled). A fundamental issue with this approach is that it fails to recognise the internal probity issues and conflicts of interest that may exist between MIC and its own advisers and consultants (discussed from paragraph 2.41).

Identifying suitable advisers and consultants

2.41 A business reference is a recommendation provided by, or on behalf of, an employer, to assist an individual (usually a former employee) seek employment. Sometimes a business reference is also given in respect of services that have been provided to it by another party (such as contractors, consultants, suppliers and clients) to assist the service provider obtain further business

27 This process also included declarations from MIC's board members, its IT service provider and key advisers including Herbert Smith Freehills, Macquarie Capital, Parsons Brinckerhoff and Deloitte.

28 The declaration process involved reviewing an attached list of 'potential respondents' to the major procurement process from the intermodal and logistics industries.

29 MIC advised the ANAO in April 2018 that it had refreshed senior staff conflict of interest declarations in March 2018.

opportunities. This is MIC's preferred approach for the selection of its advisers and consultants.[30] Specifically, MIC's consultants and advisers (whether they were engaged through sole source or select tender processes) were identified:

- in 51 per cent of instances by way of business reference (26 per cent by MIC employees; 17 per cent from advisers; and 8 per cent were a combination of MIC staff and adviser referrals);
- twenty-three per cent of the time due to their previous experience working for MIC or the Department of Finance (before responsibility for the project was transferred to MIC);
- via unknown sources in 14 per cent of instances (due to poor MIC documentation); or
- by a combination of the above (six per cent) or through provider-initiated proposals (in six per cent of instances).

2.42 These methodologies for selecting candidates combined with MIC's preference for limited tender or sole source procurement processes raise a number of probity concerns including: conscious or unconscious bias towards a particular candidate; manipulation of assessment processes in order to achieve desired outcomes; and the inappropriate limiting of competition within the process. They also place a significant limitation on MIC's achievement of value for money (discussed from paragraph 2.48).

Individual referrals

2.43 It is common for potential employees or suppliers to be identified by way of referral by others. The risks associated with this method of identification are usually managed by the process that these referrals feed into. For example, to better manage probity risks, those staff making referrals should:

- formally disclose the nature of the relationship with the consultant and any conflicts of interest in writing; and
- be excluded from decision-making processes regarding the assessment of proposals if the conflict of interest is material or, alternatively, recuse themselves entirely from the assessment process.

2.44 Additionally, senior management should be attuned to these situations and lead by example in their own circumstances. This is particularly important, because it is an entity's senior leadership (particularly the CEO) that employees look to for determining what behaviour is acceptable and what is not.[31] These processes were not adopted by MIC. Rather, the ANAO's analysis was that it was common and acceptable practice for MIC's senior managers (predominantly the CEO and

30 MIC advised the ANAO in April 2018 that: 'The quality and timeliness of the advice required are important. Therefore, MIC will typically invite a proposal from a single or small number of selected consultants. … MIC senior staff generally know who in the industry is of the right calibre, experience and knowledge to fulfil the role. Sometimes, MIC seeks advice on suitable candidates from other knowledgeable advisers MIC trusts, and whom MIC is confident will know who is suitable. … The candidates are discussed internally to determine who is best suited, available and without conflict. One or a small number are then approached to provide a proposal.'

31 Independent Commission Against Corruption (ICAC) NSW, 'Foundations for Corruption Prevention—Organisational Culture'. https://www.icac.nsw.gov.au/preventing-corruption/foundations-for-corruption-prevention/organisational-culture/4872 [Accessed 30 June 2018].

Project Delivery Director[32]) to source consultants that were either long-standing business or personal associates[33] (referred to herein as an 'associate'). These relationships were not hidden, but also were not formally disclosed. Nor were the related probity issues addressed. Examples of these include situations where:

- two of the referees that were used by a senior staff member (for obtaining their position with MIC) were later awarded contracts by the same MIC staff member (through their respective employer or consulting companies) under sole source arrangements. These contracts were awarded in June 2014 (resulting in payments totalling $26,500) and February 2015 (resulting payments totalling $46,000 as of February 2018); and
- shortly after the same senior staff member's commencement with MIC, a consultant that had been providing MIC with 'risk support services' was replaced with another firm. This firm was identified and sole sourced by the new MIC employee. The reason for the change of firms was discussed at MIC's November 2013 ARC meeting[34], but it was not disclosed to the Committee that the Director and Principal of the new firm was an associate of the staff member.

Referrals from MIC's advisers

2.45 On occasions, MIC has sought references from current consultants for potential candidates for the provision of new or related services. Where it has done so, it sought the advice of either one of its lead advisers (namely, Herbert Smith Freehills and Parsons Brinckerhoff) or from a contracted associate. Where these referrals were requested, the ANAO has been unable to identify any evidence suggesting that any consideration was given to the potential conflict of interest issues arising from such referrals. Specifically, MIC:

- accepted an offer by Herbert Smith Freehills to nominate suitable probity adviser candidates for MIC's major procurement process; and
- approached Parsons Brinckerhoff on a number of occasions for suitable candidate referrals. For example, after deciding that it had a requirement to procure an adviser to conduct 'additional geotechnical and geochemical investigations', MIC requested that Parsons Brinckerhoff:
  - design the methodology for the investigation and analysis (which was to be used as a basis to brief suitable candidates); and
  - 'provide a list of suitable companies that can carry out this work and an estimate of the cost of this investigation and analysis for budget purposes'.

---

32 The Project Delivery Director and the CEO worked together at the same special purpose vehicle (SPV) company from 2004 to 2009. The CEO assisted the Project Delivery Director with his application for the MIC role by reviewing his resume and suggesting edits that should be made to it before its submission. The CEO was also on the selection panel for the role.

33 These business associates were usually former colleagues of the CEO and/or the Project Director from their prior employment over the preceding 10 to 15 years.

34 The reason was recorded as: 'management had formed the view that a risk adviser with a more practical approach and greater relevant expertise … would be better placed to assist MIC with the completion of the risk management plan and risk register.'

2.46 This latter request was made by MIC following advice from Parsons Brinckerhoff that it wanted to nominate itself to submit a proposal for the delivery of the services. There was no evidence to suggest that MIC had addressed the potential conflict of interest created by Parsons Brinckerhoff both defining the terms of the tender process and participating in the tender. It subsequently nominated itself as one of three firms for shortlisting by MIC and provided a proposal for the work, but was unsuccessful.

Referring associates to negotiating party

2.47 As outlined at paragraph 2.37, MIC drafted a 'Conflicts of Interest Policy' in February 2014 that was not subsequently finalised.[35] The policy stated that 'conflicts may not necessarily be personal to employees or contractors, but may also arise where the interests of family, friends or close personal or business associates or business partners of employees (an Associate) or contractors conflict with those of MIC'. Examples provided for these situations included using one's position to promote or obtain benefits for others. In this regard, the ANAO identified at least five instances where a senior MIC staff member had provided business referrals for their associates to Qube. This was of particular concern given the timing of three of these representations occurred during direct negotiations between MIC and Qube, and the other three before financial close:

- 28 October 2014 — an associate's new consulting firm offering the 'provision of real time systems and consulting services in transport (tolling, ITS, C-ITS), health, logistics and corporate information systems', was promoted by MIC to Qube. On 30 October 2014, a senior MIC employee provided the associate with the contact details for Qube's Managing Director;
- 23 April 2015 — a senior MIC staff member committed to promoting an associate's construction company to Qube. On 18 May 2015, the staff member introduced the two parties to one another via email;
- 4 May 2015 — after confirming with Qube that it was about to recruit staff, a senior MIC staff member provided Qube with the resumes of a former colleague and an associate's colleague;
- 13 April 2016 — after having dinner together the evening prior, a senior MIC staff member provided the contact details of two senior Qube employees to a large construction company; and
- 28 October 2016 — a MIC board member introduced a colleague from another entity to a senior MIC staff member in order to facilitate contact between the colleague and Qube. After meeting in person, the senior MIC staff member provided the contact details of senior Qube employees to the board member's colleague in December 2016.

Has value for money been demonstrably obtained?

MIC's identification of potential candidates by way of personal or business referrals combined with its extensive use of non-competitive procurement processes significantly diminished the value for money that might have otherwise been obtained. Many of MIC's procurements have been urgent, unplanned or reactive. This inherently increases the risk of paying more. It was

35 This draft policy was revised and included within the package of documents provided to the ANAO by MIC in June 2018 (see paragraph 1.14).

also difficult to be assured that there was a genuine business need for a number of MIC's procurements — particularly where the original proposal was initiated by the service provider. MIC typically has not revisited or negotiated on price, even when the opportunity has presented itself.

2.48 MIC's procurement processes were predominantly based on management discretion. They were also largely inconsistent with the market testing requirements prescribed by MIC's financial thresholds. In this respect, MIC advised the ANAO in April 2018 that:

- its oversight of the delivery of the intermodal terminal by Qube means issues arise that need MIC's attention, typically unexpectedly and often urgently. In these circumstances, MIC typically needs a relatively small piece of specialist advice at short notice, so a broad-based and lengthy procurement is not appropriate;
- the quality and timeliness of the advice required are important. Therefore, MIC will typically invite a proposal from a single or small number of selected consultants;
- MIC senior staff generally know who in the industry is of the right calibre, experience and knowledge to fulfil the role. The candidates are discussed internally to determine who is best suited, available and without conflict. One or a small number are then approached to provide a proposal;
- candidates are generally not told they are sole-sourced, so their proposals are prepared as if in a competitive environment.

2.49 MIC's identification of suitable candidates did not always include the successful adviser. For example, in February 2014, a MIC staff member collected four referrals for suitable firms from personal and business associates for the role of MIC's 'open access adviser'. The firm that was ultimately selected for the role was not included within these referrals. Rather, it had heard that MIC was about to procure these services and initiated contact with MIC seeking to be included in the process.

2.50 MIC has engaged consultants under circumstances where there was said to be an urgent or unforeseen need, but then has either signed contracts that allow for the provision of ongoing or ad hoc services, or has extended the originally concise contract dates in order to continue engaging those services. By way of example, MIC engaged a legal adviser in February 2017 via a sole source process to provide independent advice on an urgent issue. The original scope of work was estimated at $20,000 to $30,000 and delivered for approximately $32,000 over a two and a half week period. MIC subsequently extended the engagement and as of February 2018, had paid the adviser service fees totalling $698,000. Due to the process undertaken, it is difficult for MIC to demonstrate that it has achieved value for money in this procurement.

2.51 MIC advised the ANAO in April 2017 that it 'has long-standing arrangements with a number of advisers and consultants (e.g. legal advisers, tax and accounting advisers, internal auditor, risk consultant, insurance broker, corporate affairs advisers, IT services provider, traffic analysis and engineering support, quantity surveyors). MIC's contractual and financial records support this statement. The ANAO's analysis was that there are a number of consultants with which MIC works with more often. In these cases, MIC is unlikely to periodically reapproach the market to test the value for money it is receiving via these services. Further supporting this analysis, MIC has executed a high number of variations for some contracts (up to 72 variations).

2.52 When possible, the negotiation of a capped contract cost can be an effective way to manage expenditure and achieve value for money. More than half of MIC's contracts do not have capped pricing mechanisms. Rather they contain schedules of hourly and/or daily rates. The ANAO identified a number of instances (at least three) where MIC had opportunities to negotiate the rates or pricing structures proposed by its advisers and consultants, but chose not do so. These instances included MIC staff providing proforma contracts to advisers for signing without populating the agreed fees schedule; and MIC staff failing to respond to suggestions by advisers that their rates were negotiable.

Provider-initiated proposals

2.53 In February 2014, a firm employing at least two long-term business associates of two senior MIC staff members made a number of attempts to secure a contract with MIC.[36] This culminated in the submission of a 'technical support proposal' in March 2015 across various areas where MIC 'may' require support. The proposal was submitted shortly after MIC's attendance at the Committee for Economic Development of Australia (CEDA) Annual Economic and Political Overview on 13 February 2015 as the firm's guest.

2.54 Rather than accepting the March 2015 proposal, MIC nominated the firm as a suitable candidate for the Independent Verifier role required under the contractual arrangements between MIC and SIMTA. This was a joint appointment by MIC and SIMTA.[37] The firm was not successful through this process, but was subsequently engaged by MIC in July 2015 for the technical support services proposed in March 2015.

2.55 In May and July 2016, a former MIC board member contacted MIC and requested a meeting to discuss opportunities to support MIC through services provided by their advisory firm.[38] Following a meeting between the entities in August 2016 and the submission of a draft proposal in September 2016, a MIC senior staff member emailed the firm to:

- reiterate the six 'small short-term and discrete tasks' for which MIC was interested in obtaining some assistance; and
- explicitly state that the scope and fee for each should be agreed on a case by case basis, rather than on the longer-term retainer arrangement proposed by the firm.

2.56 Internal communication indicated that senior MIC staff believed it was necessary to award work to the firm in order to maintain a positive relationship with the former board member. After at least three more draft proposals had been submitted and attempts by MIC to reduce the cost and scope of the work, the parties agreed to a 12 month contract, including a monthly retainer component, in late April 2017. The minimum total cost of the contract was $72,600 (GST inclusive).

---

36 MIC was aware that the offers of hospitality by the firm were a means to discuss securing a contract with MIC. This understanding was reflected in internal communication in October 2014 between the two senior MIC staff members after they were invited to lunch by one of their associates from the firm. Specifically, they agreed that 'the time suggested [for lunch] is OK but the expectation of work opportunity may be an issue … maybe a 'coffee' with [the firm] is more in keeping with what they might get from us.'

37 MIC disclosed to Qube on 26 June 2015, midway through the joint procurement process, that the firm's 'personnel [are] known to MIC senior staff'.

38 The former board member was the Executive Chairman of the advisory firm.

There was no evidence that any other firms were approached to provide quotations (as required by MIC's policy).

Performance management

2.57 In July 2013, MIC conducted a limited tender procurement process to select a new communications adviser.[39] This process involved inviting proposals from four firms that were identified via personal and business referrals. After receiving proposals from the four firms and shortlisting to two of the respondents, MIC's Corporate Affairs Manager met with the newly selected CEO[40] in June 2013 to discuss the proposals on the basis that he was listed as a referee for one of the shortlisted providers. The firm had been providing these services to the incoming CEO's previous company. The ANAO was not able to identify any evidence that MIC considered the potential for any conflict of interest. The firm was engaged (jointly with another firm) by MIC in July 2013 for a 12 month period.

2.58 The contract was subsequently extended on a 12-monthly basis until July 2016 when the consortium's unsatisfactory performance resulted in MIC seeking a new communications adviser. Internal MIC records from July 2016 indicate that the CEO planned to terminate the contract with the consortium on that basis. By the end of August 2016 (seven weeks after the contract had expired), MIC's CEO met with one[41] of the consortium firm's Managing Director to advise that MIC would not be extending the contract.[42]

2.59 Specifically, the unsatisfactory performance was associated with the Managing Director's services (as opposed to the other firm within the consortium). Notwithstanding this, the CEO advised MIC's Corporate Affairs Manager after the meeting that he had decided to retain the services of the Managing Director's firm under a new contract, but not renew the services of the other firm.

2.60 It is difficult to conclude that MIC had obtained value for money through this engagement.

39 Communications advice and services were previously provided by a firm contracted to the Department of Finance. MIC did not invite this firm to submit a proposal on the basis that it was not happy with the quality of its work. Of particular note was that one of the key staff members from the poorly performing firm had resigned and had established a new consulting agency. This was one of the three invited by MIC to submit proposals for the role.

40 The CEO did not formally commence in this role until September 2013.

41 This was the firm for which the CEO had provided a reference in 2013.

42 The parties met over lunch, which was initiated by the firm and accepted by MIC.

3. Credit cards and staff expenses

Areas examined

The ANAO examined whether the Moorebank Intermodal Company (MIC) effectively managed and controlled the use of credit cards and reimbursement of staff expenses for official purposes.

Conclusion

MIC has not had in place an appropriate and effective framework to manage and control the use of corporate credit cards and reimbursement of staff expenses.

Area for improvement

Following the commencement of this ANAO performance audit, MIC commissioned a consultant to undertake a review of the company's corporate expenses (see Appendix 3). The ANAO has recommended that MIC fully implement the recommendations from that review.

Are appropriate policies and procedures in place to govern the reimbursement of staff expenses?

Travel expenses and studies assistance are the primary areas of focus for MIC's expenses policies. MIC was timely in the development of its expenses policy (May 2013), but slow to develop its studies support policy (April 2015). There are gaps in the policy framework with work needed to adequately address expenditure by MIC on entertainment, telephones and professional memberships.

3.1 Organisational policies are an important component of sound corporate governance. They are a key mechanism for management to communicate expected performance and acceptable behaviour to staff. Clear policies also assist management to efficiently and effectively monitor and enforce compliance.

3.2 While MIC was generally slow in the development of its suite of corporate policies, among the first three to be finalised were the credit card and expenses policies. These were considered and approved, along with the financial delegations, by the MIC board in May 2013 (five months after MIC's establishment).

3.3 A separate policy addressing financial support for staff undertaking further approved studies or training was approved by the MIC Chief Executive Officer (CEO) in April 2015. Prior to this, MIC did not have a policy in place that documented MIC's views or expectations of staff undertaking MIC-funded training or studies. Reimbursements for university course fees had been provided to staff in the 12 months before the policy was in place.

3.4 The overall content of the expenses and credit card policies has remained largely unchanged, with the exception of the credit card policy being merged with the expenses policy (referred to subsequently as the 'Expenses Policy') in July 2015. Until June 2018, the board had not reconsidered any updated versions of the policy. Rather, any reviews of the policy were undertaken by senior MIC staff.

Categories of expenses

3.5 To determine whether MIC's policies were appropriately targeted towards its business activities, the ANAO examined the distribution (by value) of expense claims relating to each area of MIC's policies. Study and travel-related expense claims (including international travel) are MIC's largest expense areas, representing 34 and 33 per cent of claims value respectively. This indicates that the degree of focus in respect of travel-related and study (via the separate Staff Study Support Policy) expenses within MIC's policies is commensurate with the percentage of staff expense claims under these two categories.

Travel related expenses

3.6 MIC's expenses policy covers a range of appropriate work-related expenses that are commonly reimbursed to staff by their employers. While the policy effectively communicates the types of expenses covered, the amount of supporting guidance beneath each category varies. The policy is heavily focussed on travel-related expenses.

3.7 The travel-related costs identified by the policy are: air travel; overnight accommodation; overnight incidentals; meals; car mileage costs; and taxis. For board members' travel expenses, the policy refers to the limits set by the Remuneration Tribunal's Determination[43]. Almost 90 per cent of MIC's travel-related reimbursements to staff are associated with land transportation, with two thirds of these expenses being for rental cars and mileage for Sydney-based travel. With regard to MIC's policy for land transport expenses, the ANAO's analysis was that it:

- is silent on train-related travel expenses (MIC has reimbursed train fares on at least 115 occasions to staff and directors). This represents an opportunity for MIC to direct its staff towards more cost effective transport methods;
- lacks supporting documentation and templates (such as a car mileage log sheet); and
- does not address how to justify and evidence mileage expenses (that is, where the collection of receipts and tax invoices is not applicable).

3.8 Absence of this detail can lead to inconsistent practices being applied and increases the risk of erroneous or fraudulent claims. This risk becomes significant if there are ineffective checks and controls in place to identify and remedy any inconsistencies (discussion of the effectiveness of MIC's checks and controls begins at paragraph 3.19).

3.9 MIC has a generic expense claim form that is used for the reimbursement of all expenses. The same form is also used for the credit card acquittal process. The form collects minimal information about the basis for the claim. It could better support MIC's processes by requiring employees to disclose mandatory information that would enable approvers to be more informed (for example, listing the name, position and company of people being entertained or the trip details taken by staff claiming car mileage expenses).

3.10 In June 2018, MIC advised the ANAO that when claiming for mileage expenses, its 'staff provide a map of their trip using Google maps, and the time and distance are displayed on the map.' This evidencing method is not required by the claim form or noted within MIC's policy. ANAO analysis is that this method has been adopted 56 per cent of the time by staff claiming these

43 Remuneration Tribunal, *Determination 2014/15: Official Travel by Office Holders*, 31 August 2014.

expenses, or for 35 per cent of the value of mileage claims.[44] In 24 per cent of mileage claims, no supporting evidence was provided, and for the remaining 20 per cent, staff had handwritten the trip details and kilometres travelled somewhere within their claim.

Other expenses eligible for reimbursement

3.11 MIC's expenses policy explicitly outlines three additional areas of non-travel related costs that it reimburses to staff. These are for entertainment; memberships of professional bodies; and telephone costs. MIC does not have adequate policies in place to govern expenditure on entertainment, telephones or professional memberships. The guidance (see Figure 3.1) is brief and leaves significant scope for interpretation. Of note is that, in addition to using undefined terms such as 'reasonable amount per head' and 'appropriate business purpose', the policy does not provide examples or guidance for staff to determine, for example:

- who is responsible for deciding when and whether it is appropriate to provide business and staff entertainment;
- whether it is appropriate to provide alcohol when entertaining, and if so, how much is considered acceptable;
- which annual subscriptions to professional bodies are likely to be supported by MIC, and why; or
- the practicalities for determining the proportion of telephone costs related to business calls.

Figure 3.1: Extract of MIC's Expenses Policy — entertainment, telephone and professional membership expenses

3.6 Business and staff entertainment

3.6.1 Business

Claims for entertaining must show the business purpose, the location of the event plus the name, position and company of every person entertained.

Where two or more employees are engaged in entertaining, then the most senior person present should pay for the bill.

3.6.2 Staff

Staff entertaining should be for an appropriate business purpose and not exceed a reasonable amount per head.

The most senior person present should pay for the bill.

3.7 Telephone related costs

The company will reimburse the proportion of telephone costs related to business calls made on private telephones on submission of the telephone bill and a completed expense form.

3.8 Memberships of professional bodies

The company will reimburse the annual subscription to professional bodies up to a total of $1,000 per annum, where the memberships are in the interests of the company.

Source: MIC Expenses Policy, February 2016.

44 The variance between these percentages shows that the higher value the mileage claim, the less likely staff will evidence it using the Google map method. The high-value claims were the result of multiple days' or weeks' worth of mileage being bulked into single mileage claim line items.

3.12 MIC's guidance has not been adequate in governing expenditure on entertainment, telephones or professional memberships. It has resulted in varying interpretations and practices being adopted by MIC employees across these expense items. For example:

- some senior MIC employees often claimed for reimbursement of entertainment expenses, whereas others rarely claimed, and some have never claimed; and
- when determining the amount to claim in respect of telephone expenses, some staff use their itemised monthly accounts to identify which phones calls were made for business purposes in order to determine the proportion of business calls made for the month. Other employees consistently claim for a flat 50 per cent of the cost of their monthly account.

Are policies and procedures in place to govern the appropriate issue, use and cancellation of credit cards?

MIC's credit card policy provides an appropriate framework for the issue, use and cancellation of credit cards. The first version of the policy was approved in May 2013 and had undergone few changes until June 2018. The updated June 2018 policy addressed a range of deficiencies in earlier versions of the policy relating to the separation of duties and acquittal processes.

3.13 As outlined at paragraph 3.1, MIC's credit card policy has been in place since May 2013, and was merged with the expenses policy in July 2015. The policy has consistently stated that corporate credit cards will only be issued to employees who are able to demonstrate that a card will aid in the efficient and effective exercise of their duties.[45] The policy does not outline specific acceptable expenditure, but states that:

> Examples of company expenditure that will influence the decision to issue a card include:
>
> - frequent minor purchases of goods and services (including internet purchases);
> - usage to meet costs for domestic and overseas travel; and
> - the need to meet the cost of 'out of pocket' expenses.

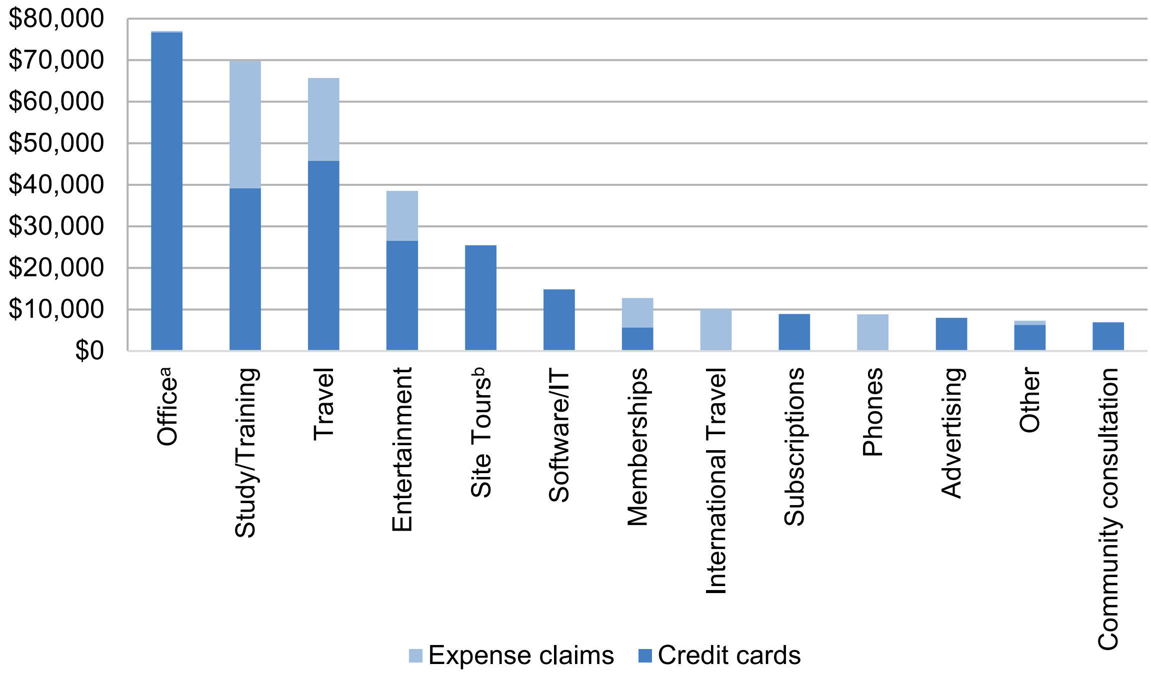
3.14 Most of MIC's credit card transactions between February 2013 and December 2017 were attributable to its administrative staff (72 per cent of MIC's total credit card expenditure).

3.15 The expenses paid with corporate credit cards are similar to those that have been reimbursed through the expense claim process and are consistent with the high-level examples of expenditure provided within the policy (as listed in paragraph 3.13). Figure 3.2 provides a consolidated summary of staff expenses across both credit cards and expense claims.

---

45 The policy has also consistently stated that all directors of the MIC board are eligible to be issued with a corporate credit card. Four board members have used corporate credit cards since MIC was established, three of whom are no longer board members. MIC advised the ANAO in August 2018 that 'no credit cards have been used by or issued to directors since the beginning of March 2015'.

Figure 3.2: Consolidated MIC staff credit card and expense claim transactions by category



Note a: Sixty-five per cent of the 'office' category was for printing and stationery expenses. The remainder was for staff amenities, postage, furniture and décor and insurance.

Note b: Most of the expenses incurred under the 'site tours' category was for the April 2017 Australian Government sod turning ceremony onsite at the Moorebank Intermodal Precinct.

Source: ANAO analysis of MIC records.

3.16 MIC's policy required staff seeking to be issued with a corporate credit card to submit a 'Corporate credit card application form'. This form had been consistently located in the appendices of MIC's policy, along with an 'Acknowledgement of conditions of use form' that must be completed and signed before using the credit card. Among other things, staff acknowledged when signing these forms that:

- the card remained the property of MIC and would be kept in their possession and under their strict control;
- they would undertake monthly reconciliations upon receipt of their monthly credit card statements. This process included:
  - certifying that goods or services paid for had actually been delivered or provided;
  - attaching supporting documentation including tax invoices to the statement;
  - signing the statement to verify that all transactions had been made for official purposes; and
  - forwarding the statement with supporting documentation to the approver for authorisation; and
- they would not permit the card to be used by any other person than themselves.

3.17 An authorisation table detailing which of MIC's senior staff were the approvers for each respective credit card holder was also contained within the policy. Of note is that:

- the CEO was the approver for the Chair and the directors of the board, while the Chair was the CEO's approver; and
- the Finance Director was listed within the policy as a cardholder, one of the approvers (for the Operations Coordinator) and as responsible for finalising the accounts.

3.18 MIC has been progressively decreasing its active credit card numbers. Board members ceased using credit cards in April 2015, and more recently, no more than two active credit cards have been issued at one time. These cards have been held by the Operations Coordinator, plus either the Finance Director (between July 2014 to June 2017) or the CEO (from July 2017). In July 2017 the new Finance Director proposed to not hold a credit card and had it issued instead to the CEO. MIC advised the ANAO in June 2018, that this was to provide greater separation between the Finance Director's duties.

Are effective controls in place for MIC to be assured its policies and procedures are being complied with?

MIC's controls have been ineffective in assuring compliance with its policies.

3.19 MIC's credit card acquittal and expense claim processes are the primary control mechanisms that the company has in place to ensure compliance with its policies. These processes are paper-based and require the printing, signing and scanning of forms with attached supporting evidence before they are approved and processed. This places significant reliance upon the approvers in this process to scrutinise transactions, detect non-conformity with the policy and enforce compliance. These manual processes are not uncommon in small entities like MIC, and are generally considered appropriate.

Approval process

3.20 MIC's expenses policy outlines the requirements that must be met for both reimbursement claims and credit card acquittals before they are submitted, approved and processed. Of particular note in this respect is that:

- claims and acquittals must be supported by original invoices and receipts;
- credit cards must be acquitted monthly and expense claims must be submitted on a regular basis so as to not accumulate a backlog of aging claims;
- in order for the company to recover GST, a GST invoice is required. Credit card slips or statements will not be accepted as evidence of business expenditure;
- staff must sign the claim/acquittal form to confirm that all expenses are reasonable and have been necessarily incurred in the performance of company duties;
- the approver must also sign the form to confirm that:
  - they approve of all the amounts claimed on the expense claim form;
  - there is adequate supporting documentation; and
  - the expenditure is reasonable and incurred for company purposes; and
- where an acquittal/expense claim is incorrect or lacks sufficient supporting documentation it must be returned for amendment and then resubmitted.

3.21 MIC's approvers have a strong record in signing off employee expense claims and monthly credit card expenditure. Less than one per cent had not been verified by an approver before being processed.[46] The ANAO's analysis in respect of the effectiveness of these approvals was that:

- while most claims for reimbursement were appropriately supported by receipts, MIC's approvers overlooked some instances where receipts had been omitted, or allowed staff to use personal bank statements to verify expenses. These allowances were made by, and predominantly for, senior MIC staff and directors of the board;
- from 2016, two board members commenced submitting backlogs of old claims.[47] These were approved by either the CEO or the Chair of the board;
- heavy reliance is placed claimants' and approvers' understanding and diligence towards expenses covered by the policy. For example:
  – on four occasions over a three year period two staff exceeded the $1000 cap on professional membership fee reimbursements (once by one staff member and three times by another). This resulted in MIC funding 46.6 per cent more towards these membership fees than the policy allowed. MIC's records indicate that one staff member recognised that they had exceeded this limit in June 2015, and in subsequent years made clear on their expense claim forms how much of their second membership was able to be reimbursed. Both staff members were direct reports to the CEO;
  – MIC's policy does not specifically address land transportation for board members but the Remuneration Tribunal Determination outlines 'general principles' in respect to travel by board members. It states that when making travel arrangements, amongst other things, 'office holders are to consider the total cost of travel, including value for money (the 'best deal' for the taxpayer)';[48] and
  – MIC's policy allows for personal travel to be combined with business travel as long as 'any additional expense is borne by the traveller' although there has been at least one occasion when a decision was taken for MIC to meet the costs of personal travel; and
- there has been no evidence identified suggesting approvers had rejected or returned any claims or raised any issues with expenditure prior to the new Finance Director doing so shortly after commencing with MIC in December 2016. For example, in December 2016, the Finance Director returned an incomplete expense claim to one of the directors of the board on the basis that it was not compliant with MIC policy. It did not include all of the required supporting documentation (receipts for transport and overnight stay meals). MIC's records suggest that the practice of not requiring receipts was originally adopted by the director, previous Finance Director and the CEO (as the approver) for May 2015 claims and had remained an ongoing arrangement.

46 The CEO's credit card acquittals were an exception to this standard. Having been issued with a credit card in July 2017, there should have been seven acquittals completed and approved by the Chair of the board for the CEO's card over the period examined by this audit. Rather, the Chair had approved the first month's expenditure and the remaining months were either approved by the Finance Director or not approved.

47 On eight separate occasions these board members have submitted bulk claims for expenses incurred over the previous four months to two years.

48 Remuneration Tribunal, *Determination 2017/15: Official Travel by Office Holders*, 27 August 2017.

Entertainment expenses

3.22 Potential risks associated with hospitality expenditure include:

- inappropriate, excessive or extravagant expenditure;
- expenditure not being relevant to the operation of the organisation or not effective in achieving benefits for the organisation;
- weak controls on management of expenditure; and
- expenditure not being accounted for appropriately.

3.23 The majority of MIC's entertainment expenses were paid for via corporate credit card (65 per cent of total cost and 68 per cent of occurrences). Most of MIC’s entertainment expenditure was for staff entertainment, accounting for 82 per cent (or approximately $29,000) of total entertainment expense and 65 per cent (or 177 of 274) of individual instances.

3.24 Business entertainment accounted for 22 per cent of (or 61) instances and nine per cent (approximately $3000) of total cost. In 35 instances (8 per cent), the ANAO was unable to determine whether the expense was for staff or business entertainment due to insufficient information in the respective expense claim or credit card acquittal.

3.25 Although otherwise vague in its guidance, MIC’s policy outlines that particular details must be captured by staff when acquitting or seeking reimbursement for entertainment expenses[49] (detailed within Figure 3.1). The level of detail and evidence captured by employees in their respective claims or acquittals varied largely. It ranged from no evidence being provided at all to the presentation of a receipt and a brief reason for the entertainment, such as ‘team lunch for staff engagement and PAC approval’[50] or ‘coffee with PB’[51]. Depending on the staff member submitting the claim, these details may have also been accompanied by the initials or first and last names of the individuals present. These practices were not challenged by MIC’s approvers, three of whom were responsible for approving over 85 per cent of entertainment and hospitality expense claims.[52] This situation further illustrates the ineffectiveness of MIC’s approval and acquittals process (discussed at paragraph 3.21).

3.26 The ANAO was unable to identify any records evidencing an explicit distinction between expenses that were for business or staff entertainment.[53] Nor were any records identified that evidenced any contemplation by MIC as to whether expenses were ‘for an appropriate business purpose’ or what should be considered a ‘reasonable amount per head’ for staff entertainment. Common expenses reimbursed in full or charged to credit cards included: birthday cakes on each

---

49 MIC’s chart of accounts contains codes for ‘entertainment’ and ‘staff amenities’, which have been used interchangeably and sometimes incorrectly by staff to account for entertainment and hospitality expenses reimbursed or incurred on corporate credits cards. The entertainment code was used for 67 per cent and the staff amenities code for 20 per cent of MIC’s entertainment and hospitality expenses.

50 That is, an approval required for the progress and development of the Moorebank Intermodal Terminal by the NSW Planning Assessment Commission.

51 That is, Parsons Brinckerhoff, MIC’s main technical adviser.

52 Specifically, these approvers were the MIC CEO (45 per cent of instances); the Finance Manager (21 per cent); and the Chair of the Board (20 per cent).

53 As part of the audit, the ANAO categorised these expenses manually between staff and business entertainment. Where there was any doubt, the expense was classified as unknown.

staff member's birthday; Melbourne Cup lunches; and lunches and dinners for staff and board celebrations[54]. In this latter respect, the ANAO notes that the average spend on alcohol at the 10 most expensive MIC functions was approximately 30 per cent of the total bill (with a range of 17 to 45 per cent). Consistent with the expenses policy (that the most senior person should pay for the bill), the MIC CEO was responsible for 85 per cent of the entertainment expenses reimbursed to staff.

Cancellation of credit cards

3.27 When credit card holders cease their employment with MIC, they are required to immediately return the card to the company. It is then the responsibility of MIC's finance staff to notify the card provider of the required cancellation. MIC's financial records indicate that this has not always happened.

3.28 MIC's first Finance Director was employed from February 2013 until November 2016, and was a credit card holder at the time of his departure. Rather than the card being cancelled as soon as practicable, it continued to be used for some six months by MIC until the card was transferred into the CEO's name.

3.29 Due to there being limited credit cards on issue at one time, MIC has adopted a practice whereby credit cards are securely stored onsite with select staff being able to access the card. In this respect, MIC advised the ANAO in June 2018 that it was:

> aware of instances where another staff member has used a MIC credit card. This is only done with approval of the cardholder / delegate with authority. This approach is consistent with MIC's policy to use the company credit card for small business expenses. An example is the payment of ASIC fees by the Governance Coordinator using [the CEO's] card. Approval to spend was provided verbally by the Company Secretary and CEO. Formal approval is confirmed when the credit card statement is approved for payment by the CEO or Chair.

3.30 This practice is inconsistent with the requirements specified in the conditions of use form that staff must sign before they are provided with a card (see paragraph 3.16). Further, it constitutes a circumvention of the controls MIC has in place to ensure appropriate credit card use and expenditure.

54 Celebrations were for events including: reaching term sheet agreement, contractual close and financial close between MIC and the Sydney Intermodal Terminal Alliance, staff farewells, staff and board Christmas functions and a staff member's engagement.

4. Gifts and benefits

Areas examined

The ANAO examined whether the Moorebank Intermodal Company (MIC) effectively managed the risks associated with accepting and providing hospitality, gifts or benefits.

Conclusion

MIC has not effectively managed the risks associated with accepting and providing hospitality, gifts or benefits. Initially this was due to the absence of relevant policies and guidance. Subsequent to the development of policies and guidance, poor compliance and ineffective governance arrangements resulted in the acceptance of offers that should have been declined under MIC's policy framework.

Area for improvement

Following the commencement of this ANAO performance audit, MIC commissioned a consultant to undertake a review of the company's gifts and donations framework (see Appendix 4). The ANAO has recommended that MIC fully implement the recommendations from that review. More broadly, in December 2017 following a review of control frameworks in place across 26 entities (not including MIC), suggested that there is merit in the development a whole of government gifts and benefits policy setting the minimum requirements for entities to include within their policies, to promote good practice across Australian Government entities.[55]

Are appropriate policies and procedures in place in respect to the giving and receiving of gifts and benefits?

MIC did not have a policy and supporting gifts and benefits register until September 2014. This was approved some 21 months after MIC was established. The policy would be significantly enhanced if it explicitly identified procurement and contracting activities as a high-risk area for the acceptance of gifts and benefits. Amendments to the policy in February 2018 have weakened controls by allowing MIC's Chief Executive Officer (CEO) to both accept and approve his or her own receipt of gifts and benefits.

4.1 Organisations and individuals sometimes offer gifts and hospitality in the course of business interactions. The acceptance of gifts or benefits has the potential to give rise to real or perceived conflicts of interest.[56] Gifts and benefits policies are commonly developed as key mechanisms to communicate how to handle such offers. The content of these policies are influenced by an entity's industry and operating environment.

4.2 Prior to the development of MIC's first 'Code of Conduct' in February 2014, no guidance was in place in respect to the giving and receiving of gifts, hospitality and benefits by MIC employees. The extent of gifts and benefits-specific guidance provided by the code of conduct was that 'MIC

55 Auditor-General Report No. 47 2017-18 *Interim Report of Key Financial Controls of Major Entities*, pp. 14-17.

56 Australian Public Service Commission, *APS Values and Code of Conduct in Practice*, section 5.4.1 [Internet], http://www.apsc.gov.au/publications-and-media/current-publications/values-and-conduct [Accessed May 2018].

will not tolerate behaviour or activities that adversely affect MIC and its reputation'.[57] Within the range of examples provided for this principle, two referred to the giving or receiving of gifts or benefits 'in contravention of the Gifts or Benefits Policy'. This policy was in draft form at the time, but was later used as a basis for the 'Gifts and Donations Policy' approved by the board in September 2014.

4.3 MIC's newly established External Affairs Committee (EAC) initiated the review of the draft policy and the inclusion of donations within its scope in August 2014. The EAC was a sub-committee of the MIC board[58] that also included relevant senior MIC staff and contracted advisers within its membership (such as the Corporate Affairs Manager and MIC's communications advisers). MIC's 'Gifts and Donations Register' was created in late September 2014, following the EAC's endorsement and the board's approval of the policy. In August 2018, MIC advised the ANAO that:

> The External Affairs Committee was dissolved on 26 May 2016. Subsequently, the Audit and Risk Committee considers the Gifts and Donations register on a quarterly basis, noting that there have been several periods where this has been six-monthly. MIC will implement the gifts and donations as a standing item agenda at all Audit and Risk Committee meetings in the future.

Scope of the Gifts and Donations Policy

4.4 MIC's policy expressly applies to the members of the board and all MIC employees, including those engaged via contract. The purpose of the policy is 'to establish standards that:

- will be applied in seeking approval from the EAC[59] to make a charitable donation or community sponsorship (discussed from paragraph 4.29); and
- enable MIC's people to identify when to accept or decline a gift or benefit.'

4.5 The policy separately addresses the requirements and circumstances for the provision of donations and sponsorships and the acceptance of gifts and benefits. It does not address the giving of gifts and benefits by MIC staff to others. MIC advised the ANAO in August 2018 that it is 'currently updating the Gifts and Donations Policy to reflect recommendations arising from [its internal] Business Integrity Review and the ANAO's recommendations'.

4.6 The policy defines gifts and benefits as 'something that has a monetary value or worth, or other advantage or privilege derived as a result of a business-related relationship'.[60] It provides a financial threshold to assist staff in determining whether gifts should be formally reported. Gifts with values of less than $100 are considered of 'nominal' value, while formal reporting is required for gifts and benefits that are valued at $100 or more. This amount is within the range of nominal amounts specified by other GBEs whose policies are publicly available. Specifically, the Australian Submarine Corporation's staff are required to report gifts and benefits that are greater than $50 in value, whereas NBN Co does not require reporting until the value of the item reaches $200.

---

57 An update to the Code of Conduct in December 2015 elaborated upon and strengthened this advice. By this date, MIC had developed a standalone Gifts and Donations Policy.

58 The Chair of the EAC was a member of the MIC board. Attendance at the EAC meetings was open to all other board members.

59 In February 2018, this section of the policy was amended to remove the EAC as the approving authority and was replaced with a requirement to obtain approval from the 'CEO or Audit and Risk Committee, as appropriate'.

60 Specific examples provided are: 'a dinner at a restaurant, tickets to attend a sporting or cultural event, a Christmas gift, [and] a gift presented on reaching agreement with a supplier.'

4.7 The policy states that 'working lunches, informal coffee meetings or attending a cocktail function (or similar) at the invitation of a supplier or consultant is acceptable, so long as this does not create a conflict of interest or alter your decision making process or objectivity.' In this latter respect, the policy places a caveat on these situations by explicitly stating that staff 'must not accept **any** gift or benefit that may create or be perceived to create a conflict of interest' (ANAO emphasis added).

4.8 Compliance with this condition requires considered and accurate identification of circumstances that give rise to a perceived or actual conflict of interest. As noted at paragraph 2.37, MIC has not had a conflicts of interest policy in place to support this identification. MIC's approach to accepting gifts and benefits has been characterised by an absence of consideration in this respect. This situation is discussed further at paragraph 4.32.

4.9 Additionally, the policy also requires that staff must not:

- seek gifts or benefits in connection with their directorship, employment or engagement contract, as appropriate, at MIC;
- be influenced by the receipt of a gift or benefit to alter their decision-making process or objectivity; and
- accept monetary/financial gifts under any circumstances related to their employment at MIC.

4.10 In assessing the appropriateness of MIC's policy, the ANAO compared it with policies adopted by other entities. Clearer guidance could be provided to staff and MIC's policy strengthened by the inclusion of additional details. This includes:

- consideration being given to the cumulative value of gifts and benefits being accepted by staff. For example, where the combined value of second and subsequent nominal gifts exceed the reportable value threshold, other entities require the nominal items must be collectively treated as reportable;
- explicit identification of instances where the acceptance of gifts, benefits or hospitality brings a higher than usual level of associated risk, or is prohibited altogether. For example, such a prohibition could be applied to staff engaging in commercial discussions and procurement activities;
- providing a clear definition for a 'business relationship'. In this respect, other entities require that a broad interpretation be adopted and should extend to any actual or potential commercial arrangement. Examples include an actual or prospective customer or supplier, or a person seeking employment or engagement with the company. Additional guidance to staff in this area has been communicated by entities to staff through separate business and personal reference policies.

Approval process

4.11 When declaring a reportable gift or benefit, MIC's policy requires staff to notify their manager or the Chair. In doing so, staff must include details such as: the provider of the gift or benefit (that is, the organisation name); date received/to be received; brief description of the gift or benefit; and its estimated value. A response in writing is then to be provided by the Chair or respective manager to the staff member advising whether they may retain the gift or benefit. In this respect, the policy explicitly requires the approver to consider the gift in light of the policy itself, MIC's values and its code of conduct.

4.12 In February 2018, this section of the policy was amended to remove the requirement to seek approval from the Chair. Rather, staff are now to notify their manager or the CEO in respect of reportable gifts or benefits. As of April 2018, 41 per cent of the gifts, benefits and hospitality identified as being offered were intended for the CEO (either solely or jointly with other MIC staff). The amendment to the policy:

- allows the CEO to unilaterally accept such offers without the requirement to seek separate approval; and
- involves the CEO approving board members' acceptance of gifts, benefits or hospitality.

4.13 The policy requires that MIC's Governance Coordinator be notified of the outcome in respect to each gift or benefit so that the items can be accurately recorded in MIC's gifts and donations register. In addition to the maintenance of the register, the Governance Coordinator is also responsible for preparing quarterly reports on gifts and benefits to the EAC (prior to mid-2016) or the Audit and Risk Committee (post mid-2016). The effectiveness of MIC's reporting to the EAC or Audit and Risk Committee is discussed at paragraph 4.15.

Is the recording of offers of hospitality, gifts or benefits accurate and complete?

MIC's recording of gifts and benefits has been inaccurate and incomplete. Key factors in this situation have been:

- the lag in the development of MIC's policy material meant that staff were not required to record such offers until late 2014;
- poor understanding of the requirements of the policy, resulting in only three items (rather than at least 63) being recorded on the register until November 2015;
- MIC's recording only of gifts and benefits that were accepted and not those refused (evidence is that few offers have been refused) prior to February 2018; and
- poor consideration of the application of the policy towards MIC board members.

4.14 MIC's recording of offers of gifts, benefits or hospitality commenced in December 2014, after the approval of its Gifts and Donations Policy and the development of its accompanying register (in September 2014). Within the first 12 months, three items were recorded in the register. Each of these items were physical gifts (bottles of wine) and were given to and accepted by senior MIC staff. Two of these had recorded values in excess of the $100 reportable threshold, but only one was recorded as being approved in accordance with MIC's policy.

4.15 The EAC did not receive, nor did it request, a report on MIC's acceptance of gifts or benefits until October 2015 (some 13 months after assuming this oversight responsibility). Following the EAC's review of the register, 33 items were retrospectively recorded on the register in November 2015.[61] Some of these items dated back to 2013 and all involved the acceptance of either hospitality (lunches and dinners) or invitations to various functions. The stated reason for these events being

61 This represents 39 per cent of the items (84 in total) recorded on MIC's gifts and donations register as of April 2018.

previously omitted from the register was a matter of 'interpretation'. This matter was discussed at the October 2015 EAC meeting. The ANAO identified from MIC records that there were at least another 27 items (similar in nature and value to the 33 identified by MIC) that were accepted by MIC staff but not recorded on the register for this period (prior to November 2015).

4.16 The EAC reviewed updates to the register twice more at its February and April 2016 meetings before being disbanded ahead of its scheduled June 2016 meeting.[62] Updates to the register have since been reviewed by the Audit and Risk Committee at around six-monthly intervals (as at February 2018) rather than the required quarterly reviews.

4.17 The ANAO's analysis of the accuracy of the information recorded within MIC's gifts and donations register was that:

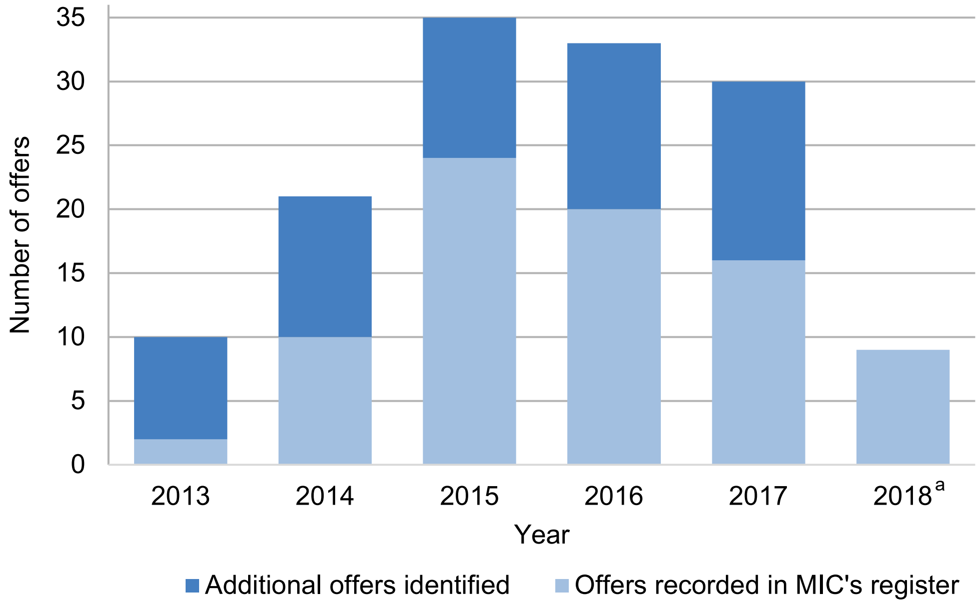
- as of June 2017, MIC had included estimated values for only 16 per cent of the items recorded in the register. This is a low result given the provision of this information is a mandatory requirement of MIC's policy. By February 2018, MIC had updated its register to include estimated values for 71 per cent of the items recorded;
- there is an absence of records relating to the acceptance of gifts, benefits and hospitality by MIC's board members. Only two events involving the provision of hospitality to a MIC board member were recorded. A senior MIC staff member was also a recipient in these instances;
- the approach taken by MIC towards the recording of gifts and benefits illustrates a lack of understanding of the underlying reasons for the information required. For example:
  - the column in the register designed to capture cumulative offers is consistently populated with 'refer to register'. A proper consideration of cumulative offers necessitates the specification of the quantity and value of the previous offers; and
  - a number of entries involved the incorrect recording of the entity coordinating the event instead of the entity providing the gift or benefit to MIC (that is, tickets to the event);
- prior to February 2018, MIC's practice was to only record offers of gifts, benefits and hospitality that were accepted by staff. This involved the recording of 80 offers (40 of which were 'reportable', 26 'nominal' in value and 14 with undetermined[63] values) as being accepted by MIC staff between 2013 and 2017. Six declined offers (one reportable and five nominal) were recorded in 2018, as well as a further three accepted offers; and
- in addition to the items recorded on the register, there were a further 57 similar offers that should have been recorded by MIC. Three of these were declined.

4.18 Figure 4.1 illustrates the level of accuracy recorded within MIC's register.

62 Disbandment of the EAC coincided with the non-renewal of the contracts for three of the five directors who made up the EAC membership.

63 That is, the value had not been estimated by MIC.

Figure 4.1: Accuracy of offers recorded within MIC's Gifts and Donations Register



Note a: The MIC records underpinning the ANAO's identification of additional offers were collected in early February 2018. The 2018 column represents the offers recorded by MIC in its register up until April 2018.

Source: ANAO analysis of MIC records.

How often are offers of hospitality, gifts or benefits accepted by MIC?

> Where records exist, MIC has accepted most offers of hospitality, gifts or benefits. From MIC's establishment to April 2018, there were at least 43 organisations that made at least 138 offers of gifts, benefits or hospitality with an estimated total value of $20,928 to MIC's staff. Four of these organisations accounted for 56 per cent of the quantity and 65 per cent of the total value of these offers. These entities were MIC's three key advisers and Qube. MIC accepted all but eight of these offers.

4.19 From MIC's establishment to the end of 2017, there were at least 43 organisations that made at least 138 offers of gifts, benefits or hospitality with an estimated total value of $20,928 to MIC's staff (see Table 4.1). Due to MIC's practice of recording only accepted offers of gifts, benefits and hospitality, it is difficult to accurately determine the number of offers that MIC has declined in the period since it was established. From February 2018, MIC commenced also recording declined offers. Between February and April 2018, it recorded nine separate offers on its register, of which six were declined and three accepted. In August 2018, MIC advised the ANAO that:

> The number and value of gifts and benefits offered to staff over the life of the company has been very low.

Table 4.1: Offers of gifts, benefits or hospitality to MIC staff by year

Period	Number rejected	Number accepted	Total offers	Estimated total value
2013	1	9	10	$1,540
2014	0	21	21	$3,150
2015	0	35	35	$7,088
2016	0	33	33	$4,160
2017	1	29	30	$4,100
2018	6	3	9	$890
Total	**8**	**130**	**138**	**$20,928**

Source: ANAO analysis of MIC records.

4.20 There were four organisations that represented 56 per cent of the quantity and 65 per cent of the total value of the offers made to MIC. These four organisations consisted of:

- MIC's three most highly paid consultants. Specifically, these were MIC's:
  - commercial adviser (7 per cent of the total value and 4 per cent of the total quantity of offers);
  - legal counsel (36 per cent of the total value and 33 per cent of the total quantity of offers); and
  - key engineering adviser (14 per cent of the total value and 15 per cent of the total quantity of offers); and
- Qube, MIC's private sector delivery partner (representing 8 per cent of the total value and 4 per cent of the total quantity of offers).

4.21 The relationship between the giver and the employee is an important consideration. Gifts and benefits offered by both Qube and the consulting firms were almost always directed towards senior MIC staff, and in particular, those with influence over or decision-making responsibilities in regards to MIC's contractual arrangements. Three of MIC's most senior staff members accounted for 83 per cent of the total offers made.

4.22 The gifts, benefits and hospitality provided to MIC have included:

- invitations to conferences, orations or other speaking events (usually including a lunch or dinner);
- invitations to functions, including consultants' annual end-of-year events, various art exhibitions, fundraisers and cocktail parties;
- lunch or dinner at Sydney CDB and surrounding venues with estimated prices per head ranging from $50 to $200;
- bottles of wine, chocolates and fruit baskets; and
- tickets to a sporting event and a political fundraising dinner.

4.23 The political fundraiser took place in March 2014 and was recorded on MIC's register in November 2015. The ANAO notes that MIC's policy explicitly states that:

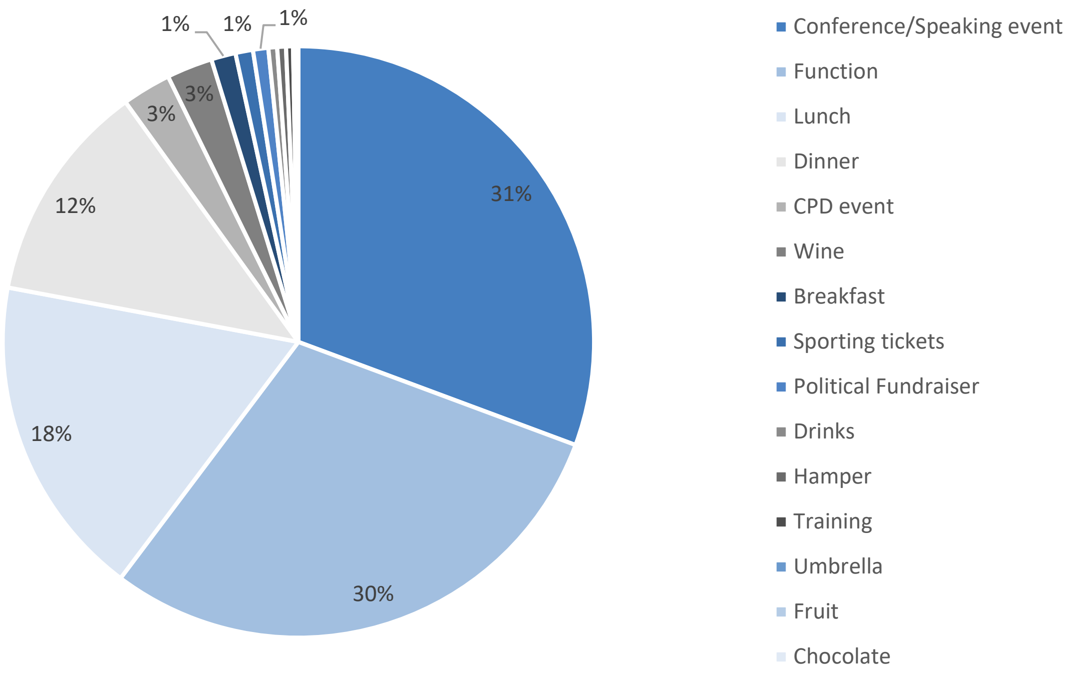
MIC's policy is not to make direct or indirect political donations (which includes not attending political fundraising events or functions as an invitee).

4.24 In respect of the political fundraising event, MIC advised the ANAO in August 2018 that:

It only became evident to the CEO upon arrival at the event that an invitation from MIC's technical adviser to a dinner on 27 March 2014 was to a political fund-raising event. MIC acknowledges that the CEO attended and it was included in the Gifts and Benefits register, but attendance was inadvertent. It is not MIC's practice or policy to attend political fundraisers.

4.25 Figure 4.2 shows the proportion (based on value) of these gifts, benefits and hospitality that have been offered to MIC employees.

Figure 4.2: Categories of gifts, benefits or hospitality offered to MIC by proportion



Source: ANAO analysis of MIC records.

How often are hospitality, gifts or benefits, including donations and sponsorships, provided by MIC?

MIC has, on occasion, provided entertainment or hospitality to its paid consultants and Qube. It has been less common for MIC to provide gifts or benefits. Since it was established, MIC has provided a total of $56,250 in donations or sponsorships to six different entities. Two of these predated the development of MIC's policy and the remaining four were not approved in accordance with the policy.

4.26 It has been less common for MIC to be the provider of gifts or benefits to other entities. On a small number of occasions it has given gifts to external parties, such as bottles of wine to key consultancy staff and movie vouchers to Liverpool residents affected by air and noise monitoring activities at the Moorebank intermodal site. It occasionally provides gifts, hospitality or entertainment to staff for special occasions. These have included: Melbourne Cup events; farewell gifts and lunches or dinners; birthday cakes (typically valued between $40 and $60 each); and celebratory dinners for the achievement of project milestones, such as contractual close.

4.27 The ANAO identified 34 occasions (with a total estimated cost of approximately $7000) on which MIC supplied hospitality and/or entertainment for a range of its paid consultants or to Qube. Twenty-four of these occasions involved the conduct of business meetings over coffee. While these purchases represented 71 per cent of MIC's offers, they were of low value and represented two per cent of the total cost. Five social events[64] arranged by MIC for a select range of its paid consultants (and in one case in November 2016, Qube), represented 90 per cent of these costs to MIC. Gifts, benefits and hospitality provided for and by Qube are discussed in further detail from paragraph 4.34.

4.28 The ANAO identified a further 64 meetings conducted over coffee (42 occasions) or lunch (22 occasions) where there was insufficient evidence to indicate which party had paid or whether the bill was split. In this respect, MIC advised the ANAO in June 2018 that it often took turns with advisers in paying for the bills. Additionally, MIC advised that:

> Meetings are occasionally conducted as coffee meetings, and on rare occasions over lunch, consistent with industry practice. No formal guidance is provided to staff in respect of conducting meetings over coffee or lunch, although it is well understood that any such expenditure, either given or received, is to be of small/nominal value (e.g. simple coffee, or a light lunch). Sometimes, verbal consent is provided beforehand. Formal approval is provided through approval of expenses claims.

Donations and sponsorships

4.29 As outlined at paragraph 4.4, approval from MIC's EAC was required for the provision of donations or sponsorships from August 2014 up until February 2018. MIC advised the ANAO in February 2018 that, in practice, the Audit and Risk Committee (ARC) assumed the responsibility for providing this approval after the EAC was disbanded in May 2016. This situation has been reflected in the February 2018 update to MIC's gifts and donations policy, along with an amendment to allow the CEO alone to approve donations and sponsorships up to the value of $5000.

4.30 MIC has provided six donations or sponsorships. The first two of these preceded the development of MIC's policy. The approvals required by MIC's policy were not obtained for the subsequent four contributions. The circumstances for each of these contributions were:

- In mid-2013, MIC provided a research entity with payments totalling $47,445. This was the result of discussions it held with the 'independent not-for-profit research foundation' in relation to establishing a 'Citizen's Jury' as a mechanism for local community engagement on the intermodal development. While the entity provided MIC a proposal for its assistance, it advised that it was not a consultancy and would not enter into a services contract. Rather, the proposal submitted to MIC by the entity requested reimbursement for expenses ($5445), jury participant payment ($12,000 among 30 participants), research project grant funding ($15,000) and a matching cash contribution to its foundation ($15,000). Approval from the board was not sought, but MIC's Interim CEO and Corporate Affairs Manager discussed and agreed to accept the proposal.

64 These events included cocktail parties and a lawn bowling event.

- In July 2014, MIC sponsored the Liverpool City Council's Mayoral Ball by providing it with $5000 ('silver' sponsorship). Proceeds from the ball were to be provided to two local charities. The Council subsequently returned MIC's payment on the basis of community discontent concerning the intermodal development. MIC agreed to provide the funding directly to the beneficiaries. This sponsorship preceded the establishment of the EAC. The ANAO could not identify any evidence that the board had provided prior approval for the sponsorship before the payment was made.
- In July and August 2015, MIC sponsored two NSW Business Chamber events for a total of $8250 (including GST) at which it and Qube made presentations about the intermodal development. In both instances, MIC indicated that it would approach Qube to cover half the sponsorship fees, but this did not eventuate. Approval from the EAC was not sought. Rather, MIC's CEO agreed to the $5500 sponsorship, and the Corporate Affairs Manager agreed that MIC would cover the sponsorship for $2750, resulting in MIC meeting the full cost of the two events.
- In April 2017, as part of a negotiation between MIC and a prospective consultant (see paragraphs 2.55 and 2.56), MIC agreed to provide 'up to $50,000 for sponsorship of relevant events — two or three events and the terms of sponsorship to be agreed with MIC from time to time'. Consistent with this agreement, MIC provided $27,500 (GST inclusive) to the Western Sydney Leadership Dialogue as sponsorship for an event called Boomtown in July 2017. No formal approval was sought, but the CEO had discussed the details of the negotiation with a director of the board prior to entering into the 12 month contract.
- In December 2017, MIC provided a $500 donation for a Holsworthy High School student art exhibition. Qube matched the donation, taking the total donation to $1000. The CEO approved the donation, rather than the ARC.

Are the risks involved in providing or accepting offers of hospitality, gifts or benefits adequately considered?

> MIC has not adequately considered the risks involved in providing or accepting offers of hospitality, gifts or benefits. This has resulted in the acceptance (and provision) of gifts, benefits or hospitality that, had the risks been properly considered, should have been declined.

4.31 At an enterprise level, MIC has taken steps to identify and document its risks (namely by conducting risk workshops led by risk management consultants) and their corresponding mitigation strategies in its risk management plan and accompanying register. Risks associated with procurement activities, conflicts of interest and the acceptance or offering of gifts, benefits or hospitality were not identified within the plan or register. Additionally, MIC has not finalised any updates to its risk management plan since 2014**.** In August 2018, MIC advised the ANAO that:

> MIC confirms that risks associated with procurement activities, conflict of interest and the acceptance of gifts, etc. are not on the risk register.
>
> MIC's Risk Management Plan is reviewed annually but changes are not often made as it is by its nature a static document. The risk register is formally reviewed and updated in quarterly risk workshops attended by all staff and chaired by MIC's independent external risk specialist adviser.

MIC is currently reviewing the Risk Management Plan in light of the recommendations of [MIC's internal auditor] and the ANAO.

4.32 Provided it is accurate and adequately maintained and reviewed, a gifts and benefits register is a particularly useful tool for managing potential probity risks in procurement and contract management. The ANAO observed some inadequacies in MIC's approach to recording and reporting offers of gifts, benefits or hospitality in its register. Specifically:

- the oversight and review of MIC's register by the EAC and ARC has been intermittent and less frequent than required by MIC's policy (see paragraphs 4.14 to 4.15). Where records exist, the reporting material provided to the committees has been inadequate in allowing an effective review of accepted offers. This is because MIC's approach has been to provide excerpts of only new entries made to the register since the committee's last review. This does not allow the cumulative effect of offers to be properly considered; and
- MIC has recorded in all instances on its register that no conflicts of interest exist in respect of the offers made. This, and the timing of some of these offers indicates that MIC has not had sufficient regard to perceived conflicts of interest, particularly in respect of ongoing procurement processes. For example:
  - senior MIC staff accepted offers of entertainment and hospitality from a number of prospective advisers, some of which MIC later contracted through non-competitive procurement processes; and
  - in 2016 (before achieving financial close with Qube), MIC accepted offers of entertainment by two of Qube's contracted advisers.

4.33 Some government-owned entities have developed mitigation strategies aimed at decreasing the quantity of offers of gifts, benefits or hospitality made to their staff. To do so, an entity first needs to communicate its expectations and acceptable practices to its suppliers or potential suppliers. An effective way to do this is by publishing applicable policies on the entity's website (as some other GBEs have done). This is an area of opportunity for MIC.

Gifts, benefits or hospitality provided by and to Qube

4.34 MIC's major procurement process for the selection of its private sector delivery partner commenced in December 2013 with an expression of interest process and was finalised when it and Qube achieved financial close in January 2017. A number of other important milestones were achieved in between, including:

- entering into a Fundamental Matters Memorandum of Understanding in September 2014;
- agreement of a detailed terms sheet between MIC and SIMTA (now Qube) in December 2014; and
- achievement of contractual close in June 2015.

4.35 During and subsequent to these procurement and contractual milestones, a number of offers of gifts, benefits and hospitality were provided to and by MIC and Qube.

4.36 The ANAO's analysis in respect of these offers and acceptances was that MIC's recording of these items on its register was in accordance with the requirement for items over the $100 threshold to be recorded, but the acceptance of nominal offers from Qube is inconsistent with the requirement that staff 'must not accept any gift or benefit that may create or be perceived to create a conflict of interest'. Of particular note is that items were accepted (or provided) before the contractual arrangements between MIC and SIMTA/Qube were finalised.

Recommendation no.1

4.37 The Moorebank Intermodal Company promptly implement the recommendations made in its June 2018 internal reviews in a way that addresses both the findings of those reviews and the findings of this ANAO performance audit.

Moorebank Intermodal Company response: *Agreed*

Grant Hehir
Auditor-General

Canberra ACT
11 October 2018

Appendices

Appendix 1 Entity responses

MOOREBANK INTERMODAL COMPANY

Suite 2, Level 9
1 O'Connell Street
Sydney NSW 2000

t +61 2 8265 5600
f +61 2 8265 5650
www.micl.com.au

ABN 64 161 635 105

Ref: MIC-S-2018724-CF

25 September 2018

Mr Brian Boyd
Executive Director
National Security, Industry & Infrastructure
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Mr Boyd

ANAO Proposed Report under section 19 of the Auditor General Act 1997 – Performance Audit

MIC, its board and management acknowledge receipt of the ANAO's proposed report under section 19 of the Auditor General Act 1997 and thank you for the opportunity to respond.

We would like to thank the ANAO for its work in the performance audit on the procurement processes and management of probity by the company.

As you are aware, MIC was incorporated under the *Corporations Act 2001* (Cth) by the Commonwealth of Australia for the specific purpose of developing both an import–export intermodal terminal and an interstate intermodal terminal, as well as warehousing associated with both terminals.

MIC was advised that the Commonwealth chose to establish a company for this purpose of both achieving a commercial rate of return on the Commonwealth's invested funds and allowing it to implement private sector practices and approaches where those would enhance the opportunity to procure the terminal more speedily or at a lower cost. MIC is, of course, subject to the *Public Governance, Performance and Accountability Act 2013* (Cth) but is not subject to the Commonwealth Procurement Rules (CPRs). However, the MIC board acknowledges that as a Government Business Enterprise (GBE), MIC should have regard to best practice within the Commonwealth public sector in all respects and adopt those practices unless it determines them not to be in the best interests of the Company, in which case, it will document its reasons.

Since establishment the board of directors has comprised a group of people, most of whom have had predominantly private sector experience and two of whom have had some public sector experience.

Given the nature of MIC's task and the fact that MIC operates entirely within the private sector for the purposes of its development and procurement, the board recruited a chief executive who had extensive experience delivering large-scale infrastructure developments in the private sector. The CEO was then tasked with staffing both the executive staff and the support staff in the office; all recruits had predominantly private sector experience.

MIC had limited departmental support in being 'stood up'.The board and management understand that this support was far less than the case for other recently formed GBEs, who have received dedicated departmental teams to establish fit for purpose public sector systems prior to 'stand up'.

On reflection and after considering the ANAO's previous performance audit and the proposed section 19 audit report for the current performance audit, the board of MIC believes it would have been wise at the time of MIC's establishment, to request more substantial 'stand up' support.

MIC does not agree that it has a preference for non-competitive procurement processes. Prior to any major procurement, MIC has considered the market structure, including in particular the nature of competition in the market and the degree of product differentiation in the market. MIC considers it has procured all major advisers through a sufficiently competitive process, and has adopted a sole-sourced approach where MIC considered it appropriate to do so. MIC recognises that its assessment and decision making processes have not been adequately documented since the company was formed in 2012 and some policies were late in being implemented or not fully adhered to; MIC is seeking to address these shortcomings by policy and process improvements that are now well underway to being implemented.

As the ANAO is aware, following the ANAO's performance audit in December 2017, MIC engaged Ernst & Young (EY) to undertake a 'business integrity review' to assist in identifying areas of weakness and opportunities for contract and financial management systems and governance improvements. MIC agrees with the ANAO's recommendation to implement the recommendations from the internal auditor's review undertaken by Ernst and Young dated 25 June 2018.

Good progress in the implementation of a new procurement framework has already been made. A new Procurement Policy was adopted by the MIC Board on 28 June 2018 and supersedes the previous procurement and selection and management of consultant policies and framework developed in 2014 and 2016 respectively, and includes the feedback from EY. The new Procurement Policy requires MIC personnel undertaking procurement activities to use appropriate templates to document the procurement requirement, the reasons for adopting single or limited source tenders, contract variations and to obtain approvals. The Commonwealth Procurement Rules guide the MIC Procurement Policy, in particular the requirement to achieve value for money. The new policy has also introduced a requirement to market test long-standing advisers. MIC has commenced implementation of these practices.

To strengthen MIC's procurement management system, MIC is now working to identify a suitable IT system to support MIC's new Procurement Policy. MIC is working closely with a consultant to identify systems to enhance contract management and financial budgets. The timeframe for completion and roll out is anticipated to be the first half of 2019.

A new Conflict of Interest policy was adopted by the MIC Board on 28 June 2018. In line with recommendations from the EY Business integrity Review, the new policy provides guidance on the identification and management of conflicts of interest by MIC's directors, the CEO, employees and contractors. The new policy assists in establishing appropriate procedures and systems to manage any conflicts. The new policy will assist in identifying potential conflicts of interest, in particular when undertaking procurement activities or accepting or offering gifts, hospitality or donations.

MIC's internal Expenses Policy has also been revised following early feedback from EY that the policy required clearer definition about reimbursement of expenses, including for travel, study, professional memberships and entertainment, amongst other matters. Further amendments will be required to address the specific recommendations made by EY and these are now underway.

2

The Gifts and Donations Policy was updated and approved by the Board in February 2018, with further revisions approved by the board in September 2018 arising from EY's Business Integrity Review recommendations. The further revisions take into account gifts, benefits, donations and sponsorships. The revised policy and training has seen improved practices adopted in recording events, in line with earlier recommendations made by the ANAO and EY.

MIC's Audit and Risk Committee (ARC) will meet more often to monitor the implementation of the EY recommendations and will commission its internal auditor to carry out a review in the first half of 2019 on the implementation of its new control policies and systems. MIC will also run training and awareness on the requirements of the revised policies as the implementation of the EY recommendations are rolled out.

MIC is in the process of recruiting a policy, compliance and risk officer who has deep Commonwealth public sector experience. This officer will be responsible for ensuring all appropriate policies on procurement, expenses, gifts and benefits are implemented and adhered to in an appropriate control environment.

MIC, its board and management acknowledge receipt of the ANAO's proposed report under section 19 of the Auditor General Act 1997 and thank you for the opportunity to respond.

Yours sincerely

Claire Filson

Chair

Audit and Risk Committee

3

Australian Government

Department of Finance

Rosemary Huxtable PSM
Secretary

Our Ref: SEC0015769

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr ~~Hehir~~ Grant

I refer to the Australian National Audit Office's (ANAO's) correspondence dated 27 August 2018 providing the proposed Section 19 Audit Report, *Procurement Processes and Management of Probity by the Moorebank Intermodal Company* (the Report) and seeking a response from the Department of Finance (Finance).

Thank you for the opportunity to respond to the matters raised in the proposed report.

Finance's response to the Report is:

> Finance notes the recommendation of the Report. Finance will provide the key learnings to Government Business Enterprises and consider the key learnings when reviewing the *Commonwealth Government Business Enterprises – Governance and Oversight Guidelines*.

Finance will continue to support the adoption and implementation of best practice governance, risk management and procurement for all Commonwealth entities, including Government Business Enterprises. The findings of this audit will be an important input to this process.

Yours sincerely

Rosemary Huxtable
Secretary

24 September 2018

One Canberra Avenue, Forrest ACT 2603 • Telephone 02 6215 3445
Internet www.finance.gov.au

Appendix 2 Internal review of procurement framework and probity protocols

1. Set out below are root causes of the findings, identified risks and related recommendations made in the June 2018 report by MIC's internal auditor following its review of MIC's procurement framework, supplier lifecycle management and probity protocols. The table also includes MIC's response to the recommendations.

Cause	Risks	Recommendations	Management Comments
Existence and efficacy of MIC's procurement framework: Lack of coordinated and comprehensive policies.	Inconsistent procurement activities conducted which could lead to value for money not being achieved. Lack of transparency. Lack of audit trail.	Review and enhance the current framework, having regard to its particular circumstances, (including the type, frequency, quantum and risk profile of its likely future procurement activity); striking a balance between these factors and its constrained organisational capacity; the sometimes urgent basis of its procurement activity and stakeholder expectations regarding ethical and efficient expenditure of public monies. This enhancement process should have regard to the CPRs (acknowledging that MIC is not obliged to comply with same but also acknowledging that they are a well-established and robust basis for drawing upon to more closely align to better practice).	Management has implemented a new procurement policy, making the existing procurement, and selection and management of Consultants policies obsolete. At the May 2018 Board meeting management obtained approval for a high level process and changed thresholds. MIC is now trialling the process prior to submitting the revised procurement policy to the Board for approval in June.
Existence and efficacy of procurement probity protocols: Lack of a comprehensive procurement framework that specifically addresses the importance of probity in the procurement process.	Lack of understanding of probity risks and mitigation techniques leading to inconsistent application of probity principles. Exposure to reputation damage and other potential losses stemming from a deficient or potentially corrupted procurement event.	Implement a stand-alone probity protocol document or at a minimum, embeds such protocols in any enhanced procurement framework. Irrespective of where the probity protocol ultimately resides, it should include, at a minimum, high-level guidance on the following areas: • Achieving an appropriately competitive procurement process (where applicable) and documenting rationale regarding circumstances where optimal competition is not achievable; • Fairness to all parties, consistency and transparency of process; • Avoidance of and/or effective management of potential, perceived, or actual conflicts of interest;	Management agrees and appropriate probity protocols have been implemented as part of the procurement policy review. MIC already has a conflicts of interest declaration for suppliers / consultants, however the procurement policy now specifies when the conflicts of interest declaration must be completed.

		• Accountability in relation to decision making; and monitoring and evaluating performance; • Communication and confidentiality of information; • Appropriate use of procurement and probity specialists; and • Compliance with legislative obligations and government policies. Implement a requirement for the preparation of a probity plan for higher value and risk procurement to ensure that probity issues are considered throughout the procurement process. A template may be developed in the first instance and tailored where necessary to the specifics of the procurement activity being undertaken. The probity plan should seek to address the high-level guidance points above, along with the more specific aspects/steps of the procurement.	
Enhancement of the current framework: Lack of comprehensive policies that are 'fit for purpose'.	Inconsistent procurement activities. Selection of inappropriate suppliers. Inability to evidence decision making. Loss of audit trail. Value for money not achieved. Exposure to corrupted procurement processes.	Enhance the current framework to include guidance on the areas above to increase consistency, transparency, accountability and ultimately, defensibility in the procurement process.	Management agrees and has addressed these requirements in the revised procurement policy.
Evidencing the need for procurement: Lack of documented procedures. Nature of the business and the variability associated with MIC's procurement needs.	Selection of inappropriate procurement method. Inadequate allocation of budget. Inability to evidence decision-making.	Develop a template that documents the purpose of the procurement and how relevant considerations have been addressed. Prepares a budget, as part of the template, which should be approved by the CEO and the Finance Manager, if above a certain threshold. The template should also document the procurement method MIC	

	Loss of audit trail.	intends to use for the procurement, along with the rationale and justification for selecting that procurement method. Apply a consistent approach to the preparation and retention of documentation evidencing decisions made.	
Consideration of whole of life costs: Lack of documented procedures. Lack of planning.	Insufficient allocation in budget. Selection of inappropriate supplier. Value for money not achieved.	Updates the Current Framework to include a consideration of whole of life costs prior to making a decision on a procurement method and defines/documents what whole of life costs include. Challenges the efficacy of contract monitoring/management processes, particularly in respect of acting on significant contract variations. Includes a section in the template for whole of life costs. Considers seeking professional feedback regarding the initial scope of work and whether there are reasonable foreseeable events that can be accounted for in these contracts.	
Selection of procurement method: Lack of comprehensive procedures. Lack of guidance on when exemptions to the policy arise.	Inconsistent procurement activities. Selection of inappropriate supplier. Inability to evidence decision making. Loss of audit trail. Value for money not achieved.	Update the current framework to include guidance on conducting each procurement method i.e. sole sourced, limited tender or open tender. The procurement framework should also define when it is appropriate to use each method and what circumstances, if any, might allow for divergence from the policy requirements. Includes a section in the template capturing which procurement method was selected and the rationale for its selection. This will ensure that sufficient evidence is retained to demonstrate how and why a particular procurement method was selected.	
Use of prequalified panel of suppliers: Gap in policies that address the nature of MIC's procurement requirements.		Identify potential procurement needs that can be met by a prequalified panel of suppliers. Update the current framework to include the ability to establish a prequalified panel of suppliers and also includes guidance on that use of that panel.	

		Develop a process and template for selecting prequalified suppliers.	
Assessing procurement risk: Lack of comprehensive policies.	Inadequate controls in place to mitigate potential risks. Selection of inappropriate supplier. Inability to evidence decision making. Value for money not achieved.	Update the current framework to include the requirement to document any risk assessments undertaken for procurements over a certain value. Includes a section in the template to document the risks of the overall procurement. The likelihood of the risk occurring and the potential impact should also be documented which will drive mitigation strategies that should be implemented.	
Achieving value for money: Lack of definitions and guidance in current framework.	Inconsistent procurement activities. Inability to evidence decision making. Selection of inappropriate supplier. Potentially corrupted process. Loss of audit trail. Value for money not achieved.	Update the current framework to include a definition of value for money and how MIC selects suppliers that demonstrate it. Develops an evaluation template to be completed, when assessing offers, which records how value for money factors have been considered, scored and demonstrates that the evaluation criteria matches those detailed in any Request for Offer document put to the market; whether it be a sole source, select or open tender process.	
Due diligence on suppliers: Lack of comprehensive procedures. Lack of resources.	Lack of comprehensive procedures. Lack of resources.	Develop and utilise a supplier prequalification database (including outcomes of due diligence processes and contractor performance) when shortlisting potential suppliers or considering tender submissions and direct/sole source appointments. Document and maintain a register of “high risk” and or “close monitoring suppliers” based on results of due diligence processes and past experiences. Consider updating the current framework to specify: • The types of suppliers that are considered high risk; • When enhanced due diligence is required to be undertaken (e.g. when a supplier provides in excess of $1m in goods and services in a single financial year); and	

		• The circumstances and procedures for ceasing engagement with a particular supplier.	
Contract variations, extensions and cessations: Lack of documented procedures. Lack of appropriate systems.	Timely and accurate management of contracts is potentially impeded. Inadequate budget allocations. Value for money not achieved. Loss of audit trail.	Update the current framework to include procedures for assessing, approving and processing contract variations. Develop a contract register to track and monitor all contracts. Explores the feasibility of implementing contract management software to support supplier lifecycle management on all projects.	
Review of procurement method: Lack of comprehensive policies.	Value for money not achieved.	Update the current framework to include a reassessment of the contract to be conducted when a contract reaches a certain threshold (for example, when expenditure exceeds contract value by 10%). The framework should also prescribe that a contract be reassessed to determine whether further market testing should be conducted to ensure value for money is being achieved.	
Periodic review of contracts: Lack of proactive monitoring procedures. Potential lack of consideration of whole of life cost.	Selection of inappropriate supplier. Value for money not achieved.	Update the current framework to include a review of long-standing contracts periodically to determine if value for money is still being achieved and the contract still serves its intended purpose more broadly.	
Records management: Lack of comprehensive policies.	Loss of data. Reduced ability to source records in the case of a dispute or an external request for information. Inability to evidence decision making.	Update current framework to include a requirement to retain documentation evidencing the above and determine the timeframe records should be retained.	MIC's Board approved a records Management Policy in May 2018. Management will conduct staff training on the requirements. The revised procurement policy requires the procurement process and rationale for decision to be documented.
Procurement plan: Nature of the business and the variability associated with MIC's procurement needs.	Suboptimal market participation in tender activity. Value for money not achieved.	Adopt a procurement planning mindset and embark upon the development of a quarterly procurement planning regime.	Management meets quarterly to discuss the financial forecast, this includes a discussion on forecast procurement needs.

Management of conflicts of interest: Lack of probity protocols.	Perceived as providing undue advantage to one party over another. Carrying out procurement activities that do not encourage competition. Selection of inappropriate supplier. Value for money not achieved.	Update the current framework to record the process implemented for managing conflict of interests. Carry out proactive testing to confirm accuracy of declarations provided through the use of open source database searches such as ASIC databases, to identify undisclosed pecuniary interests.	Management agrees and has addressed these requirements in the revised procurement policy.
Budgets maintained in Excel: Lack of comprehensive procedures. Lack of required systems.	Overruns occurring which are not budgeted for. Value for money not achieved.	Develop a template to monitor the budget to actual spend, which is to be signed off by the Finance Manager prior to the invoice being paid. Explore the feasibility of purchasing software that records and monitor budgets to actual costs.	MIC has engaged an adviser to assist the company with selecting a new system who will hold workshops to gather our requirements, prepare a request for proposal to be distributed to software companies, and advise through the selection process. Current gaps in the existing systems are: • purchasing; • contract management; and • managing actual spend against budget.
No system purchase order: Lack of appropriate systems.	Overruns occurring which are not budgeted for. Loss of audit trail. Value for money not achieved.	Implement a purchase order process where the Finance Manager is required to be a secondary approver on purchases to ensure expenses are within the overall budget. Explores the feasibility of purchasing a software system that would allow it to generate and record purchase orders which are linked to invoices and payments. The system should also keep a log of approvals.	
Invoice verification: Lack of appropriate system controls.	Potential of overpayments being made. Value for money not achieved.	Ensures payments are made in accordance with the terms and conditions of the contract. Investigates the potential overpayment to one supplier that was identified.	

Source: Business Integrity Review dated 25 June 2018.

Appendix 3 Internal review of corporate expenses

1. Set out below are root causes of the findings, identified risks and related recommendations made in the June 2018 report by MIC's internal auditor following its review of MIC's corporate expense policies and processes. The table also includes MIC's response to the recommendations.

Cause	Risks	Recommendations	Management Comments
Employee travel: Lack of definitions and guidance on what is 'reasonable' and 'appropriate'.	Potentially excessive entertainment expenses being incurred by MIC.	Revise the Expenses Policy to include procedures on how to demonstrate the 'lowest cost means' of travel was selected. This should include providing and maintaining evidence of cost comparisons and selection of the lowest cost option (e.g. screenshot of fares obtained at the time of booking).	No limits will be prescribed within the Expenses Policy however a budget for each event will be set and approved by the CEO (staff events) and the Chair (Board events). The policy will be updated to include examples of appropriate business purposes, if the reason for the entertainment doesn't align with the categories, approval must be given by the CEO.
Staff entertainment: Lack of definitions and guidance on what is 'reasonable' and 'appropriate'.	Potentially excessive entertainment expenses being incurred by MIC.	Revise the Expenses Policy to stipulate a monetary limit per head for staff entertainment expenses. Revise the Expenses Policy to include examples of 'appropriate business purposes' to ensure entertainment expenses incurred are in line with the intention of the policy.	
Directors entitlements: Lack of guidance in relation to quantum or value of expenses to be incurred.	Potentially excessive expenses being incurred by MIC.	Revise the Expenses Policy to provide guidance in relation to the value or quantum of expenses Directors can claim for a year and furthermore, ensure that claims are reimbursed on a timely basis.	All director entitlements are set and governed by Remuneration Tribunal's Determinations. MIC has no ability to restrict or alter the value claimed by a director. The Expenses Policy will be updated to ensure timeliness of claims.
Membership of professional bodies: Lack of guidance on how to deal with potential exceptions to the policy as they arise.	Breach of policies. Misuse of company benefits.	Consider reviewing the types of professional subscriptions that are beneficial for employees to hold and explore the merits of revising the $1000 limit on such subscriptions/memberships. Thought should be given to introducing an element of flexibility where there is a demonstrable need and/or benefit for an employee to hold subscriptions/memberships that may in aggregate exceed the existing $1000 limit.	The Expenses Policy will be changed to allow one membership to be reimbursed. Any additional reimbursements must be approved by the CEO.

Cause	Risks	Recommendations	Management Comments
Training and study expenses: Lack of comprehensive and coordinated policies.	Potentially excessive expenses being incurred by MIC.	Revise the Expenses Policy to include training and workshop costs as an allowable expense, including reference to the 'Study Support Policy.' Guidance in respect of what constitutes an appropriate value for training expenses per annum per employee should also be included.	The Expenses Policy will be updated to include training and workshop costs and a reference to the Study Support Policy.
Aging expense claims: Lack of defined timeframes relating to when expenses should be claimed. Lack of adherence to the Expenses Policy.	Delays in recognising expenses. Potentially inappropriate expenditure approved in error due to high volume of expenditure being reviewed by the approver.	To ensure that expenses are recognised on a timely basis, consider revising the Expenses Policy to define the time period that an expense can be claimed after a transaction has occurred, i.e. if an expense is incurred in February, then it must be claimed by the end of the following month (March).	The Expenses Policy will be updated to include an appropriate timeframe in which expenses can be claimed.
Pre-approval for expenses: Lack of adherence to the Expenses Policy. Lack of implemented process pursuant to policy requirements.	Expenses incurred that are outside of policy requirements. Overruns occurring which are not budgeted for. Value for money not achieved.	Implement a process for obtaining approvals prior to incurring air travel expenses (in line with the policy requirement), whether paid using a corporate credit card or reimbursed to the employee, to ensure that appropriate expenses are being incurred and value for money is achieved.	Directors: Approval will not be required for directors expenses allowed under the Remuneration Tribunal's Determinations. Staff: The employee's manager must provide written approval, an email is sufficient, prior to incurring the expense. The approval must be provided to the Operations Coordinator if the expense is charged to a corporate credit card and should be attached to the expense claim.

Cause	Risks	Recommendations	Management Comments
Corporate Credit Card Program: Insufficient retention of electronic and physical records. Inappropriate recording of transactions in the accounting system.	Inappropriate use of corporate credit cards. Potentially excessive expenses being incurred by MIC.	Evaluate the current policies and procedures in place relating to the retention of documentation for corporate credit cards. Evaluate the Expenses Policy to assess if all Board Members should be eligible to receive a corporate credit card. From current practice, it appears that Board Members do not require the use of a corporate credit card and therefore the policy should be updated to reflect current practice. Conduct a review of the credit card transactions incurred during the period December 2012 to April 2017. While there is evidence that MIC has improved procedures relating to the maintaining of records and reduced the number of cards in use, it may be useful to conduct the above, to assess if there had been any potential non-compliance with policy.	The Expenses Policy will be updated to remove Board members eligibility to be issued with a credit card.
Card not present transactions: Lack of guidance.	Risk of credit card fraud. Inappropriate expenses being incurred by MIC.	Update the Expenses Policy to provide guidance on controls to be implemented when dealing with card not present transactions. Assess if transactions, such as payment of professional membership fees and registration fees for trainings and conferences, should be charged on an employee's personal credit card and then reimbursed through an expenses claim rather than on the corporate credit card. This will reduce the number of card not present transactions incurred and increase the security of the credit cards. Implement a process for obtaining approvals prior to using credit cards for recurring online transactions to ensure the security of the card is maintained. Update the Expenses Policy to ensure that corporate credit card details are not retained as standing card details on merchant websites used for online transacting.	The Expenses Policy will be updated to include the type of expenditure accepted as card not present transactions. Again approval must be obtained, email is acceptable, prior to using the card. Staff expenses, such as professional memberships, will no longer be paid utilising MIC's corporate credit cards. Staff should pay for expenses on their personal credit card and seek a reimbursement.
Splitting of expenses: Lack of adherence to policy.	Potential circumvention of credit card and/or expenditure approval limits.	Ensure that payments are not split between cards and assesses whether or not the above transactions should have been charged to the corporate credit cards or an alternative method of payment should have been utilised (e.g. general expenses).	The Expenses Policy will be updated, the corporate credit should only be used if a supplier doesn't accept EFT payments.

Cause	Risks	Recommendations	Management Comments
Use of card by a non-cardholder: Lack of comprehensive policies to address requirements of MIC’s operational structure.	Misuse of corporate credit card.	Revise the Expenses Policy to stipulate that cards should be cancelled immediately upon cessation of employment. Furthermore, guidance in relation to the use of cards by non-cardholders should be provided to ensure that the security of the card is maintained.	The Expenses Policy will be updated, the corporate credit should be cancelled within a month of the employee’s departure.
Retention of documentation for corporate credit card expenses: Lack of compliance with current policies.	Loss of audit trail/ability to demonstrate compliance with requirements.	Ensure that at the time of approving expenses, all relevant supporting documentation is maintained. Furthermore, conduct reviews on a periodic basis to assist in ensuring the completeness of documentation for future audits.	Management agrees.

Source: Business Integrity Review dated 25 June 2018.

Appendix 4 Internal review of gifts and benefits management

1. Set out below are root causes of the findings, identified risks and related recommendations made in the June 2018 report by MIC's internal auditor following its review of MIC's gifts and benefits management policies and processes. The table also includes MIC's response to the recommendations.

Cause	Risks	Recommendations	Management Comments
Approval of gifts and benefits: Lack of adherence to existing policies.	Inappropriate gifts and benefits being accepted by MIC employees without approval. Loss of audit trail to evidence approvals given.	Revise the Gifts and Donations Policy to reflect the new process implemented in May 2018, to ensure consistent practice when accepting gifts/benefits. Revise the Gifts and Donations Policy to prescribe that any gifts/benefits received by the CEO should be declared in the register and that the register is reviewed by the Board of Directors quarterly.	The MIC Gifts and Donations Policy will be revised to document the new process, Gifts and Donations register will be reviewed by the Board quarterly.
Gifts and Donations Register: Lack of compliance with policies and procedures.	Lack of transparency and related probity exposures resulting from inadequate documenting of gifts/benefits offered/accepted by employees.	Revise the Gifts and Donations Policy to reflect the new process implemented in May 2018, to ensure consistent practice when accepting gifts/benefits. Conduct quarterly refresher training, to remind employees of their obligations and ensure employees' compliance with policy and procedures.	Management agrees and frequency of training to be considered.
Giving of gifts/benefits: Inadequate definitions and guidance in existing policies on the giving of gifts/benefits.	Lack of transparency in dealings with third parties.	Revise the Gifts and Donations Policy to define MIC's policy on the giving of gifts/benefits (i.e. that MIC does not give gifts/benefits). Update the Expenses Policy to stipulate where the relevant details of any entertainment expenses incurred on hosting suppliers/third parties, over a certain value, should be recorded. Ensure the Expenses Policy provides examples of what is 'entertainment expenses' and is positioned as the prevailing policy for business-related entertainment. The Expenses Policy should also reference the Gifts and Donations Policy for definitions of hospitality benefits.	Management agrees.

Cause	Risks	Recommendations	Management Comments
Giving of Donations: Lack of adherence to existing policies. Lack of comprehensive policies and procedures encapsulating both the giving and receiving of gifts.	Providing support to organisations that do not align with MIC's values. Inability to evidence decision making. Loss of audit trail evidencing approvals given.	Revise the Gifts, Benefits and Donations Record Form, to enable information relating to the giving of gifts/benefits and donations to be captured. Alternatively, a new template may need to be created to enable MIC to also evidence how the principles in the G&D Policy are being achieved when giving the donation. Revise the Gifts and Donations Policy to reflect the new process implemented in May 2018, to ensure consistent practice when giving donations. Ensure that the Expenses Policy differentiates what business related entertainment is, as opposed to hospitality benefits (notwithstanding that the form above references 'hospitality') and therefore is an example of where confusion may arise. Furthermore, the Expenses Policy should be the prevailing policy associated with business entertainment expenditure.	MIC has updated its form to add donations. Staff have been advised. Gifts and Donations Policy has been updated.
Sponsorships: Lack of adherence to existing policies. Lack of comprehensive policies and procedures.	Providing support to events and causes that do not align with MIC's values. Inability to evidence decision making. Loss of audit trail evidencing approvals given.	Update the Gifts and Donations Policy to include a template to be utilised when considering approval of sponsorships. The template should address the principles referred to in the G&D Policy and ensure that relevant approvals are documented and maintained.	MIC will update the Gifts and Donations Policy and template.

Source: Business Integrity Review dated 25 June 2018.