

The Integrated Solid Waste Management System for the Cayman Islands (Regen) - as at October 2021





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FOREWORD

In March 2021, the Government signed a Project Agreement for a public-private-partnership (PPP) contract for an integrated solid waste management system (ReGen) with [REDACTED]. As of October 2021, [REDACTED] was owned by the successful bidder from ReGen's procurement, [REDACTED].

After the election in April 2021, a new Government was formed. In August 2021, the then Premier and Deputy Premier asked that the Office of the Auditor General (OAG) review the Project Agreement. I agreed to this request and the OAG immediately started a performance audit to determine whether the Government would obtain value for money from ReGen.

The audit focused on the ReGen project, from its inception in 2014 to October 2021.¹ As part of the audit we reviewed the Project Agreement, information from the Government's financial, legal and technical advisors, and the Outline Business Case for the project. In October 2021, responsibility for the ReGen project transferred from the Ministry of Health and Wellness to the Ministry of Sustainability and Climate Resiliency.

In line with the OAG's usual practice, we issued a clearance draft report to senior officials in the civil service on 4th December 2021. We also shared the clearance draft report with the then Governor, Premier and Deputy Premier. The purpose of our clearance drafts is for the civil service to confirm the factual accuracy of the report and provide management responses to our recommendations. I appreciate the responsibility for the project transferred between ministries at the end of 2021. However, despite several reminders, we did not receive a response to the clearance draft issued in 2021 from either of the Chief Officers.

At the end of August 2024, the Government commented on factual accuracy and identified commercially sensitive information in the report. Subsequently, between September and November 2024, the Government gave us significant volumes of evidence that it had not provided in 2021. This evidence included information on procurement of advisors, due diligence checks on members of [REDACTED] proposed consortium members and draft appendices from the Project Agreement signed in March 2021. For example, we were given the following draft appendices from March 2021 – list of commercially sensitive information, the Payment Mechanism and the Performance Measurement Framework.

¹ The 'About the Audit' section of the report provides a summary of our audit.

Our report identified some risks and weaknesses with the Project Agreement and made 15 recommendations. Most of our recommendations were intended to be used by the Government to improve the Project Agreement before it was finalised. We understand that the Government used our clearance draft and recommendations to inform further negotiations with [REDACTED].

The OAG put the audit on hold to allow the Government to continue negotiating the Project Agreement. We stated that we would publish this report together with an updated report after the Government reached the financial close on the Project Agreement.

The then Minister for Sustainability and Climate Resiliency announced on 25th July 2024 that the Government was starting discussions to exit the Project Agreement.

Therefore, I am issuing an updated report of the draft our office sent to the Government in December 2021. The report comments on the March 2021 Project Agreement and other project documents that support it. The report has been updated for factual accuracy, using the comments and additional evidence provided by the Ministry of Sustainability and Climate Resiliency between August and November 2024. I have also redacted all commercially sensitive information that the Government identified in August 2024. The report does not provide information on the Government's subsequent negotiations with [REDACTED]. As noted in the report, given that three years have passed since the Project Agreement was signed the costs would have risen further.

23 January 2025

GLOSSARY OF TERMS AND ABBREVIATIONS

Breach of contract A breach of contract occurs when one party fails to fulfill their obligations under a legally binding agreement without a valid legal excuse.

This breach can take various forms, such as not performing a duty on time, not performing in accordance with the terms agreed upon, or not performing at all. This means it covers everything from late delivery of certain goods or services to missed payments.²

Contractual Close The point at which the parties to a public–private partnership, i.e. the public entity and the private party, agree on and sign a contract.

After contractual close, there are usually several additional steps to be completed by both parties before project implementation can begin. These steps may include securing the necessary building permits, finalising the financing agreements and signing contracts with subcontractors.

These additional steps are referred to as “conditions precedent”. The public entity and the private party must meet the conditions precedent for the contract to become effective.

Contract termination Contract termination is the process of ending a contract before the obligations within it have been fulfilled by all parties. This means that one or more parties have made the decision to conclude the contract earlier than they had originally agreed when drafting and signing it.³

Financial close The point at which public entity and the private party have met all the conditions precedent under the contractual close.

At this stage, the public entity and the private party have signed the project and financing agreements and have met all the contract’s conditions. The contractor can then start drawing down the financing to start work on the project.

² Juro, <https://juro.com/learn/breach-of-contract#>, (accessed 18 November 2024)

³ Juro, <https://juro.com/learn/contract-termination#>, (accessed 18 November 2024)

Framework for Fiscal Responsibility An agreement signed between the Cayman Islands and UK Governments in 2011. Parliament, then known as the Legislative Assembly, passed the framework into law in November 2012 as an amendment to the *Public Management and Finance Act*.

The framework's purpose was to enable the Cayman Islands Government to restore prudent fiscal management by controlling Government expenditure, limiting new borrowings, realigning its revenue base, improving the performance of Statutory Authorities and Government Companies; and reducing costs by working in partnership with the private sector.

In the event that the Government is non-compliant with any of the requirements of the framework, the framework requires the Government to obtain written approval from the appropriate UK Secretary of State before it:

- finalises its Strategic Policy Statements;
- incurs new loans or refinances any existing ones;
- proceeds with any project with a lifetime value of more than \$10 million;
- uses public assets as collateral as part of any arrangement with an external party external; or
- hypothecates any revenue.

Green Book Guidance issued by His Majesty's Treasury on how to appraise policies, programmes and projects.⁴

Project Agreement In March 2021, the Government and [REDACTED] signed a Project Agreement for an integrated solid waste management system. The Project Agreement is subject to several conditions precedent being satisfied.

Many of the conditions precedent are solely within the Government's control or discretion, including the final price and scope of services. In addition, the Project Agreement gives the Government the right to terminate it without incurring any liability if the conditions precedent are not satisfied, and therefore financial close is not reached. Therefore, the Government and the Contactor did not reach financial close when they signed the Project Agreement.

⁴ *The Green Book: Central Government guide on appraisal and evaluation*, HM Treasury, 2020.

While the Project Agreement is a legally binding document, neither party is legally compelled to achieve financial close (and proceed with the ReGen project and provision of services) unless the conditions precedent are satisfied or waived.

Public Private Partnership (“PPP”)

A partnership between a public entity and a private party for providing a public asset or service. In return for periodic payments from the public entity, the private party will perform all, or a combination, of designing, financing, building, operating and maintaining the asset.

The contracts are usually long term, and the private party returns the asset to the public entity at the end of the contract period.

Public sector comparator

An estimate of the cost that the public entity would pay if it financed a project through public revenue or borrowing and delivered the services itself.

Public entities use the public sector comparator to determine whether a project should be delivered by the public entity itself or by a private party under a PPP.

Special-purpose vehicle

A separate legal entity created by one or more companies, usually for a specific objective. The entity is a distinct company with its own assets, liabilities and legal status.

Value for money

A measure of value that weighs the cost of a good or service against its quality and the benefits it brings, considering factors such as fitness for purpose. Maximising value for money ensures that public resources are used most efficiently and effectively.

Waste Infrastructure Delivery Programme (WIDP) Contract

A form of contract developed by the UK Government and industry experts in the UK to guide the delivery of waste infrastructure projects undertaken using PPPs. Public entities and contractors in many jurisdictions have used the WIDP Contract, and accept it as best practice.

EXECUTIVE SUMMARY

The Department of Environmental Health (DEH) is responsible for collecting, recycling where possible, and disposing of solid waste in the Cayman Islands. DEH, under the Ministry of Health and Wellness, manages three landfills, one on each island. The Premier announced in October 2021 that responsibility for the ReGen project would transfer to the Ministry of Sustainability and Climate Resilience. DEH remains within the Ministry of Health and Wellness.

In December 2013, the Cabinet approved a policy intended to provide the country with a national solid waste strategy and a cost-effective integrated solid waste management system (ISWMS). In 2014, the Government estimated that the Cayman Islands generated about 85,000 tons of waste annually, 82,000 or 96 per cent of which was generated in Grand Cayman. In the same year, the Government forecast that the George Town landfill could cope with the quantity of waste produced in Grand Cayman for only seven more years.

The Government reiterated its commitment to developing an integrated solid waste management policy in every Strategic Policy Statement from 2014/15 to 2020/21. The Government selected [REDACTED] as ReGen's preferred bidder in September 2017. [REDACTED]

In March 2021, after four years of negotiations, the Government signed a Project Agreement with the Contractor. At the same time, the Government rebranded the integrated solid waste management system project as "ReGen". The Project Agreement gives the Government the right to terminate it without incurring any liability if financial close is not reached. Despite being a priority for the Government since 2014, the Government and the Contractor have not achieved financial close for ReGen more than seven years after the Government started ReGen's procurement process. We report later that the Government and the Contractor agreed to extend the deadline to achieve financial close to [REDACTED].

The Government's Project Agreement with the Contractor is a Public-Private Partnership (PPP). Therefore, the Contractor will incur the cost of constructing the ReGen facility. In return for this, and for operating and maintaining the facility over 25 years, the Government will pay the Contractor a monthly fee, called a unitary charge. The Contractor will transfer the ReGen facility to the Government at the end of the 25-year period, or earlier than that if the ReGen contract is terminated. The DEH will continue to collect waste and deliver this to the landfill for processing.

ReGen will cost the Government about [REDACTED] million over 25 years, with a cost of approximately [REDACTED] million in its first year of operation. Therefore, it is important that Parliament and residents have the assurance that the Government will obtain value for money from ReGen.

The objective of the audit was to determine whether the Government will obtain value for money from ReGen. The audit sought to answer the following questions:

- Did the Government clearly set out ReGen’s objectives?
- Did the Government clearly demonstrate that a PPP was better value for money than conventional funding?
- Does the Project Agreement signed with the Contractor ensure that the Government will obtain value for money over the contract life?

The audit focused on the ReGen project from its inception in 2014 to October 2021. Where possible, we sought data relating to activities, costs and results over that time. The audit considered and incorporated relevant information from the following documents but did not fully assess them:

- the Strategic Outline Case: Integrated Solid Waste Management System, a document prepared by the Government;

█ [REDACTED]

█ [REDACTED]

KEY MESSAGES

Overall, we found that the Government:

- estimates that ReGen will cost █ million over 25 years but the estimate is likely to be understated;
- should have reassessed the value for money of the PPP and whether a PPP was the best way to finance ReGen before signing the Project Agreement; and
- should strengthen safeguards for project risks in its on-going negotiations with the Contractor.

We have included further details on these conclusions below.

PROJECT GOVERNANCE

As required by law, the Government hired external consultants to advise on the integrated solid waste management system project. The Government appointed these consultants in an open, transparent and competitive manner. The Government spent significantly more than it had budgeted on the consultants but monitored the costs. The Government exceeded the budget because its negotiations with the Contractor have been protracted.

ReGen’s Outline Business Case had some gaps. The Outline Business Case did not clearly demonstrate that a PPP was the best way to finance ReGen. Nor did it clearly specify ReGen’s objectives in terms of SMART, i.e., specific, measurable, achievable, relevant and time constrained, outputs or outcomes. In addition, the Outline Business Case was never finalised by the Government, or approved by the Cabinet as required by the *Public Management and Finance Act* (PMFA).

[REDACTED]

COSTS

The Government increased ReGen’s guaranteed minimum tonnage from [REDACTED] to [REDACTED] tons, a [REDACTED] per cent increase, after selecting the Contractor. The guaranteed minimum tonnage is the minimum amount of waste the Government has committed to deliver to the ReGen facility for processing annually. The Government and the Contractor also agreed to change the scale of ReGen’s energy recovery facility from [REDACTED] to [REDACTED] megawatts. These changes contributed to an increase in the cost of building ReGen’s facilities of [REDACTED] million, or [REDACTED] per cent.

Overall, the cost of building ReGen’s facilities increased by [REDACTED] million after procurement; [REDACTED] per cent more than the initial cost of [REDACTED] million in the Contractor’s bid. The Government may be overpaying for ReGen because it did not review the increase in construction costs to ascertain that it was reasonable. According to the financial report, the cost increases were considered reasonable because the revised contract cost of [REDACTED] million was just [REDACTED] million higher than the reserve bidder’s quote for a facility with guaranteed minimum tonnage of [REDACTED] tons and [REDACTED] megawatts.

The Project Agreement gave the Government the right to terminate it without incurring any liability if the Government and the Contractor did not reach financial close by [REDACTED]. However, the Government and the Contractor did not reach financial close by this date and extended it to [REDACTED]. Therefore, ReGen’s construction cost is likely to increase.

The Contractor's financial model estimates that the Government will incur a unitary charge of [REDACTED] million in the first year of operation and [REDACTED] million over the 25-year contract period. The Government has not considered the unitary charge's impact on its future borrowing limits and financial ratios. Therefore, it may not be able to acquire new loans in the future if ReGen causes it to breach the borrowing limits set out in the PMFA.

The Government identified and proposed two changes that would reduce the unitary charge. The first involved the Department of Environmental Health operating some aspects of the project. The second involved the Government re-appropriating the environmental levy on imported vehicles to pay for the vehicles' disposal at the ReGen facility. The financial report states that these scope changes could save the Government [REDACTED] million, reducing ReGen's cost to about [REDACTED] million over its 25-year contract period. However, the Government will continue incurring the financial costs relating to the cost savings. For example, DEH's other operating expenses, which were \$13.5 million for the 2020 financial year. As at March 2021, the Government expected ReGen to become operational in [REDACTED].

From our review of correspondence between Government officials, we found that the Government could save over [REDACTED] million by injecting capital into ReGen. However, there is no evidence that the Contractor agreed to this option. We were told this option was discussed by the Government and Contractor after the Project Agreement was signed in March 2021.

The estimated cost of ReGen of [REDACTED] million over the 25-year contract period is likely to be understated because some of the assumptions in the Contractor's financial model were inaccurate. For example, the assumed waste tonnage, inflation and discount rates were inaccurate. Using the average inflation rate from 2017 to 2019, ReGen will cost the Government [REDACTED] million over its 25-year period, [REDACTED] million more than the estimate in the Contractor's financial model. Assuming an annual growth of 3 per cent in waste tonnage, ReGen would cost [REDACTED] million.

The Contractor's financial model estimates that ReGen will generate approximately [REDACTED] million in revenue from the sale of electricity over the 25-year contract period. The Contractor will offset this revenue against the unitary charge, thus reducing the overall cost of the project. The Contractor bears the risk that the ReGen facility does not generate sufficient electricity as long as the Government delivers the guaranteed minimum tonnage.

VALUE FOR MONEY

As previously reported, the cost of constructing the ReGen facility has increased considerably, from [REDACTED] million to [REDACTED] million, since the Government selected the Contractor as ReGen's preferred bidder. Therefore, the Government should have prepared an updated value for money assessment before signing the Project Agreement. A value for money assessment may have shown that conventional funding or borrowing would provide better value for money than the PPP.

In March 2021, after the Government agreed on ReGen's price with the Contractor, the Government's financial advisor prepared a report entitled *ISWMS Project: The Interim Financial Report* (the "financial

report”). The financial report contained a value for money assessment. However, the assessment was incomplete because it only considered qualitative factors. A full value for money assessment should also analyse quantitative factors, i.e. the financial implications.

The Government will not be able to measure ReGen’s benefits because it has not fully specified ReGen’s objectives in terms of specific, measurable, achievable, relevant and time-constrained (i.e. SMART) outputs and outcomes.

The Government has been funding major capital projects using conventional funding for several years because its finances have significantly improved since it prepared the Outline Business Case in 2016. In addition, in September 2020, the Government obtained an emergency line of credit of \$330.5 million at an interest rate of 3.25 per cent. The interest rate on the line of credit is significantly lower than the internal rate of return of [REDACTED] per cent that the Government will pay to the Contractor. The higher internal rate of return is because of risks transferring from the Government to the Contractor. We found that the Government could have saved over [REDACTED] million by funding ReGen conventionally. The Government should have reassessed the best way to finance ReGen to ensure that it obtained the best value for money and that ReGen was affordable in the long term.

RISKS

The Government carried out due diligence checks on the Contractor and all members of the Contractor’s proposed consortium.

From our review of documents prepared by the Government’s legal advisor, we found that, overall, the Project Agreement contains adequate safeguards for most project risks, but some safeguards need to be strengthened.

The Project Agreement includes adequate safeguards for most, but not all operating risks. It contains adequate safeguards for design and construction risks and allows the Government to share excess profits from ReGen with the Contractor if the Government’s forecast assumptions are significantly understated. [REDACTED]

In addition [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]⁵ The Project Agreement contains change management mechanisms that are consistent with the Waste Infrastructure Delivery Programme (WIDP) contract but does not explicitly mention safeguards for technology/obsolescence risk.⁶

[REDACTED]

The Government and the Contractor have prepared and agreed a draft Performance Measurement Framework and a draft Payment Mechanism. These documents specify the service levels and sanctions for poor performance by the Contractor. They are fundamental to the Government’s ability to effectively oversee and manage the contract but are subject to further negotiation. It is essential that the final versions specify robust service levels and sanctions for poor performance.

[REDACTED]
[REDACTED] The Project Agreement requires the Contractor to obtain direct approval from the Government for any third-party debt refinancing. [REDACTED]
[REDACTED]
[REDACTED]

The Government has not yet assessed ReGen’s risks against its strategic objectives.

⁵ The United Kingdom’s Infrastructure Projects Authority recommends that public bodies inspect the underlying assets in Public-Private Partnerships before contract expiry. The IPA suggests that inspections start seven years before contract expiry and recommends that public bodies perform further inspections at five years and 0–3 years before contract expiry. See paragraph 147.

⁶ Please refer to the *Glossary of terms and abbreviations* for a definition of the WIDP contract.

INTRODUCTION

THE GEORGE TOWN LANDFILL IS CLOSE TO CAPACITY

1. The Department of Environmental Health (DEH) is responsible for collecting, recycling where possible, and disposing of solid waste in the Cayman Islands. DEH, under the Ministry of Health and Wellness (the Ministry), manages three landfills, one on each island.
2. In December 2013, the Cabinet issued *Policy Guidance for a Proposed Integrated Solid Waste Management System Cayman Islands*. The Government intended to achieve the policy by developing a National Waste Management Strategy that would guide effective long-term programmes for collecting, processing, recycling, resource recovery and disposal of solid waste. The Government's policy's purpose was to:
 - provide the country with an environmentally sound and cost-effective integrated solid waste management system without incurring more debt;
 - provide an efficient and economic balance of public and private services to enable it to meet or exceed requirements for the effective management of solid waste while ensuring public health and safety and protecting the environment for the near and long term; and
 - have an operational integrated solid waste management system as soon as possible, subject to a transparent and accountable procurement process.
3. In 2014, the Government estimated that the Cayman Islands generated about 85,000 tons of waste annually, 82,000 or 96 per cent of which was generated in Grand Cayman.⁷ Tonnes is the unit of measure for weight under the metric system. However, throughout the tendering and negotiation process for its proposed integrated solid waste management system, the Government used tons as a unit of measure for waste. Therefore, we have also used tons throughout this report. One ton is equivalent to about 0.907 tonnes.
4. In the same year, the Government forecast that the George Town landfill could cope with the quantity of waste produced in Grand Cayman for only seven more years. Therefore, the Government decided to develop an integrated solid waste management system to manage the country's solid waste sustainably.
5. The Government told us that waste tonnage data pre-2016 is unreliable. Therefore, we considered waste data from 2017 to 2020. Between 2017 and 2020, the total waste that DEH managed at the

⁷ *Strategic Outline Case – Integrated Solid Waste Management System, Cayman Islands Government, April 2024.*

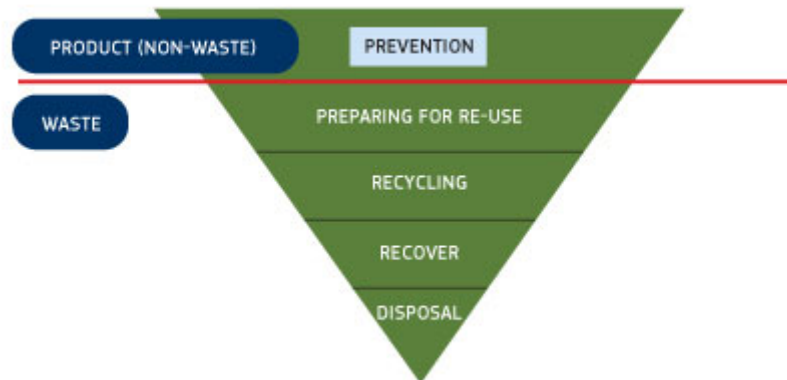
three landfills increased from 106,000 to 133,000 tons a year, a 26 per cent increase. The waste generated grew at a higher rate than the population (4 per cent) over the same period. The number of visitors grew by 9 per cent between 2017 and 2019.⁸ More than 95 per cent of the waste was produced in Grand Cayman and managed at the George Town landfill.

THE GOVERNMENT HAS NOT ACHIEVED FINANCIAL CLOSE FOR REGEN MORE THAN SEVEN YEARS AFTER PROCUREMENT STARTED

6. According to *Policy Guidance for a Proposed Integrated Solid Waste Management System Cayman Islands*, the Government expected to enter a PPP for the project. A PPP is a contract between a public entity and a private party for providing a public asset or service. In return for periodic payments from the public entity, the private party will perform all, or a combination, of designing, financing, building, operating and maintaining the asset. The contracts are usually long term, and the private party returns the asset to the public entity at the end of the contract period.
7. The policy's broad objective was to provide the country with a national solid waste strategy and a cost-effective integrated solid waste management system which:
 - minimised the risks of immediate and future environmental pollution and harm to human health;
 - accommodated the Islands' growth over 50 years, with interim reviews every five years;
 - adhered to the principles of the European Commission's hierarchy of solid waste management (Exhibit 1), which are that waste prevention and re-use are the preferred options, followed by recycling and energy recovery, with waste disposal through landfills a last resort.

⁸ The Government closed the borders in March 2020 in response to the COVID-19 pandemic, resulting in a 72 per cent decrease in the number of tourist arrivals from 2019 to 2020. Therefore, we used the change in the number of tourists between 2017 and 2019 to compare. Between 2017 and 2019, the number of stay-over visitors increased by 20 per cent, and the number of cruise ship visitors increased by 6 per cent.

Exhibit 1: European Commission's waste hierarchy



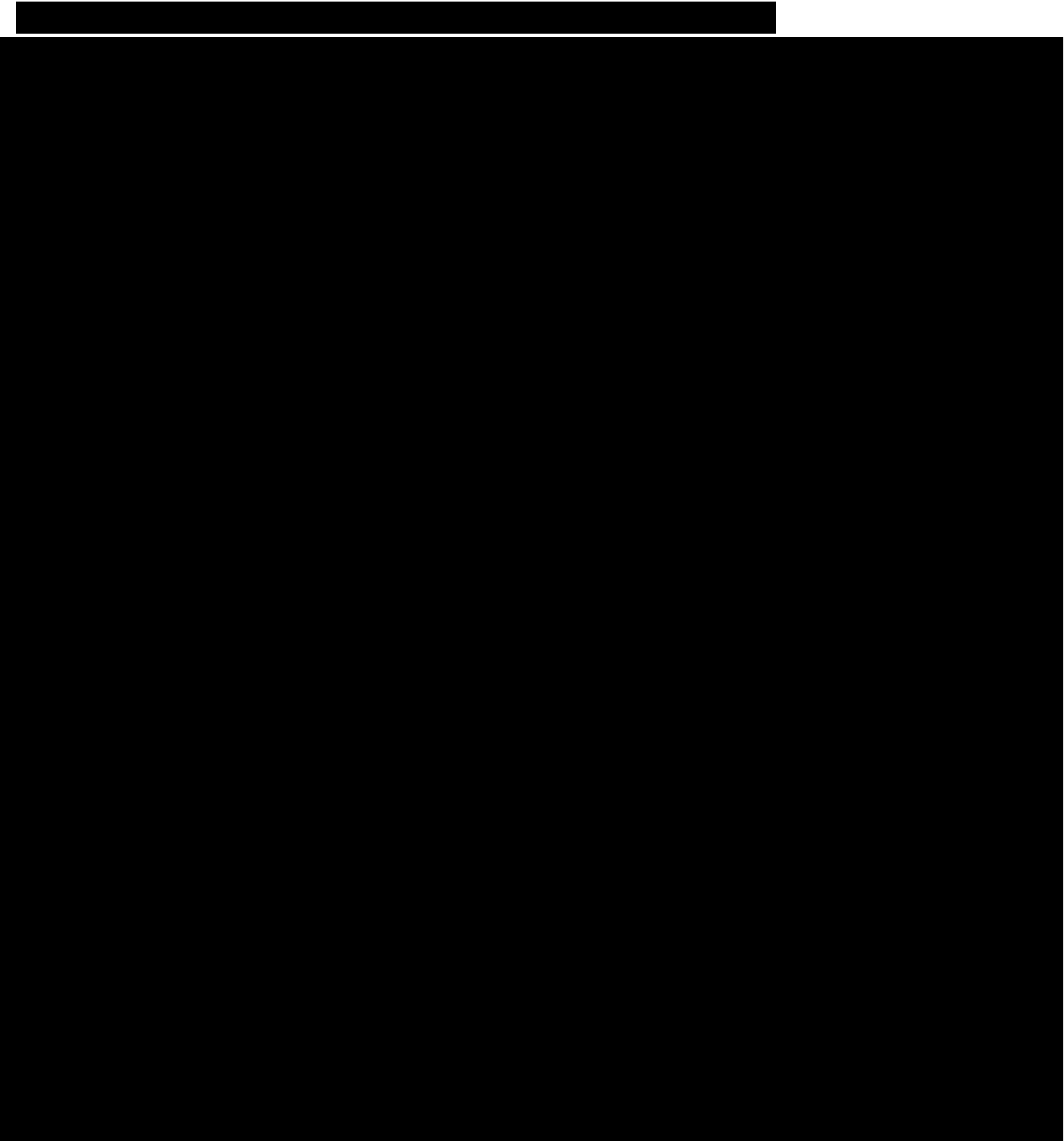
Source: *Waste management and prevention, European Commission, 2020.*

8. The Government's 2014/15 Strategic Policy Statement provided further support for these broad objectives. For example, Broad Outcome 5 (d) was about the development of a modern waste management facility that included waste to energy and recycling facilities through a PPP. The Government reiterated its commitment to developing an integrated solid waste management system in every subsequent Strategic Policy Statement through to the 2020 Strategic Policy Statement, which covered the 2020 and 2021 financial years. The 2022–2024 Strategic Policy Statement did not contain this commitment. In 2014, the Government developed a Strategic Outline Case for an integrated solid waste management system.
9. As required by the Framework for Fiscal Responsibility, the Government hired external consultants for the integrated solid waste management system. The consultants were:⁹
 - Amec Foster Wheeler Environment & Infrastructure UK Limited (known as Wood Environment and Infrastructure UK Ltd. as at October 2021) was chosen as the technical and environmental advisor.
 - KPMG was chosen as the financial advisor. The Government undertook a joint procurement process for the technical, environmental and financial advisors. Therefore, the Government hired KPMG as the financial advisor through KPMG's joint bid with Amec Foster Wheeler Environment & Infrastructure UK Limited.
 - Maples and Calder (Cayman LLP) and Burges Salmon LLP were selected as the legal advisors.

⁹ A definition of the Framework for Fiscal Responsibility can be found in the *Glossary of terms and abbreviations*. The definition also includes a summary of the consequences the Government faces if it breaches the framework.

10. In September 2017, the Government selected [REDACTED] as the preferred bidder for the integrated solid waste management system. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]



Source: ISWMS Project: The Interim Financial Report, KPMG, March 2021.

11. After four years of negotiations, the Government and the Contractor signed a Project Agreement in March 2021. The Project Agreement gives the Government the right to terminate it without incurring any liability if its conditions precedent are not satisfied, and therefore financial close is not reached.
12. The integrated solid waste management system was rebranded as “ReGen” in the same month. We refer to the proposed integrated solid waste management system as ReGen throughout this report. The Government and the Contractor have been engaged in negotiations since then. Therefore, they have not achieved financial close for ReGen more than seven years after the Government started the procurement process.
13. The Outline Business Case included a proposed timetable for ReGen’s procurement process, but the Government did not adhere to it. This is partly because the Government subsequently discovered that its estimates of waste tonnage used in the Outline Business Case were inaccurate. Having revised its estimates of waste tonnage after selecting the preferred bidder, the Government had to renegotiate the contract price with the Contractor. We were told that other factors also contributed to delays in the procurement process. For example:
 - a change to the site on Grand Cayman on which ReGen was to be located and the consequent negotiation and governance of the [REDACTED];
 - several changes to the structure and membership of the proposed Contractor’s consortium; and
 - the Contractor temporarily halting the execution of work on the Environmental Impact Assessment.
14. Exhibit 3 shows the key dates in ReGen’s procurement.

Exhibit 3: Key dates in ReGen’s procurement

Activity	Target completion date	Actual/proposed completion date
Cabinet policy directive for the development of an integrated solid waste management system	Not applicable	December 2013
Development of the Strategic Outline Case	May 2014	April 2014
Procurement of ReGen’s environmental, technical and financial advisors	September 2014	September 2014
Development of the National Solid Waste Management Policy for the Cayman Islands	December 2015	August 2015
Procurement of ReGen’s legal advisors	September 2014	27 October 2016
Development of the Outline Business Case	June 2015	September 2016
Commencement of ReGen’s procurement process	September 2015	November 2016
Selection of ReGen’s Contractor	March 2017	September 2017
Amendment of the Contractor’s proposed consortium	Not applicable	November 2019
Increase in the guaranteed minimum tonnage from [REDACTED] to [REDACTED] tons	Not applicable	March 2021
Signing of the Project Agreement and rebranding of the Integrated Solid Waste Management System as ReGen	Not applicable	March 2021
Initial target date for financial close	September 2017	[REDACTED]
Extension of the target date for financial close	Not applicable	[REDACTED]
Revised target date for financial close	Not applicable	[REDACTED]
ReGen’s first full operational month	October 2020	Currently estimated to be [REDACTED] ¹⁰

Source: OAG analysis of ReGen documents provided by the Ministry of Health and Wellness.

15. The Government and the Contractor prepared and maintained project timetables, but the last timetable was prepared in February 2020. In addition, the timetables did not clearly show the activities and timelines needed to reach financial close. Given the delays to the project, clear project and regularly updated project timetables would have provided useful milestones for the Government and the Contractor to adhere to and helped ensure that they achieved financial close sooner.
16. The Project Agreement gave the Government the right to terminate it without incurring any liability if the Government and the Contractor did not reach financial close by [REDACTED]. However,

¹⁰ The estimate is likely to change because the Government and the Contractor have not yet achieved financial close. ReGen’s estimated construction period is [REDACTED].

the Government and the Contractor did not reach financial close by this date and extended it to [REDACTED].

REGEN'S CONSTRUCTION COST INCREASED FROM [REDACTED] MILLION TO [REDACTED] MILLION AFTER PROCUREMENT

17. As highlighted in Exhibit 3, the Government selected the Contractor as the preferred bidder for ReGen in September 2017, but negotiations to reach financial close were still ongoing in October 2021.
18. As previously reported, the contract negotiations have been protracted partly because the Government increased ReGen's guaranteed minimum tonnage after selecting the preferred bidder. The guaranteed minimum tonnage is the minimum amount of waste the Government has committed to deliver to the ReGen facility for processing annually. The Government's technical and financial advisors prepared the Outline Business Case with an estimated annual waste of approximately [REDACTED] tons. The Government set this figure as ReGen's guaranteed minimum tonnage in starting the procurement process.
19. However, the guaranteed minimum tonnage was increased after the Contractor had been selected because the waste collected at the George Town landfill was found it to be higher than initially estimated. The Government and the Contractor agreed to increase ReGen's guaranteed minimum tonnage to [REDACTED] tons annually. The Government and the Contractor also agreed to change the scale of ReGen's energy recovery facility from [REDACTED] to [REDACTED] megawatts.
20. The Contractor increased the price for constructing the ReGen facility from [REDACTED] million to [REDACTED] million, a [REDACTED] million or [REDACTED] per cent increase after procurement. Exhibit 6 in the **ReGen's objectives** chapter shows that increasing the guaranteed minimum tonnage and the scale of ReGen's energy recovery facility contributed to [REDACTED] million of the [REDACTED] million increase. The exhibit also shows the other components of the [REDACTED] million increase in ReGen's construction cost.

REGEN WILL COST THE GOVERNMENT APPROXIMATELY [REDACTED] MILLION OVER 25 YEARS

21. The Government's contract with the Contractor is a PPP. Therefore, the Contractor will pay for the construction cost. In return for constructing the ReGen facility, and for operating and maintaining it over 25 years, the Government will pay the Contractor a monthly fee called a unitary charge. The Contractor will transfer the ReGen facility to the Government at the end of the 25-year period or earlier than that if the ReGen contract is terminated.
22. In March 2021, after the Government agreed on ReGen's contract price with the Contractor, the Government's financial advisor prepared a report entitled *ISWMS Project: The Interim Financial Report* (the "financial report"). The financial report, which was based on the Contractor's financial model, estimated that ReGen would cost the Government [REDACTED] million over its 25-year contract

period. However, the Government identified and proposed some changes that would reduce the unitary charge namely:

- The Department of Environmental Health (DEH) would operate the household waste recycling centre, materials reprocessing facility; medical waste facility and the green waste facility.
- The Government would re-appropriate the environmental levy on imported vehicles to pay for the vehicles' disposal at the ReGen facility.

23. The financial report states that these scope changes could save the Government [REDACTED] million, reducing ReGen's cost to about [REDACTED] million over its 25-year contract period. However, the Government will continue incurring the financial costs relating to the cost savings. For example, DEH's other operating expenses, which were \$13.5 million for the 2020 financial year. The Government expects ReGen to become operational in [REDACTED].

[REDACTED]

24. [REDACTED]

25. [REDACTED]

26. [REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

28. [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

29. [REDACTED]
[REDACTED]

30. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

THE GOVERNMENT HAS NOT ASSESSED REGEN’S RISKS AGAINST ITS STRATEGIC OBJECTIVES

31. After the election in April 2021, a new Government was sworn in in the same month. The new Government has set sustainability as one of its strategic policy objectives. The 2022–2024 Strategic Policy Statement states that the Government plans to offer incentive programmes to encourage recycling and reduce waste.

32. We were told that officials from the Ministry of Health and Wellness briefed the new Cabinet about ReGen in May 2021. However, the briefing was limited to ReGen’s progress and did not include ReGen’s risks or the lack of value for money assessment before the Government signed the Project Agreement. In addition, the briefing did not include an analysis of the potential impact that proceeding with ReGen would have on the new Government’s planned policies. The briefing did not include an assessment of ReGen’s impact on the principles of responsible financial management in the *Public Management and Finance Act* (PMFA). We discuss these principles in detail in the **ReGen’s objectives** chapter of this report.

ABOUT THE AUDIT

33. We carried out this audit because there are concerns about whether the Government will obtain value from money from the ReGen contract. The Government estimates that ReGen will cost approximately [REDACTED] million over its 25-year contract life, with a cost of approximately [REDACTED] million in its first year of operation alone. As of March 2021, the Government expected ReGen to become operational in [REDACTED], with [REDACTED] as its first full operational year. Therefore, it is important that Parliament and residents have assurance that the Government will obtain value for money from spending this large amount of money.

34. The objective of the audit was to determine whether the Government will obtain value for money from ReGen. The audit sought to answer the following questions:

- Did the Government clearly set out ReGen’s objectives?
- Did the Government clearly demonstrate that a PPP was better value for money than conventional funding?
- Does the Project Agreement signed with the Contractor ensure that the Government will obtain value for money over the contract life?

35. The audit focused on the ReGen project, from its inception in 2014 to October 2021. Where possible, we sought data relating to activities, costs and results over that time. The audit considered and incorporated relevant information from the following documents but did not fully assess them:

- the Strategic Outline Case: Integrated Solid Waste Management System, a document prepared by the Government;

[REDACTED]

[REDACTED]

[REDACTED]

36. We conducted the audit in accordance with the International Standards of Supreme Audit Institutions. The approach to the audit included:

- conducting interviews with key stakeholders, including Ministry of Health and Wellness and other Government officials involved with the ReGen project;
- reviewing documents relating to ReGen, including the Strategic Outline Case, the Outline Business Case, procurement documents, the Project Agreement and its supporting schedules, Cabinet Papers, legislation, budget documents, legal reports and financial reports and statements;
- analysing financial information, for example money spent on ReGen to date;
- researching leading international practices, e.g. the Green Book and past audit reports about PPPs from the UK's National Audit Office;
- technical advice and support from the UK's National Audit Office;
- analysing audit evidence and assessing against agreed criteria to develop findings, recommendations and a conclusion on the audit objective;
- providing a draft report to relevant government officials for a review of its factual accuracy;
- providing recommendations to support the Government's continued negotiations of the Project Agreement before reaching financial close. (see Appendix 2);
- presenting a final report of the audit to the Parliament.

37. We structured the report into three chapters:

- ReGen's objectives;
- Value for money during ReGen's procurement;
- Value for money during ReGen's contract life.

38. More information about the audit, including the audit criteria, approach and methodology, can be found in Appendix 1 of this report.

REGEN'S OBJECTIVES

39. A business case is a management tool developed over time as a proposal develops. It keeps together and summarises the results of all the necessary research and analysis to support transparent decision-making. In its final form, the business case becomes the key document of record for the proposal, summarising the proposal's objectives, key features of implementation management and arrangements for post-implementation evaluation.
40. The business case develops iteratively over time, often in three distinct stages, with more detail being provided at each stage, as follows:
- Stage 1, the Strategic Outline Case – the scoping phase.
 - Stage 2, the Outline Business Case – the detailed planning stage.
 - Stage 3, the Final Business Case – the detailed final phase.¹¹
41. The Framework for Fiscal Responsibility requires the Government to prepare a business case demonstrating the need for all projects where the Government is considering PPP. The business case should “include a fully argued and costed risk and impact assessment; and specify the benefits the project is designed to deliver to ensure that an informed decision can be made on whether or not to proceed to the procurement stage”. In addition, the framework requires the Government to only undertake PPPs where a financial appraisal demonstrates improved value for money against a conventionally financed alternative.
42. The Framework for Fiscal Responsibility also requires the Government to prepare the business case before it starts the procurement process. Parliament, then known as the Legislative Assembly, passed the framework into law in November 2012. The Government prepared the Outline Business Case for the ReGen project in September 2016, in accordance with the law.
43. In January 2017, the Government, through its Major Projects Office, adopted a governance framework for major capital projects. The framework requires the Government to prepare a Final Business Case before appointing a Contractor for all major capital projects. In March 2019, the Government adopted its Public–Private Partnerships & Alternative Financing Policies and

¹¹ *Assessing business cases ‘a short plain English guide’*, HM Treasury, November 2020. The HM Treasury Guidance refers to Stage 3 as a Full Business Case. This is the same as a Final Business Case, which is the term we use in this report.

Procedures. The policies and procedures also require the Government to prepare a Final Business Case for all PPPs.

44. This chapter describes findings from our review of the Outline Business Case and the Government's due diligence checks on the proposed Contractor's consortium. It also describes our assessment of the Government's value for money analysis before signing the Project Agreement and the Government's procurement of its advisors for the ReGen project.

THE OUTLINE BUSINESS CASE HAD SOME GAPS

45. The purpose of the Outline Business Case is to revisit the Strategic Outline Case in more detail and to identify a preferred option that demonstrably optimises value for money. It also demonstrates the project's affordability.¹²

THE GOVERNMENT SHOULD HAVE REASSESSED THE BEST WAY TO FINANCE REGEN

46. The PMFA sets out six principles of responsible financial management that should inform the policies drawn up and decisions taken by the Cabinet. These principles include three ratios that relate to borrowing, including net worth, the cost of borrowing and net debt.
47. In September 2016, the Cabinet approved, and the Government published ReGen's Outline Business Case for public consultation as required by the Framework for Fiscal Responsibility. However, the Outline Business Case was never finalised by the Government, or approved by the Cabinet.
48. The Outline Business Case stated that conventional borrowing to fund ReGen was unlikely to be a viable option because the Government had decided not to acquire any new loans. This statement was based on the 2015/16 Strategic Policy Statement (SPS) in which the Government stated its objective not to undertake any new borrowings from 2015 to 2018. The Government technical and financial advisors jointly prepared the Outline Business Case. However, determining the Government's willingness or ability to borrow was not within the advisors' scope of work.
49. The Government reiterated the commitment not to undertake any new borrowing in each of its SPSs between 2015 and 2021. In addition:
 - The 2015/16 SPS highlighted the Government's plans to fully fund future capital and operating needs from recurrent revenue. In this SPS, the Government highlighted a solid waste management system as one of the critical infrastructure projects it would fund using recurrent revenue.

¹² Ibid.

- The 2016–2017 SPS highlighted the Government’s policy to fund capital investments using cash generated from operating surpluses. The list of capital projects in the SPS included improved waste handling facilities.
- The 2018–2019 stated that the Government would not acquire new borrowings apart from refinancing an element of its bullet bond that was due to expire in November 2019.
- The 2020–2021 SPS stated that capital investments over the next three financial years would address critical infrastructure priority areas including remediating the landfill and implementing a long-term waste management solution. The SPS estimated the cost of these, and other planned capital projects, at about \$380 million from 2020 to 2022. The SPS stated that this capital expenditure would be funded from surplus generated from operating activities and existing reserves.

50. However, under the Government’s financial reporting framework, International Public Sector Accounting Standards, a PPP is a form of borrowing. It is therefore unclear why the Government believed that conventional borrowing was not an option, but a PPP was. We demonstrate in the **Value for money during ReGen’s procurement** chapter that PPP appeared to be more expensive than conventional borrowing, and would therefore have a bigger impact on the Government’s financial ratios.

51. The Outline Business Case did not consider the impact of undertaking ReGen using a PPP on the Government’s compliance with the principles of responsible financial management. In addition, it is unclear whether the Government reassessed its ability, or the Cabinet’s willingness, to borrow.

52. The Government’s finances have significantly improved since it prepared the Outline Business Case in 2016. For example, the Government had accumulated surpluses of \$560 million by December 2020, and reported an additional \$107 million surplus in the nine months ended September 2021.¹³ As a result, the Government has been funding major capital projects using conventional funding for a number of years.

53. In September 2020, the Government obtained an emergency line of credit of \$330.5 million at an interest rate of 3.25 per cent to help deal with the economic fallout of the COVID-19 pandemic. In its 2022–2024 Strategic Policy Statement, the Government stated its intention to use the line of credit to fund forecast capital expenditure. The interest rate on the line of credit is significantly lower than the internal rate of return of ■ per cent that the Government will pay to the Contractor.¹⁴

¹³ The \$560 million figure is based on the Government’s draft financial statements for the entire public sector for the year ended 31 December 2020. We have not yet audited these financial statements. The \$107 million figure is from the Government’s Unaudited Quarterly Financial Report for the nine months ended 30 September 2021.

¹⁴ The internal rate of return is the expected compound rate of return that an investor will earn on a project or investment.

Therefore, the Government should have reassessed the best way to finance ReGen to ensure that it obtained the best value for money and that ReGen was affordable in the long term.

THE OUTLINE BUSINESS CASE DID NOT CLEARLY DEMONSTRATE THAT A PPP WAS THE BEST WAY TO FINANCE REGEN

- 54. The Outline Business Case did not clearly demonstrate that a PPP was the best financing option for ReGen because the difference in the estimated value for money of the PPP compared with a public sector comparator was less than 3 per cent.
- 55. To perform a value for money analysis of different options in a business case, the economic costs and benefits for each year covered by the proposal are calculated. The costs and benefits are then added to obtain a net figure for each year. Each of these annual net values is then discounted and the results are summed to give a net present value (NPV). The NPV is the basis on which value for money is assessed. Exhibit 5 summarises the results of the value for money analysis, as detailed in the Outline Business Case.

Exhibit 5: Summary of the value for money analysis of ReGen’s PPP against the public sector comparator

	NPV
Public sector comparator (A)	\$553 million
PPP (B)	\$538 million
Total estimated value for money in \$ (C = A – B)	\$15 million
Total estimated value for money (%)	2.76%

Source: Outline Business Case, September 2016.

- 56. Exhibit 5 shows that the estimated value for money of the PPP was marginal (2.76 per cent). According to the sensitivity analysis in the Outline Business Case, a 0.5 per cent reduction in the Government’s assumed borrowing rate would have resulted in the public sector comparator delivering better value for money than a PPP, to the tune of █ per cent. A 0.5 per cent increase would have resulted in the PPP delivering better value for money than the public sector comparator by █ per cent.
- 57. The Government could not give us a copy of the initial financial model that underpinned the value for money comparison in the Outline Business Case because it did not receive one from its technical and financial advisor. As a result, we could not determine whether the Government’s assumed cost of borrowing in the financial model was reasonable. We discuss later, in ‘**Value for money during ReGen’s procurement**’ chapter, why we believe that some of the assumptions used in the financial model in the Outline Business Case were not reasonable. This casts significant doubt on the

Government's conclusion that a PPP represented better value for money than a conventionally funded procurement.

THE OUTLINE BUSINESS CASE DID NOT CLEARLY SPECIFY REGEN'S OBJECTIVES

58. The Green Book recommends the 5 Case Model as a framework for developing business cases. The 5 Case Model breaks a business case into five interconnected but distinct aspects, namely the strategic, economic, financial, commercial and management aspects of the case. The business case should enable stakeholders to ascertain that proposals:

- are supported by a robust case for change – the strategic case;
- optimise value for money – the economic case;
- are commercially viable – the commercial case;
- are financially affordable – the financial case; and,
- can be delivered successfully – the management case.¹⁵

59. Our review found that the Outline Business Case contained all the elements of the 5 Case Model. We also compared the Outline Business Case with the Checklist for Assessment of Business Cases extracted from the Green Book.¹⁶ We found that the Outline Business Case specified ReGen's risk transfer scope, adequately justified the decision to use a competitive dialogue procedure for the procurement, and included a timetable for ReGen.

60. However, the objectives of a project as set out in a business case should set be SMART, i.e. specific, measurable, achievable, relevant and time constrained. The Outline Business Case specified the Government's objectives for ReGen, but the objectives were generic, i.e. they were not expressed in terms of SMART outputs and outcomes. According to the Outline Business Case, implementing ReGen would have the following benefits:

- Increased recycling and composting and delivering a modern waste-to-energy plant, reducing the Cayman Islands' landfill requirement by about 95 per cent.
- Capping and remediating the George Town landfill with the ongoing need for landfill 'bottom ash' from burned waste undertaken in a properly managed way.
- Significantly reducing the environmental and public health risks, including fires, associated with the George Town landfill.

¹⁵ *Assessing business cases 'a short plain English guide'*, HM Treasury, November 2020.

¹⁶ Checklist for Assessment of Business Cases, HM Treasury, November 2020.

61. Without clearly specified objectives, the Government will not be able to determine if it has obtained value for money from ReGen once the project is operational. The Government also outlined ReGen's benefits in the 2014 Strategic Outline Case. However, these were also not clearly set out in the form of SMART outputs or outcomes. According to the Strategic Outline Case, implementing ReGen would have the following benefits:

- Efficiently employ limited resources and recover resources that can be reused, recycled or converted to energy.
- Reduced public health risks and nuisances associated with current solid waste management operations. For example, odours, noise, fires, pests and dust.
- Reduced environmental impacts associated with current solid waste management operations. For example, leachate contamination of water resources and soil and emissions from fires.
- Enhance the appearance of the George Town landfill and the reputation of the Cayman Islands as responsible stewards of the environment.
- Support ongoing development by including private sector partners.
- Allow recovery of energy from waste and composting of organic waste convert waste into useful end products that have a potential to generate revenue to offset operational expenses.

62. ReGen's proposed benefits were set out on the project's website.¹⁷ Most, but not all of these, are more clearly set out in the form of SMART outputs or outcomes. According to the website:

- Waste generated in the Cayman Islands would be used to generate approximately 9 megawatts of electricity, enough to power over 2,000 homes and businesses in Grand Cayman.
- ReGen would transform waste management in the Cayman Islands through a series of modern, efficient, clean and safe waste management facilities.
- Remediating the existing landfill would reduce greenhouse gas emissions by more than 25,000 tons a year, equivalent to removing more than 5,000 cars from our roads every year.
- ReGen would be constructed and operated to the European Union Industrial Emissions Directive, which is considered the highest global standard.
- New facilities for processing green waste, metal, household waste, and construction and demolition waste would allow more waste to be recycled.

¹⁷ The ReGen website www.regen/ky is owned and operated by Waste Solutions Cayman Ltd. The website states that the project is in partnership with the Cayman Islands Government, Department of Environmental Health and Dart.

- Remediating the George Town Landfill will turn the current waste mound into a green space that may one day feature a public viewing area.
- ReGen would allow sustainable waste management through diverting up to 95 per cent of waste from the George Town Landfill through reducing, reusing, recycling and recovering waste.
- ReGen would generate about 300 construction jobs and up to 60 long-term skilled jobs throughout the life of the project.¹⁸

Recommendation 1: The Government should specify all Regen’s benefits in the form of SMART outcomes and outputs.

THE GOVERNMENT DID NOT PREPARE A FULL VALUE FOR MONEY ASSESSMENT BEFORE SIGNING THE PROJECT AGREEMENT

63. The purpose of the Final Business Case is to revisit the Outline Business Case based on the outcome of the subsequent procurement activities; together with the recommendation for an affordable solution that continues to optimise value for money. The Final Business Case should contain detailed arrangements for the successful delivery of required goods and implementation of services from the recommended supplier(s).¹⁹ The Final Business Case should also include an updated value for money assessment based on the results of the procurement process.

64. In deciding whether or not to approve the Project Agreement, the Cabinet considered the financial report and a high-level summary of the main points of the Project Agreement, *ISWMS Project: High Level Project Agreement Summary* (the Legal Summary), prepared by its legal advisor. Based on our review of the financial report, the Government:

- Did not perform a full value for money assessment before signing the Project Agreement;
- may be overpaying for ReGen; and
- may not be able to borrow in the future.

65. We provide further details on each of these consequences below.

¹⁸ ReGen: Local Impact, <https://www.regen.ky/>, (accessed 25 October 2024).

¹⁹ *Assessing business cases ‘a short plain English guide’*, HM Treasury, November 2020.

THE GOVERNMENT DID NOT PERFORM A FULL VALUE FOR MONEY ASSESSMENT BEFORE SIGNING THE PROJECT AGREEMENT

66. As previously reported, the cost of constructing the ReGen facility has increased considerably, from [REDACTED] million to [REDACTED] million, since the Government selected the Contractor as ReGen's preferred bidder. Therefore, the Government should have prepared an updated value for money assessment. An updated value for money assessment may have shown that conventional funding or borrowing would provide better value for money than the PPP.

67. The financial report contained a value for money assessment. However, the assessment was incomplete because it did not include a quantitative value for money analysis. The Government's financial advisor did not perform a quantitative value for money analysis, stating that it was impossible to do so for the following reasons:

- The multiple developments in the project's definition have resulted in the public sector comparator developed in the Outline Business Case to become out of date and they are not relevant.
- The pricing of the inputs that could be developed in any updated public sector comparator are subject to 50 per cent plus optimism bias because there are no comparative numbers in respect of similar projects in this jurisdiction.
- The uniqueness of place which characterises the Cayman Islands mitigates the use of other benchmarking financial data.

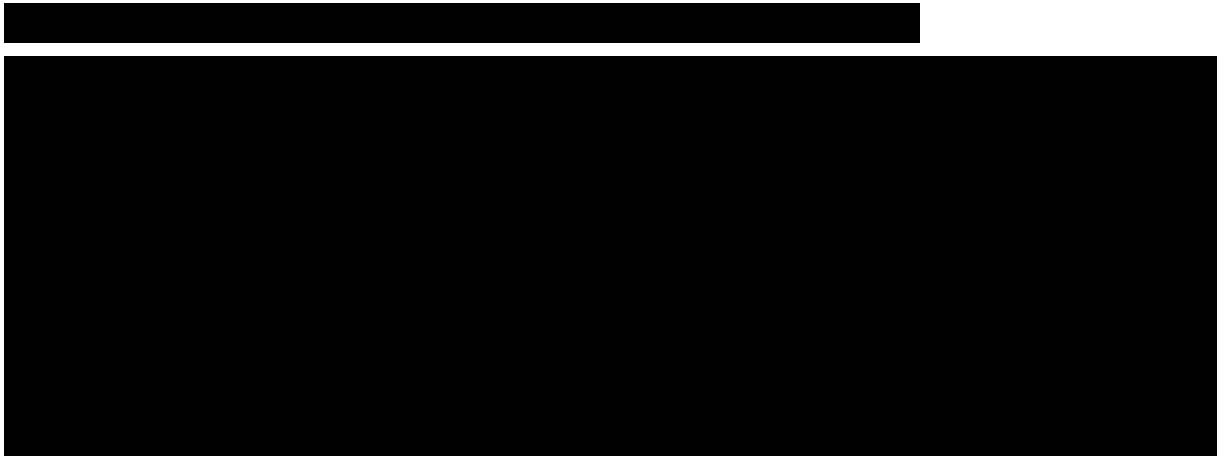
68. The Outline Business Case contained a quantitative value for money assessment. It is therefore unclear why the Government's financial advisor could overcome these challenges when preparing the Outline Business Case in 2016 but not when preparing the financial report in March 2021. However, it is worth noting that the Government did not clearly specify what it required from the financial advisor. The Government's contract with the technical and financial advisor only required the financial advisor to review and advise on the content of the final offer from the preferred bidder before the Government signed a contract for ReGen.

Recommendation 2: The Government should prepare a Final Business Case for all major capital projects, as required by its framework for major capital projects and *The Procurement Act, 2016*. The Final Business Case should:

- **contain a comprehensive options analysis;**
- **specify the project's benefits in terms of SMART outputs and outcomes;**
- **contain a qualitative and quantitative value for money analysis justifying the selected alternative.**

THE GOVERNMENT MAY BE OVERPAYING FOR REGEN

69. The Government may be overpaying for ReGen because it did not review increases in the construction costs to ascertain that they were reasonable. The Government increased ReGen’s guaranteed minimum tonnage from [REDACTED] to [REDACTED] tons, a [REDACTED] per cent increase, after it selected the Contractor as ReGen’s preferred bidder. The Government and the Contractor also agreed to change the scale of the energy recovery facility from [REDACTED] to [REDACTED] megawatts. These changes contributed to an increase in the cost of building ReGen’s facilities of [REDACTED] million, or [REDACTED] per cent.
70. Overall, ReGen’s estimated construction cost rose by [REDACTED] million after procurement, an increase of [REDACTED] per cent over the initial cost of [REDACTED] million in the Contractor’s bid. Exhibit 6 shows the breakdown of the [REDACTED] million increase in ReGen’s cost.



Source: ISWMS Project: The Interim Financial Report, KPMG, March 2021. The financial report was underpinned by the Contractor’s financial model.

71. According to the financial report, the cost increases were considered reasonable because the revised contract cost of [REDACTED] million was just [REDACTED] million higher than the reserve bidder’s quote for a facility with guaranteed minimum tonnage of [REDACTED] tons and [REDACTED] megawatts. The Government’s view was that the reserve bidder’s quote was not competitive. Therefore, the Government did not contact the reserve bidder to get an updated quote.
72. As will be explained later in the report, the Government and the Contractor agreed that the construction costs of [REDACTED] million would be valid only if financial close was achieved before [REDACTED]. The Government and the Contractor did not reach financial close before that date. Therefore, ReGen’s construction cost is likely to increase.

Recommendation 3: The Government should, prior to financial close, review all price increases proposed by the Contractor to ensure that they are reasonable.

THE GOVERNMENT MAY NOT BE ABLE TO BORROW IN THE FUTURE

73. A PPP is a form of borrowing. Therefore, the unitary charge that the Government will pay to the Contractor will increase the Government's level of borrowing and debt ratios. As reported earlier, the PMFA sets out six principles of responsible financial management. These principles, which should inform the policies drawn up and decisions taken by the Cabinet, include three ratios that relate to borrowing, including net worth, the cost of borrowing and net debt.
74. In return for designing, building, financing, operating and maintaining the ReGen facility, the Government will pay a monthly unitary charge to the Contractor. The Government estimates that it will incur an annual unitary charge of [REDACTED] million in ReGen's first year of operation. Because the cost of building the ReGen facility is significantly higher than when the Government's technical and financial advisors prepared the Outline Business Case, the unitary charge is also higher.
75. The Government has not considered the impact of the increased unitary charge on its future borrowing limits and financial ratios. In May 2021, we reported on the Government's financial performance over the five years 2014/15 to 2019.²⁰ That report stated the following in relation to borrowing and the principles of responsible financial management that relate to borrowing (financial ratios):
- The Government's borrowing level had reduced significantly, to \$330 million, at the end of 2019. However, the Government had arranged a stand-by line of credit of \$330.5 million, and it had provided a loan of \$20.9 million to the Cayman Islands Airport Authority.
 - The cost of borrowing had fluctuated. The Government had adhered to the principle that the cost of borrowing in any year should not be more than 10 per cent of core government revenue in only two of the five years reviewed.
 - Net debt was consistently less than 80 per cent of core government revenue.
 - Core government had sufficient assets to cover liabilities, but this did not include all liabilities, as the reported liabilities did not include the full liability for retirement benefits. If the Government included that liability, its net worth would be negative.
76. We reported previously that the Government intends to use the \$330.5 million line of credit to fund major capital projects over the next few years. The PPP for ReGen will further increase the Government's total borrowing levels, and financial ratios, in the medium to long term. Therefore,

²⁰ *Improving Financial Accountability and Transparency: Financial Management and Reporting*, Office of the Auditor General, May 2021.

the Government may not be able to acquire new loans in the future if ReGen causes it to breach the borrowing limits set out in the PMFA.

Recommendation 4: The Government should calculate ReGen’s impact on its future borrowing limits and financial ratios to ensure that the limits and ratios comply with the *Public Management and Finance Act*. The cost of the unitary charge for ReGen should also be incorporated into forecast borrowing ratios in future Strategic Policy Statements.

THE GOVERNMENT CARRIED OUT DUE DILIGENCE CHECKS ON THE CONTRACTOR’S PROPOSED CONSORTIUM

77. It is good practice to carry out due diligence checks on contractors and consortium members. Procuring entities can perform due diligence by independently verifying that a supplier or provider is who they claim to be and has the financial ability as well as the necessary capacity and capability to deliver over the life of the contract. The procuring entity should document all due diligence actions. All due diligence actions should be documented. At a minimum, the procuring entity should check that the supplier:

- is who they claim to be, by looking at their legal set-up;
- is financially sound, by checking their financial history;
- can be trusted, by checking corruption indicators;
- has good past performance of appropriate health and safety and employment practices;
- has the capacity, capability and expertise to deliver, based on past performance;
- has the right systems and processes to be able to deliver;
- can deliver what is needed for the price quoted by testing the assumptions in their proposal; and
- understands the contract deliverables and requirements and their obligations.²¹

78. Our review of the financial report found that the Contractor’s consortium has changed significantly since the Government selected the Contractor as ReGen’s preferred bidder in September 2017, specifically:

█ [REDACTED]

²¹ *Conducting due diligence checks*, New Zealand Government Procurement – Government Property Group, 2021.

[REDACTED]

79. The Government performed due diligence checks on the original and replacement members of the Contractor’s consortium.

THE GOVERNMENT APPOINTED ITS CONSULTANTS IN ACCORDANCE WITH THE LAW

80. In February 2018, we reported on the Government’s use of consultants and temporary staff.²² The report recommended the following in relation to the Government’s use of consultants:

- The Government should monitor its spending on consultants.
- The Government should ensure that Requests for Proposals and Invitations to Tender are prepared for all open procurements and that they are in line with policies and procedures.
- The Government should develop standard terms and conditions for consultant contracts that ensure that its interests are protected and it is able to achieve value for money.
- The Government should establish effective policies, criteria and processes for evaluating and managing consultant contracts, including guidance on the options available to address poor performance and on carrying out post-contract evaluations.

81. As reported earlier, the Government hired external consultants to act as its financial, legal, technical and environmental advisors to assist in its decision-making on ReGen. The Government appointed these consultants in an open, transparent and competitive was as required by the PMFA. The Government procured these consultants in accordance with the PMFA because the consultants’ procurement started before the *Procurement Act (2016)* and the Procurement Regulations, 2018 were in effect.²³

82. As at September 2021, the Government had spent \$6.5 million on these external advisors. The Government spent \$3.7 million of the \$6.5 million on its legal advisors, compared to the initial contract award of about \$428,000. The Government spent the remainder, \$2.8 million, on its

²² *Government’s Use of Consultants and Temporary Staff*, Office of the Auditor General, February 2018.

²³ The *Procurement Act (2016)* became effective on 1 May 2018. The latest version of this act is the *Procurement Act (2023 Revision)*. The Procurement Regulations, 2018, became effective from 2 May 2018. The latest version of these regulations is the Procurement Regulations (2022 Revision).

financial, technical and environmental advisors, compared to the initial contract award of about \$657,000.

83. The Government exceeded its budgeted costs for these consultants because its negotiations with the Contractor have been protracted. However, the Government monitored its costs on these consultants and in July 2017, informed its Central Tenders Committee (CTC) when it exceeded the budgets for consultants it had set during procurement.²⁴ The Government also informed the CTC that the consultant would bill future costs incurred on ReGen using agreed hourly rates. In February 2018, the CTC noted the Government's update and did not raise any objections.

²⁴ At the time, the Central Tenders Committee was responsible for overseeing the tender process for contracts over \$250,000 to ensure the tender process was carried out fairly, consistently, ethically and transparently in accordance with the Cayman Islands' laws.

VALUE FOR MONEY DURING REGEN'S PROCUREMENT

84. The Framework for Fiscal Responsibility requires that the Government consider PPPs when a financial appraisal demonstrates that a PPP will deliver better value for money than a conventionally funded alternative. If the Government is non-compliant with any of the requirements of the framework, the framework requires the Government to obtain written approval from the UK's Secretary of State before it:

- finalises its Strategic Policy Statements;
- incurs new loans or refinances any existing ones;
- proceeds with any project with a lifetime value of more than \$10 million;
- uses public assets as collateral as part of any arrangement with an external party; or
- hypothecates any revenue.

85. This chapter assesses the value for money conclusions, and the basis for those conclusions reached during ReGen's procurement.

THE GOVERNMENT RELIED ON FINANCIAL MODELS THAT HAD SOME INACCURATE ASSUMPTIONS

86. As part of its value for money analysis in the Outline Business Case in 2016, the Government's financial advisor's initial financial model estimated the NPV of the PPP and of a public sector comparator.

87. In March 2021, after the Government agreed on ReGen's price with the Contractor, the Government's financial advisor prepared a report entitled *ISWMS Project: The Interim Financial Report* (the "financial report"). The financial report's purpose was to assist the Government in its assessment of ReGen's proposed financial terms and inform the Cabinet discussion and decision on the Project Agreement. The financial report was underpinned by a revised financial model prepared by the Contractor. The Contractor's financial model calculated estimates of the unitary charge based on different assumptions.

88. Both the initial financial model and Contractor's financial model relied on various assumptions to determine whether financing ReGen using a PPP would provide better value for money than a conventionally funded alternative. Some of the key assumptions were the waste tonnage, inflation rate, contract period, discount rate and the revenue from electricity generated from the energy recovery facility. There is no evidence that the Government's financial advisor assessed the reasonableness of the assumptions used in the Contractor's financial models. We assess the reasonableness of these assumptions below.

THE GOVERNMENT COULD HAVE INCREASED REGEN'S CAPACITY MUCH EARLIER THAN IT DID

89. The Government's technical and financial advisors prepared the Outline Business Case for ReGen with a proposed capacity of 80,000 tons of waste. This was based on actual data collected by the Department of Environmental Health in the 12 months to February 2016.
90. However, the Government told us that waste tonnage data pre-2016 is unreliable. The Government told us that the weighing facilities for waste delivered to the George Town Landfill were only operational for part of each working day between March 2015 and February 2016. The Government also told us the facilities were closed when operators were on holiday. These two challenges were partly corrected in 2016 resulting in more accurate estimates. Further adjustments to the waste tonnage were required later on in the procurement process.
91. Our review of Economics and Statistics Office data found that the annual waste tonnage exceeded 100,000 tons a year from 2017 to 2020. However, the Government was not quick enough in incorporating the updated waste tonnage data in its negotiations with the preferred bidder. For example, the Government did not increase ReGen's capacity until 2020, during negotiations with the preferred bidder after its appointment. As noted in the **ReGen's objectives** chapter, this is one of the reasons why ReGen was significantly delayed, and why the construction cost and the unitary charge have increased.
92. [REDACTED]
[REDACTED]
[REDACTED] In addition, the Project Agreement requires the Contractor to process approximately [REDACTED] more tons of waste [REDACTED]. Therefore, the total tonnage that the Contractor is required to process for [REDACTED] is approximately [REDACTED] tons. [REDACTED]
[REDACTED]
[REDACTED]
93. The Contractor prepared the revised financial model assuming that ReGen will become operational in [REDACTED]. ReGen's first full year of operation is [REDACTED], and it will be active for only six months in [REDACTED], its last operational year. We have used this information to present waste tonnage and the corresponding unitary charge at five-year intervals from [REDACTED] (Exhibit 7).

[REDACTED]

[REDACTED]

Source: OAG analysis of the financial data in the Contractor's financial model

94. The minimum tonnage will remain constant throughout the contract period. However, the Government's base payment will increase over time because of inflation. The Contractor's financial model assumes that [REDACTED] tons of waste will be generated in the Cayman Islands in 2026. This will cost the Government [REDACTED] million in unitary charge expenses, of which [REDACTED] million relates to processing costs for waste tonnage above the guaranteed minimum threshold. The Contractor's financial model shows that the Cayman Islands will generate [REDACTED] tons of waste in 2046. This will cost the Government [REDACTED] million in unitary charge expenses, of which [REDACTED] million will be processing costs for waste tonnage above the guaranteed minimum threshold. The original Outline Business Case considered different waste growth scenarios ranging from 2-4 per cent a year.
95. The Contractor's financial model estimates that the Cayman Islands will produce [REDACTED] tons of waste in 2021. This estimate is consistent with the latest available data from the Economics and Statistics Office at the date of the report. The estimate is higher than the guaranteed minimum tonnage but below the fixed price threshold of [REDACTED] tons. The Contractor's financial model also forecasts that [REDACTED] tons of waste will be generated in the Cayman Islands by 2050, representing a [REDACTED] per cent increase from 2020.
96. As stated previously, the Government told us that waste tonnage data pre-2016 is unreliable. Our review of published data found that, from 2017 to 2020, the total annual waste that the Department of Environmental Health managed at the three landfills increased by 26 per cent, from 106,000 to

133,000 tons.²⁵ The increase represents an average annual growth rate of 6 per cent. [REDACTED]

Applying an estimated annual waste tonnage growth rate of [REDACTED] per cent to the Contractor's financial model shows that ReGen will cost the Government [REDACTED] million over the 25-year period of the contract. The cost increases to [REDACTED] million at a growth rate of [REDACTED] per cent.²⁶

97. The financial report should have contained a sensitivity analysis showing the impact of different forecasts of waste levels on the unitary charge. The lack of sensitivity analysis means that the Government was not aware of the potential increase in the unitary charge if its waste growth forecasts are inaccurate. The Government did not ask the financial advisor to provide a sensitivity analysis. However, it is unclear why the financial advisor did not consider one to be necessary.
98. It is worth noting that the Outline Business Case highlighted the importance of waste minimisation initiatives as part of the Government's strategy for ReGen. Therefore, the Outline Business Case used a waste reduction function of 1 per cent in its forecasts of future waste generated.

REGEN'S COST IS UNDERSTATED BECAUSE THE INFLATION RATE USED IN THE CONTRACTOR'S FINANCIAL MODEL WAS INACCURATE

99. In the Outline Business case, the Government's financial advisor used an inflation rate of 1.6 per cent in the analysis of value for money of the PPP compared with a conventionally funded alternative. [REDACTED]

[REDACTED] However, using the same data, we calculated an inflation rate of 1.5 per cent.

100. The Government also forecasts inflation in its Strategic Policy Statements. In the 2016/17 Strategic Policy Statement, the Government said that it expected inflation to be 2.0 per cent, on average, in the three financial years to 2019. The 2016/17 Strategic Policy Statement was the last to be published before the Government's technical and financial advisors prepared the Outline Business Case in September 2016.
101. The Government did not give us the initial financial model underpinning the value for money analysis in the Outline Business Case. As a result, we could not quantify the impact of the errors in the estimated inflation, if any, on the value for money analysis.

²⁵ *The Cayman Islands' Compendium of Statistics 2020*, Economics and Statistics Office, July 2021.

²⁶ Using the cumulative annual growth rate of 6 per cent results in forecast waste tonnage of approximately 990,000 tons in 2050, which is an unrealistic estimate. [REDACTED]

102. The actual unitary charge that the Government will pay to the Contractor will be adjusted annually based on the actual inflation rate in the Cayman Islands. According to the Contractor's financial model, the unitary charge for the first year of the ReGen contract will be about [REDACTED] million.

103. Using the formula that the Government's financial advisor used to calculate the inflation rate in the Outline Business Case, we found that the inflation rate in the Contractor's financial model should have been 3.3 per cent. Our calculation was based on an average of the inflation rates between 2017 and 2019. Assuming an annual inflation rate of 3.3 per cent, ReGen will cost the Government [REDACTED] million over its 25-year period, [REDACTED] million more than the estimate in the Contractor's financial model. We were told that the Contractor's financial model included sensitivity analyses for inflation rates of [REDACTED] per cent and [REDACTED] per cent. However, the financial advisor did not include these analyses in the financial report for the Government's consideration.

104. The Government's 2020 Strategic Policy Statement (the last one published before its financial advisor prepared the financial report in March 2021) forecast that inflation would increase by an average of 2.3 per cent in the four years to 2022. Assuming an annual inflation rate of 2.3 per cent, ReGen will cost the Government [REDACTED] million over its 25-year period, [REDACTED] million more than the estimate in the Contractor's financial model.

105. The estimated inflation rate of [REDACTED] per cent used in the Contractor's financial model is lower than both the estimated inflation rate of 3.3 per cent based on the latest available data and the 2.3 per cent inflation forecast used by the Government in the 2020 Strategic Policy Statement. As a result, the unitary charge in the financial report, and in the signed Project Agreement, is likely to be understated because the Government must bear all the increases in cost due to inflation.

REGEN'S COST IS UNDERSTATED BECAUSE THE CONTRACTOR USED AN INACCURATE DISCOUNT RATE IN THE CONTRACTOR'S FINANCIAL MODEL

106. The contract period and discount rates are key inputs into the initial financial model used to compute the value for money of the PPP and the conventionally funded alternative. In ReGen's case, the proposed contract period is 25 years. Based on the summary of assumptions reflected in the Outline Business Case, the 25-year contract period used in the value for money analysis was reasonable.

107. The initial financial model should reflect a similar discount rate to determine the NPV of both the PPP and the conventionally funded alternative, and the discount rate should reflect the time value of money, for example the interest rate that the Government would pay to borrow an amount equal to the project's cost.

108. As reported previously, the Government did not provide us with a copy of the initial financial model. Therefore:

- We could not ascertain if the Government’s financial advisor spread the cost of the PPP and the cost of the conventionally funded alternative over the 25-year contract period in the initial financial model.
- We were unable to ascertain if the discount rates that the Government’s financial advisor used in both the PPP and the conventionally funded alternative were reasonable; and
- We could not determine if the value for money analysis used the same discount rate for both alternatives. Using different discount rates would skew the results of the value for money assessment towards whichever alternative had a higher discount rate.

109. As stated earlier, in 2020, the Government obtained an emergency line of credit of \$330.5 million at an interest rate of 3.25 per cent. [REDACTED]

THE FINANCIAL REPORT CONTAINS A CLEAR SENSITIVITY ANALYSIS FOR ELECTRICITY REVENUE

110. ReGen includes an energy recovery facility for the generation of electricity from the treatment of non-recyclable waste. The Contractor intends to sell the electricity generated from the facility to the Caribbean Utilities Company, Ltd (CUC). The Contractor will offset the revenue from the sale of electricity against the unitary charge, thus reducing the overall cost of the project.

111. The Outline Business Case contains a summary of the quantitative value for money analysis. The analysis shows the estimated revenue from the sale of electricity to CUC. However, the Government did not provide us with a copy of the initial financial model. Therefore, we were unable to obtain the assumed price of electricity used in the initial financial model and ascertain whether or not it was reasonable. For the same reason, we could not quantify the impact of any errors in the assumed price of electricity on the value for money analysis.

112. The Contractor used a selling price of [REDACTED] cents per kilowatt-hour for electricity generated from ReGen to estimate the unitary charge in the Contractor’s financial model. The financial report includes an analysis of the sensitivity of the unitary charge to the price of electricity considering three additional price points i.e. [REDACTED] and [REDACTED] cents per kilowatt-hour.

113. We analysed the electricity generation costs incurred by CUC over the three months to February 2021. We found that the average cost of generating one kilowatt-hour of electricity was approximately 8 cents for electricity generated from fuel and 0.6 cents for electricity generated from renewable sources.

114. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

However, the Government believes it is well placed to manage this risk because section 12 of the *Utility Regulation and Competition Act (2021 Revision)* allowed the Cabinet to give lawful directions to OfReg after consultation with OfReg’s board. There is an additional risk that if the Government forces CUC to accept the electricity generated at a higher price than it usually pays, CUC may pass this additional cost on to consumers.

THE CALCULATION OF THE UNITARY CHARGE IS CONSISTENT WITH BEST PRACTICE

115. Best practice requires that the computation of the unitary charge should be based on only capital costs, equipment maintenance and financing costs. We found that the Contractor’s financial model’s calculation of the unitary charge is consistent with best practice.

Recommendation 5: The Government should ensure that it uses assumptions that are as accurate as possible in its financial models for options appraisal. The Government should calculate the sensitivity of its appraisals to changes in significant assumptions underpinning the financial models.

THE GOVERNMENT COULD HAVE SAVED OVER [REDACTED] MILLION BY FUNDING REGEN CONVENTIONALLY

116. As noted earlier, ReGen’s construction cost has increased by [REDACTED] million since the Contractor’s initial bid, submitted in April 2017. After the Government agreed a revised price with the Contractor, its financial advisor prepared a financial report, in March 2021. The purpose of the financial report was to assist the Government in its assessment of the Contractor’s proposed financial terms.

117. The financial report concluded that a PPP with the Contractor was the only viable option available to the Government, “as there is no do-nothing option”. The financial report ruled out a “do-nothing” option on the basis that ReGen’s construction would take three years and the George Town landfill could only cope with the quantity of waste produced in Grand Cayman for five more years.

118. A full value for money analysis should consider both qualitative and quantitative factors. The financial report contained a qualitative value for money assessment of the ReGen contract. However, the financial report did not contain a quantitative value for money assessment of a PPP against a conventionally funded alternative because the Government’s financial advisor stated that they could not perform one.

119. We previously reported that the Government borrowed \$330.5 million at an interest rate of 3.25 per cent in 2020. We also noted that the Government will pay the Contractor an internal rate of

return of [REDACTED] per cent, [REDACTED] per cent higher than the cost of Government borrowing.²⁷ [REDACTED]

120. In a 2018 report, the UK's National Audit Office (NAO) reported that investors in PPPs could expect to receive a return of between 2 and 4 per cent above the cost of government borrowing.²⁸ The NAO's forecast was based on PPP deals entered into since 2013. The NAO also reported that some PPP deals agreed in 2013, when market conditions were poor, provided internal rates of return that were more than 5 per cent above Government borrowing rates.

121. Small changes to the cost of capital can have a significant impact on costs. As an illustration, the Government would pay [REDACTED] million in interest if it borrowed [REDACTED] million (the estimated construction cost of the ReGen facility) at an interest rate of 3.25 per cent over 25 years. [REDACTED]

[REDACTED] It is important to note that this analysis does not consider other benefits of PPPs for example the transfer of some risks from the public to the private entity. In the **Value for money during ReGen's contract life** chapter, we highlight that a significant risk that the unitary charge will be higher if the Contractor's owners raise the interest rates on their debt before financial close.

122. Therefore, an updated value for money assessment may have shown that conventional funding or borrowing would provide better value for money than the PPP.

THE GOVERNMENT COULD SAVE OVER [REDACTED] MILLION WITH A CAPITAL INJECTION INTO REGEN

123. The financial report states that the Government can reduce the amount of the unitary charge by making a capital injection on the first day that the ReGen facility becomes operational. It states that a [REDACTED] million capital contribution from the Government would result in savings of [REDACTED] million in the unitary charge over ReGen's contract period of 25 years. However, the financial report did not state the maximum capital contribution that the Government could make.

124. From a review of correspondence between Government officials, we found that the Contractor will allow the Government to inject a maximum of only [REDACTED] million into the project. The same correspondence asserts that the Government will save approximately [REDACTED] million over the contract period by doing so. However, the optional capital injection was not included in the March 2021 Project Agreement and there is no other evidence that the Contractor agreed to this option. We

²⁷ The internal rate of return is the expected compound rate of return that an investor will earn on a project or investment.

²⁸ *PFI and PF2*, National Audit Office, 2018.

were told this option was being discussed by the Government and Contractor after the Project Agreement was signed in March 2021.

Recommendation 6: The Government should ensure that all key terms and conditions agreed with its suppliers are reflected in the supporting contract.

Recommendation 7: The Government should confirm with the Contractor how much capital it can inject into the ReGen project.

Recommendation 8: The Government should inject capital into ReGen if it can to save on future costs.

VALUE FOR MONEY DURING REGEN'S CONTRACT LIFE

125. PPPs enable governments to obtain long-term value for money through appropriate risk transfer to the private sector over the life of a project – from design and construction to operations and maintenance.²⁹

126. This chapter assesses the allocation of risk between the Government and the Contractor in the Project Agreement and the value for money that the Government will obtain during the 25-year contract period. It also assesses:

- the adequacy of the safeguards that the Project Agreement provides to the Government to ensure that the Contractor performs the waste management services to the agreed levels; and
- whether or not the Government will obtain value for money over the ReGen's life.

THE PROJECT AGREEMENT CONTAINS ADEQUATE SAFEGUARDS FOR MOST PROJECT RISKS, BUT SOME SAFEGUARDS NEED TO BE STRENGTHENED

127. As stated in the **ReGen's objectives** chapter, the Government's legal advisor prepared the Legal Summary in March 2021. The Legal Summary includes, among other information, the allocation of risks between the Government and the Contractor based on the contract. From our review of the Legal Summary, we found that, overall, the Project Agreement contains adequate safeguards for most, but not all ReGen's risks.

128. The Outline Business Case developed before the procurement process started contained a summary of the proposed risk allocation between the Government and the as-yet-to-be-determined preferred bidder. It would have been useful to compare the risk allocation in the Outline Business Case with that in the Project Agreement. However, the Government has not prepared, or asked its legal advisor to prepare a comparison between the risk allocations in the Outline Business Case and the Project Agreement.

²⁹ *Government Objectives: Benefits and Risks of PPPs*, World Bank, 2020.

[REDACTED]

129. As with any other government contract or service provided, ReGen will be affected by changes in laws and regulations over its 25-year contract period.

130. Based on the best practice WIDP Contract, the Government should have accepted the risk of only those future changes in laws and regulations that affect ReGen specifically. The Contractor should have retained the risks of future changes in laws that apply to the broader population and the business community.³⁰

131. However, the current ReGen contract is not consistent with the WIDP Contract. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This is a significant risk for the Government to accept.
[REDACTED]
[REDACTED]

THE PROJECT AGREEMENT CONTAINS ADEQUATE SAFEGUARDS FOR MOST, BUT NOT ALL OPERATING RISKS

132. Appropriate risk allocation between the public and private sectors is the key to achieving value for money on PPPs. The main categories of risks are:

- design and construction risks
- operating risks
- demand risks
- residual value risks
- technology/obsolescence risks
- external finance risks
- price risks and
- risk of contractor default.³¹

133. The Government should have sought to achieve not the maximum but rather the optimum transfer of risk, allocating risks to the Contractor that the Contractor is best placed to manage. Our review of

³⁰ See the *Glossary of terms and abbreviations* on page 3 for a definition of the WIDP Contract.

³¹ *Examining the value for money of deals under the Private Finance Initiative*, National Audit Office, 1999.

the Legal Summary found that the Project Agreement contains some safeguards for most, but not all project risks. We examine each of the risks in further detail below.

[REDACTED]

134. Best practice in PPPs suggests that the private party should meet any cost increase arising from poor estimating, delays or failure to meet the client’s requirements. It also recommends that the public entity should not pay the private party until the start of service delivery.³²

135. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

THE PROJECT AGREEMENT INCLUDES ADEQUATE SAFEGUARDS FOR MOST OPERATING RISKS

136. Operating risks include the risk that the Contractor fails to meet performance standards for service delivery or fails to make assets available for use. Exhibit 8 below summarises the safeguards included in the Project Agreement to protect the Government from operating risks.

Exhibit 8: Summary of the Government’s safeguards for operating risks

Risk	Description and safeguards
<p>The Contractor cannot export electricity from the ReGen facility to the national grid.</p>	<p>Based on the Contractor’s financial model, the Government’s financial advisor forecast that ReGen will generate approximately [REDACTED] million in revenue from the sale of electricity over the 25-year contract period. The Government will use this revenue to offset the unitary charge.</p> <p>The risk that the Contractor cannot export electricity to the national grid is significant. However, the Government, the Contractor and CUC have significant commercial incentives to ensure that this risk does not materialise.</p> <p>The financial report states that ReGen’s energy recovery facility is being designed to have a generating capacity of 35.5 megawatts of electricity. The Contractor bears the risk that the ReGen facility does not generate sufficient electricity</p>

³² Ibid.

Risk	Description and safeguards
	as long as the Government delivers the guaranteed minimum tonnage.
Damage to the environment and health and safety.	<p>The Project Agreement requires the Contractor to ensure that the delivery of the agreed services does not damage the environment.</p> <p>It also gives the Government the right to step in and operate the ReGen facility if there is a serious or immediate risk to the health or safety of persons, property or the environment.</p> <p>The Government would have to compensate the Contractor in such a case. The compensation payable is consistent with the WIDP Contract.</p>
The Contractor does not accept some waste delivered to the ReGen facility.	<p>The Project Agreement requires the Contractor to accept, with a few reasonable exceptions, all waste delivered to the ReGen facility.</p> <p>It also gives the Government the right to step in and operate the facility if the Contractor does not accept waste delivered to the site for more than 48 consecutive hours. In such circumstances, the Project Agreement requires the Government to compensate the Contractor, consistent with the WIDP Contract.</p>
The unitary charge invoiced by the Contractor is inaccurate.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
The Contractor is unable to obtain insurance for some risks.	<p>[REDACTED]</p>

Risk	Description and safeguards
	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>The Contractor fails to provide the waste management services.</p>	<p>We discuss the Government’s safeguards against the risk that the Contractor fails to provide the waste management services later in this chapter.</p>

Source: OAG analysis of the ISWMS Project: High Level Project Agreement Summary

137. Section 15 of Annex A of the Framework for Fiscal Responsibility requires the Government to include its contingent liabilities in its Strategic Policy Statements. The framework also requires the Government to explain in its Strategic Policy Statements how each contingent liability will be managed or financed and to report progress to date. International Public Sector Accounting Standards also require the Government and Government-owned entities to disclose contingent liabilities in their annual financial statements.

138. We found that the Government’s 2022–2024 Strategic Policy Statement did not contain details of the Government’s contingent liabilities arising from its contractual obligations in the ReGen Project Agreement and the [REDACTED].³³

139. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Recommendation 9: The Government should update the contingent liabilities disclosures in its recently published 2022–2024 Strategic Policy Statement.

Recommendation 10: The Government should disclose all of its contingent liabilities arising from ReGen and the [REDACTED] in its financial statements.

³³ We included a summary of the [REDACTED] in the **Introduction** chapter.

THE GOVERNMENT CAN SHARE EXCESS PROFITS FROM REGEN WITH THE CONTRACTOR

140. Because of the uncertainty of long-term forecasts, best practice requires that public entities consider whether they should put in place mechanisms to claw back part of any future windfall gains from PPPs.
141. As reported earlier, the Government is entitled to a fixed processing fee for approximately [REDACTED] tons a year. However, the Government forecasts that the Cayman Islands will generate approximately [REDACTED] tons of waste by 2050. As reported earlier, the Government did not perform a sensitivity analysis to determine the optimal minimum tonnage in the contract.
142. The Project Agreement states that the Government will pay a mark-up of [REDACTED] per cent on cost for any waste above [REDACTED] tons. Our analysis found that waste generated in the Cayman Islands had increased by [REDACTED] per cent in the four years from 2017 to 2020. Should the waste generated continue to increase at a similar rate, the Government will be required pay significantly higher costs in terms of the unitary charge.
143. We also found that the Government will pay more if actual waste tonnage rates are higher than the estimates used to calculate the unitary charge. The Project Agreement refers to a Payment Mechanism. The Payment Mechanism will govern the payments due to the Contractor for providing the waste management services. The draft Payment Mechanism included in the Project Agreement contains an excess profit share mechanism, where any excess profits are shared equally between the Government and the Contractor. However, the draft Payment Mechanism was subject to negotiation before financial close.

THE PROJECT AGREEMENT LIMITS THE GOVERNMENT'S RIGHT TO INSPECT THE REGEN FACILITY

144. The residual value risk is the risk that the waste management facility is not in good condition when the Contractor hands it back to the Government at the end of the contract period.
145. The Project Agreement requires the Contractor to design and implement maintenance procedures to ensure that the ReGen facilities are available, achieve their anticipated working life and are in good condition when handed back to the Government at the end of the contract period.
146. The Project Agreement gives the Government the right to inspect the ReGen facilities to ensure that the Contractor is maintaining them appropriately. The Government can commission rectification works if the facility is poorly maintained and recover the cost of these works from the Contractor by withholding future unitary charge payments. However, the Government can inspect the facility only once every two years in case of persistent poor maintenance by the Contractor.
147. The United Kingdom's Infrastructure and Projects Authority (IPA) recommends that public authorities inspect the underlying assets in PPPs before contract expiry. The inspections, referred to

as early, or initial condition surveys allow the authority to confirm that the vendor is meeting their obligations on asset condition and performance. The inspections also allow time for any remedial works to be completed ahead of the final condition survey, and for any such works to be factored into revised lifecycle plans. According to the IPA, the initial condition surveys reduce the risk of significant rectification works being required at the end of the contract. The IPA suggests that inspections start seven years before contract expiry and recommends that public authorities perform further condition surveys at five years and 0 – 3 years before contract expiry.³⁴

148. The Project Agreement does not give the Government the right to perform an initial condition survey. However, it gives the Government the right to conduct a final condition survey 18 months before the end of the contract period. The Government can withhold part of the unitary charge payments made in the final year to create a sinking fund towards remediation costs for the ReGen facility.

THE PROJECT AGREEMENT DOES NOT EXPLICITLY MENTION SAFEGUARDS FOR TECHNOLOGY OR OBSOLESCENCE RISK

149. Technology or obsolescence risk is the risk that the quality of service delivery may be adversely affected if the equipment or other assets used in the service delivery become obsolete. Alternatively, there could be a need to make a further financial investment in the project to introduce equipment or other assets based on new technology.³⁵

150. The Project Agreement contains change management mechanisms that are consistent with the WIDP contract. However, the Project Agreement does not explicitly mention safeguards for technology or obsolescence risk.

THE GOVERNMENT HAS NOT CONSIDERED THE SENSITIVITY OF THE CONTRACTOR'S FINANCIAL MODEL TO CHANGES IN INTEREST RATES

151. [REDACTED]
[REDACTED]
[REDACTED] The Project Agreement requires the Contractor to obtain direct approval from the Government for any third-party debt refinancing.
[REDACTED]
[REDACTED]
[REDACTED]

³⁴ *Manging the Risks of PFI Contract Expiry – Support Plan*, Infrastructure and Projects Authority, 2021.

³⁵ *Examining the value of money of deals under the Private Finance Initiative*, National Audit Office, 1999.

152. The Government has accepted this risk. However, it did not quantify the possible effects of changes in interest rates. Any change in interest rates will [REDACTED] ReGen’s value for money.

THE SAFEGUARDS FOR PRICE RISK HAVE EXPIRED

153. The Project Agreement set a [REDACTED] million for ReGen that was effective until [REDACTED]. However, the Government and Contractor did not achieve financial close by that date, creating a significant risk that the price will increase further.

Recommendation 11: The Government should, as far as possible, renegotiate any departures from the WIDP Contract before it reaches financial close with the Contractor. [REDACTED]

[REDACTED]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

154. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

155. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Recommendation 13: The Government should put in place mechanisms to ensure that it does not breach any of its obligations in the ReGen contract.

THE PROJECT AGREEMENT AND OTHER KEY DOCUMENTS ARE SUBJECT TO FURTHER NEGOTIATION

156. To ensure that the Contractor performs the agreed-upon services satisfactorily, the final contract should contain appropriate sanctions and penalties for poor service delivery. In addition, the Government should ensure that the final contract entitles it to unrestricted access to information about the costs and performance levels retained internally by the private entity.

157. We assessed the extent to which the Project Agreement clearly stipulates the sanctions that the Contractor will face for poor service delivery, and the Government's access to information under the Project Agreement. Our findings are set out below.

THE SPECIFIED SERVICE LEVELS AND SANCTIONS FOR POOR PERFORMANCE ARE SUBJECT TO NEGOTIATION

158. The Project Agreement refers to a Payment Mechanism and a Performance Measurement Framework. The Payment Mechanism will govern the payments due to the Contractor for providing the waste management services. The purpose of the Performance Measurement Framework is to ensure proper performance of the waste management services by imposing penalties for poor performance, [REDACTED]. The two documents are separate, accompanying documents to the Project Agreement. The Project Agreement:

- requires the Contractor to accept, with a few reasonable exceptions, all waste delivered to the ReGen facility;
- requires the Contractor to operate and maintain the facilities satisfactorily;
- requires the Contractor provide all plant and equipment needed to operate the waste treatment facilities;
- specifies the service and performance levels expected of the Contractor; and
- establishes the procedures and for dispute resolution and contract renegotiation.

159. If the Contractor fails to provide the agreed waste management services satisfactorily, the Government's primary remedy is to make payment deductions from the Contractor in accordance with the Performance Measurement Framework and Payment Mechanism. [REDACTED]
[REDACTED]
[REDACTED]

160. As at March 2021, the Government and the Contractor had prepared and agreed a draft Performance Measurement Framework and a draft Payment Mechanism. However, the two documents are subject to further negotiation. These documents are fundamental to the

Government's ability to effectively oversee and manage the contract. It is therefore essential that the final versions specify robust service levels and sanctions for poor performance.

[REDACTED]

161. [REDACTED]

- | [REDACTED]
- | [REDACTED]

Recommendation 14: The Government should ensure that the Payment Mechanism and the Performance Measurement Framework are finalised as soon as possible.

Recommendation 15: The Government should ensure that the Payment Mechanism and the Performance Measurement Framework contain sufficient incentives and sanctions to ensure that the Contractor operates the ReGen facility satisfactorily.

CONCLUSION

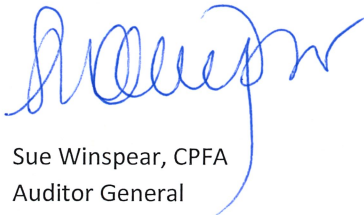
162. In August 2021, my Office started a review of the Project Agreement for ReGen that the Government signed in March 2021. ReGen is the proposed solution to integrated waste management, and is the first public private partnership (PPP) agreement that the Government has entered into. PPP agreements can provide governments with options to invest in infrastructure without them having to pay the upfront construction costs. However, most governments have moved away from PPPs as they generally do not provide value for money.
163. The Government first set out its policy for this waste disposal system in 2013. The project has experienced a protracted procurement process. The Government selected [REDACTED] as ReGen's preferred bidder in September 2017. However, it took almost four years before the Government signed a Project Agreement with [REDACTED] in March 2021. [REDACTED] will be wholly owned by [REDACTED], which will be owned by a consortium made up of [REDACTED] and [REDACTED]. [REDACTED] is wholly owned by [REDACTED], the successful bidder from ReGen's procurement. During these four years, the consortium's proposed members changed but the Government carried out due diligence checks on them all.
164. Despite being a priority for the Government since 2014, the Government and [REDACTED] have not achieved financial close for ReGen more than seven years after the Government started the procurement process.
165. The Government prepared an Outline Business Case (OBC) for the project in 2016. The Outline Business Case had some gaps. It did not clearly demonstrate that a PPP would provide better value for money or clearly specify ReGen's objectives in terms of SMART, i.e., specific, measurable, achievable, relevant and time constrained, outputs or outcomes. In addition, it did not clearly demonstrate that a PPP was the best financing option. The Outline Business Case was never finalised by the Government, or approved by the Cabinet as required by the *Public Management and Finance Act* (PMFA).
166. After selecting the Contractor, the Government increased ReGen's guaranteed minimum tonnage from [REDACTED] to [REDACTED] tons, a [REDACTED] per cent increase. The Government and the Contractor also agreed to change the scale of ReGen's energy recovery facility from [REDACTED] to [REDACTED] megawatts. These changes contributed to a [REDACTED] million, or [REDACTED] per cent, increase in the cost of building ReGen's facilities. Overall, the estimated construction cost of ReGen's rose by [REDACTED] million after procurement, an increase of [REDACTED] per cent over the initial cost of [REDACTED] million in the Contractor's bid. The Government did not review these cost increases to ensure they were reasonable. According to the financial report, the cost increases were considered reasonable because the revised contract cost of

However, in deciding whether to continue or terminate the Project Agreement, the Government should also consider other factors. For example, the assessment of the remaining capacity at the George Town landfill and the time needed to re-procure.

172. [REDACTED]
[REDACTED]
[REDACTED] The Project Agreement requires the Contractor to obtain direct approval from the Government for any third-party debt refinancing. [REDACTED]
[REDACTED]
[REDACTED] The Government has accepted this risk.

173. At the time of our review, the contracting parties have prepared and agreed drafts of some key documents, i.e. the Payment Mechanism and the Performance Measurement Framework. These documents specify the service levels and sanctions for poor performance by the Contractor. They are fundamental to the Government's ability to effectively oversee and manage the contract. However, they are subject to further negotiation. It is essential that the final versions specify robust service levels and sanctions for poor performance.

174. The assistance and cooperation we received from government officials in all phases of the audit is gratefully acknowledged. Without their help, the audit could not have been completed.



Sue Winspear, CPFA
Auditor General
George Town, Grand Cayman
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4th December 2021

APPENDIX 1 – ABOUT THE AUDIT

OBJECTIVE

1. The objective of the audit was to determine whether the Government will obtain value for money from the Integrated Solid Waste Management System for the Cayman Islands (ReGen) Project Agreement.
2. The audit sought to answer the following questions:
 - Did the Government clearly set out ReGen’s objectives?
 - Did the Government clearly demonstrate that a PPP was better value for money than conventional funding?
 - Does the Project Agreement signed with the Contractor ensure that the Government will obtain value for money over the contract life?

CRITERIA

3. Audit criteria set out the expectations against which an audit can assess observed performance in order to develop findings, make recommendations as appropriate and conclude on audit objectives.
4. We set out the criteria against which the audit proposed to assess whether the Government will obtain value for money from the ReGen contract below:
 - The Government prepared the Outline Business Case and Final Business Case in line with good practice.
 - The Outline Business Case and Final Business Case demonstrated that a PPP was most likely to be the best way forward for ReGen.
 - The Cabinet approved the Outline Business Case and Final Business Case in accordance with the Public Management and Finance Act.
 - The Outline Business Case and Final Business Case clearly stipulated a timetable for ReGen.
 - The Outline Business Case specified ReGen’s objectives.
 - The Outline Business Case specified ReGen’s benefits in terms of outputs and outcomes.
 - The Government clearly documented ReGen’s scope of risk transfer in the Outline Business Case and Final Business Case.

- The Outline Business Case demonstrated that ReGen was affordable and was within the Government's budget limits.
- The Outline Business Case and Final Business Case showed that undertaking ReGen would not have an adverse impact on the Government's compliance with the borrowing limits in the Framework for Fiscal Responsibility.
- The Government complied with the prerequisites for alternative financing using PPPs set out in its Framework for Fiscal Responsibility.
- The Outline Business Case demonstrated the rationale for ReGen's chosen procurement strategy.
- The Government updated the Final Business Case to reflect new information received post procurement (i.e. any changes in scope, benefits, outputs/outcomes, costs, timescale).
- The Government reassessed ReGen based on the updated information (post procurement).
- The Final Business Case demonstrated that ReGen would meet its initially specified benefits in terms of outputs and outcomes.
- The Final Business Case demonstrated that ReGen was affordable and was within the Government's budget limits.
- The Government complied with the prerequisites for alternative financing using PPPs as set out in the Framework for Fiscal Responsibility.
- The Government documented the budgets for external consultants in the Outline Business Case and Final Business Case and monitored and managed the budgeted costs of external consultants against the set budgets.
- The Government appointed its external advisors (financial, legal, technical and environmental) in accordance with the relevant guidance, e.g. the Financial Regulations and the Ministry of Health and Wellness' procurement manual.
- The Government prepared clear terms of reference outlining the outputs expected from external consultants.
- The Government specified outputs in the terms of reference issued to external advisors that ensured value for money.
- The initial financial model used by the Government was based on the initial project specifications.
- The initial financial model demonstrated that a PPP was better value for money than conventional funding.

- The initial financial model took the total cost of the project into account when assessing value for money.
- The costs of the PPP and conventional funding were both spread over the 25-year contract period in the initial financial model.
- The Government used reasonable discount rates in the value for money analysis of the public sector comparator and the PPP.
- The Government used reasonable assumptions in the initial financial model, i.e., inflation rates, waste tonnage and the price it would receive for electricity sold to CUC.
- The Government prepared a sensitivity analysis of the initial financial model, and the sensitivity analysis demonstrated that the Government should finance ReGen using private capital only.
- The Government used a revised financial model based on the updated project specifications.
- The revised financial model took into account ReGen's full cost when assessing value for money.
- The revised financial model demonstrated that a PPP was better value for money than conventional funding.
- In the revised financial model, the Government spread the cost of the PPP and the cost of conventional funding over the 25-year contract period.
- The Government used reasonable discount rates in the value for money assessment of the public sector comparator and the PPP.
- The Government used reasonable assumptions in the revised financial model, i.e. inflation rates, waste tonnage and the price it would receive for electricity sold to CUC.
- The Government carried out a sensitivity analysis of the revised financial model, and this demonstrated that ReGen should be fully funded by private capital.
- Changes in the price (cost variations) following the increase in ReGen's guaranteed minimum tonnage from [REDACTED] tons per annum to [REDACTED] tons per annum were reasonable.
- The rates of return payable to the Contractor are reasonable compared with similar PPP projects elsewhere.
- The costs included in the unitary charge are reasonable and consistent with best practice, i.e. capital costs, equipment maintenance and financing costs only.

- The Government performed due diligence checks on the Contractor and members of the Contractor’s consortium (including any new members).
- The contract clearly specified the allocation of risks between the Government and the Contractor and the risk allocation is consistent with the risk allocation in the business cases.
- The contract requires the Contractor to give the Government access to information and facilities necessary to monitor the Contractor’s performance for the duration of the contract.
- The contract clearly specifies the service and performance levels expected of the Contractor.
- The ReGen contract gives the Government (and its auditors) the right to access the Contractor’s performance and cost records for verification purposes.
- The contract clearly specifies the procedures for dispute resolution and contract renegotiation.
- The contract clearly specifies the sanctions that the Contractor will face for late or unsatisfactory service.
- The contract allows the Government to claw back part of any future windfall gains that the Contractor may earn, to allow sharing of such benefits.
- The contract sets out the mechanisms for the Government to ensure that the Contractor maintains the waste management facilities to the required standards during the contract duration and before handover to the Government upon the expiry of the contract.
- The contract contains adequate safeguards for the following risks:
 - i. design and construction risk, and commissioning and operating risks;
 - ii. demand (waste tonnage) risk;
 - iii. residual value risk;
 - iv. technology/obsolescence risk;
 - v. normal business regulations risk, e.g. taxes;
 - vi. external finance risk;
 - vii. price risk; and
 - viii. risk of contractor default.
- The Government assessed ReGen’s risks against the new Cabinet’s strategic objectives and assumptions.

AUDIT SCOPE AND APPROACH

5. The audit focused on the ReGen project, from inception to date. Where possible, we sought data relating to activities, costs and results from the ReGen’s inception in 2014 to October 2021. The

audit considered and incorporated relevant information from the following documents but did not fully assess them:

- the Strategic Outline Case: Integrated Solid Waste Management System, a document prepared by the Government;

■ [REDACTED]

■ [REDACTED]

6. We conducted the audit in accordance with The International Standards of Supreme Audit Institutions. The approach to the audit included:

- conducting interviews with key stakeholders, including Ministry of Health and Wellness and other Government officials involved with the project;
- reviewing documents relating to ReGen, including the Strategic Outline Case, the Outline Business Case, procurement documents, the Project Agreement and supporting schedules, Cabinet Papers, legislation, budget documents, legal reports and financial reports and statements;
- analysing financial information, for example money spent on ReGen to date;
- researching international leading practices, e.g. the Green Book and past audit reports about PPPs from the UK's National Audit Office.
- technical advice and support from the UK's National Audit Office;
- analysing audit evidence and assessing against agreed criteria to develop findings, recommendations and a conclusion on the audit objective;
- providing a draft report to relevant government officials for review of its factual accuracy;
- providing recommendations to support the Government's continued negotiations of the Project Agreement before reaching financial close. (see Appendix 2); and
- presenting a final report of the audit to the Parliament.

AUDIT STAFF

7. The audit was carried out by Adrian Murenzi, Audit Manager (Performance Audit) under the direction of Angela Cullen, Deputy Auditor General (Performance Audit). We were supported by staff from the UK's National Audit Office.

APPENDIX 2 – RECOMMENDATIONS

The report is a position statement as of October 2021 and was intended to assist the Government in its negotiations. The Government provided management responses to these recommendations in August 2024, which are included below.

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>1. The Government should specify all ReGen’s benefits in the form of SMART outcomes and outputs.</p>	<p>We can agree with the general concept of setting SMART outcomes and outputs. However, this recommendation is not accepted as the objectives and constraints for the project had been outlined at the time of the audit and the OAG did not review the relevant document in their process of preparing their report.</p> <p>Section 2 of the Strategic Outline Case (“SOC”) sets out the Aims, Needs, Objectives and Constraints for the project. The SOC was cross-referred to in the documentation issued to bidders at the Pre-Qualification Questionnaire (“PQQ”) and Invitation to tender stages of the procurement.</p> <p>In the draft Report, the OAG confirms that it did not review the SOC in their process of preparing their Report.</p> <p>The CIG would encourage the OAG to review the SOC as it provides the strategic foundation for which the project is built on.</p> <p>We believe that the SOC will also provide answers to a significant number of queries and/or concerns that are in the OAG’s Report.</p>	<p>Ministry of Sustainability & Climate Resiliency.</p>	<p>Completed in the SOC and OBC. And was to be finalised in the FBC prior to financial close.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
	We also expect that, once the OAG has reviewed the SOC, there will be significant revisions to the OAG Report.		
<p>2. The Government should prepare a Final Business Case for all major capital projects, as required by its framework for major capital projects and <i>The Procurement Act, 2016</i>. The Final Business Case should:</p> <ul style="list-style-type: none"> • contain a comprehensive options analysis; • specify the project's benefits in terms of SMART outputs and outcomes; • contain a qualitative and quantitative value for money analysis justifying the selected alternative. 	<p>We agree with this recommendation in principle.</p> <p>A conditional "Project Agreement" was signed in March 2021. As we understand, the "Project Agreement" is a prestage/prelude to the final "Contract".</p> <p>The approach taken by OAG appears to be from the perspective that the conditional Project Agreement was in fact the final contract – e.g. saying that CIG failed to do a "Final Business Case", which would only be done once the parameters of financial close / final contract had been firmed up.</p> <p>The distinction between the interim position reflected in the conditional Project Agreement (which is what OAG is reviewing in their 2021 Report), and the final position that would be captured in the contract to be signed at Financial Close, is an important one in terms of the observations and statements in the OAG report.</p> <p>A Full Business Case was approved by Cabinet, subject to certain conditions, at a Meeting held on 31 July 2023 (CP 1191/23).</p>	Ministry of Sustainability & Climate Resiliency.	Prior to financial close.
3. The Government should, prior to financial close, review all price increases proposed by	<p>We agree with this recommendation in principle.</p> <p>However, we do not accept the recommendation as it implies that the Government has not reviewed all price</p>	Ministry of Sustainability & Climate Resiliency.	Completed in stages and was to be completed again

Recommendation	Management Response	Responsibility	Date of planned implementation
the Contractor to ensure that they are reasonable.	increases proposed by the Contractor to ensure that they are reasonable. At each stage in the Project where an increase in price was provided by the Preferred Bidder, the CIG's Technical and Financial advisors reviewed the proposed price increase(s) for their reasonableness.		prior to Financial Close.
4. The Government should calculate ReGen's impact on its future borrowing limits and financial ratios to ensure that the limits and ratios comply with the <i>Public Management and Finance Act</i> . The cost of the unitary charge for ReGen should also be incorporated into forecast borrowing ratios in future Strategic Policy Statements.	Agreed. The March 2021 Cabinet Paper (CP 1916/21) provided an Interim Financial Report from the CIG Independent Advisor (KPMG) which focused on the proposed project amount, including the unitary charge, as to the feasibility of the costs. Impact on future borrowings would not have occurred at this stage but would have been considered in the negotiations prior to reaching financial close. During the project negotiation period post-October 2021, several analyses were carried out and presented to Cabinet (April 2022 (CP 490/22), March 2023 (CN 121/23), and July 2023 (CP 1191/23) which identified the estimated impact of the Project on the CIG's financial ratios.	Ministry of Finance & Economic Development.	Completed in stages and was to be completed again prior to Financial Close.
5. The Government should ensure that it uses assumptions that are as accurate as possible in its financial models for options appraisal. The Government should calculate the sensitivity of its appraisals to changes in significant assumptions	Agreed. The financial models were produced and provided by the ██████████ to the CIG. The purpose of the revised financial report by the Financial Advisor was to assess the financial model provided by ██████████. At the time of the OAG 2021 Report, the Financial Advisor was not asked to provide a sensitivity analysis on waste level forecasts.	Ministry of Health, Ministry of Sustainability & Climate Resiliency, Ministry of Finance and Economic Development.	Completed in stages and was to be reviewed and completed again prior to Financial Close.

Recommendation	Management Response	Responsibility	Date of planned implementation
underpinning the financial models.			
6. The Government should ensure that all key terms and conditions agreed with its suppliers are reflected in the supporting contract.	<p>We agree with this recommendation in principle.</p> <p>As mentioned above, the distinction between the interim position reflected in the conditional Project Agreement (which is what OAG is reviewing in their 2021 Report), and the final position that would be captured in the contract to be signed at Financial Close, is an important one in terms of the observations and statements in the OAG report.</p> <p>We would therefore suggest that OAG please revise their report to be more accurate with their wording as it is/was a conditional “Project Agreement” and not a “contract”.</p> <p>Post-October 2021, as negotiations continued toward Financial Close, the draft terms and conditions that were agreed with ██████████ were being recorded in the various contractual documents.</p>	Ministry of Sustainability & Climate Resiliency.	Prior to financial close.
7. The Government should confirm with the Contractor how much capital it can inject into the ReGen project.	<p>Agreed, subject to affordability.</p> <p>As mentioned above, the distinction between the interim position reflected in the Project Agreement (which is what OAG is reviewing in their 2021 Report), and the final position that would be captured in the contract to be signed at Financial Close, is an important one in terms of the observations and statements in the OAG report.</p>	Ministry of Sustainability & Climate Resiliency, Ministry of Finance and Economic Development.	Prior to financial close.

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>The CIG Project Team accepted one of the OAG’s initial recommendations, and engaged in negotiations with the Contractor for the CIG to make an additional capital injection prior to the Project facility coming online, i.e. being commissioned, around 2026/2027.</p> <p>We feel that the OAG Report could therefore be edited slightly to state something to the effect of “...by injecting additional capital...”</p>		
<p>8. The Government should inject capital into ReGen if it can to save on future costs.</p>	<p>We do not accept this recommendation.</p> <p>The CIG Project Team accepted one of the OAG’s initial recommendations, and engaged in negotiations with the Contractor for the CIG to make an additional capital injection prior to the Project facility coming online, i.e. being commissioned, around [REDACTED].</p>	<p>Ministry of Sustainability & Climate Resiliency, Ministry of Finance and Economic Development</p>	<p>Prior to financial close.</p>
<p>9. The Government should update the contingent liabilities disclosures in its recently published 2022–2024 Strategic Policy Statement.</p>	<p>As required by the PMFA, Schedule 6, section 20, the Government was required to obtain independent professional accounting and financial advice on projects with a lifetime value above \$10 million. In this case, the advice was provided by KPMG.</p> <p>The Ministry of Finance and Economic Development (“MFED”) did not get involved in discussions related to Regen until October 2022. However, at the time the 2022-2024 SPS was being prepared, the contract was still being actively negotiated.</p>	<p>Ministry of Finance and Economic Development.</p>	

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>In the finalisation of the 2020 and 2021 Entire Public Sector Consolidated Financial Statements, the Ministry of Finance and Economic Development, the Ministry of Sustainability and the Ministry of Health and Wellness actively engaged with the Office of the Auditor General to assess and include amounts for contingent liabilities for the remediation of the George Town Landfill.</p>		
<p>10. The Government should disclose all of its contingent liabilities arising from ReGen and the ██████████ in its financial statements.</p>	<p>As required by the PMFA, Schedule 6, section 20, the Government was required to obtain independent professional accounting and financial advice on projects with a lifetime value above \$10 million. In this case, the advice was provided by KPMG.</p> <p>The MFED did not get involved in discussions related to Regen until October 2022. However, at the time the 2022-2024 SPS was being prepared, the contract was still being actively negotiated.</p> <p>In the finalisation of the 2020 and 2021 Entire Public Sector Consolidated Financial Statements, the Ministry of Finance and Economic Development, the Ministry of Sustainability and the Ministry of Health and Wellness actively engaged with the Office of the Auditor General to assess and include amounts for contingent liabilities for the remediation of the George Town Landfill.</p>	<p>Ministry of Finance and Economic Development.</p>	
<p>11. The Government should, as far as possible, renegotiate any departures from the WIDP Contract before it reaches</p>	<p>Agreed, we accept this recommendation and this will be done as far as possible. Some of the variations are the result of CIG's different position vs. the usual government parties to the WIDP contract (local councils).</p>	<p>Ministry of Sustainability & Climate Resiliency</p>	<p>Prior to financial close.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>financial close with the Contractor.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>			
<p>12. [REDACTED]</p>	<p>Agreed. We accept this recommendation. However, we believe that it should be noted that, at the time of the OAG's Report, many of the issues around risk share/profile were still to be negotiated.</p>	<p>Ministry of Finance and Economic Development, Ministry of Sustainability and Climate Resiliency</p>	<p>Prior to financial close</p>
<p>13. The Government should put in place mechanisms to ensure that it does not breach any of its obligations in the ReGen contract.</p>	<p>Agreed. We accept this recommendation.</p> <p>During the negotiations that took place post-October 2021, the Ministry of Sustainability and Climate Resiliency proposed that a Contract Manager post be created for this.</p>	<p>Ministry of Sustainability and Climate Resiliency, Ministry of Finance and Economic</p>	<p>As soon as possible, and prior to Financial Close.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
		Development, Ministry of Health and Wellness (DEH).	
14. The Government should ensure that the Payment Mechanism and the Performance Measurement Framework are finalised as soon as possible.	<p>Agreed. We accept this recommendation.</p> <p>The Payment Mechanism and the Performance Management Framework have been prepared, calibrated and completed.</p>	Ministry of Sustainability & Climate Resiliency.	Prior to financial close.
15. The Government should ensure that the Payment Mechanism and the Performance Measurement Framework contain sufficient incentives and sanctions to ensure that the Contractor operates the ReGen facility satisfactorily.	<p>We agree with this recommendation in principle. However, we do not accept the recommendation.</p> <div data-bbox="719 742 1391 1029" style="background-color: black; width: 100%; height: 100%;"></div> <p>The Payment Mechanism and the Performance Management Framework have been prepared, calibrated and completed.</p>	Ministry of Sustainability & Climate Resiliency	Prior to financial close.

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