

The Auditor-General
Audit Report No.2 2012–13
Performance Audit

Administration of the Regional Backbone Blackspots Program

**Department of Broadband, Communications and
the Digital Economy**

Australian National Audit Office

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19 National Circuit
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Or via email:

webmaster@anao.gov.au





Canberra ACT
30 August 2012

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of Broadband, Communications and the Digital Economy in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Administration of the Regional Backbone Blackspots Program*.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee
Auditor-General

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

AUDITING FOR AUSTRALIA

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

Telephone: (02) 6203 7505
Fax: (02) 6203 7519
Email: webmaster@anao.gov.au

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Audit Team
Anne Cronin
Amanda Reynolds
Mark Simpson

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Abbreviations

ANAO	Australian National Audit Office
CPGs	Commonwealth Procurement Guidelines
DBCDE	Department of Broadband, Communications and the Digital Economy
FMA Act	<i>Financial Management and Accountability Act 1997</i>
KPI	Key Performance Indicators
NBN	National Broadband Network
PBS	Portfolio Budget Statements
PRC	Performance Reporting Committee
RBBP	Regional Backbone Blackspots Program
RFT	Request for tender
TLR	Traffic Light Report

Glossary

Backhaul or Backbone	Backhaul (also known as backbone) refers to the medium and long distance fibre-optic and microwave transmission networks that connect local exchanges, main exchanges and mobile and fixed wireless towers between all population centres in Australia. Backhaul networks carry voice and data transmissions.
Broadband	The term broadband is derived from 'broad bandwidth' and highlights the distinction from narrow bandwidth-style Internet connection, such as dial-up Internet connection. Broadband provides greater data carrying capacity than narrow bandwidth Internet connections, with access speed equal to or greater than 256 kilobits per second.
Commonwealth Procurement Guidelines	The Commonwealth Procurement Guidelines, current at the time of the Regional Backbone Blackspots Program procurement, established the Australian Government's core procurement policy framework and articulated expectations for all departments and agencies subject to the <i>Financial Management and Accountability Act 1997</i> and their officials, when performing duties in relation to procurement. An official performing duties in relation to a procurement was required to act in accordance with the Commonwealth Procurement Guidelines. The Commonwealth Procurement Guidelines were replaced by the Commonwealth Procurement Rules as of 1 July 2012.
Optical fibre	Optical fibre delivers broadband Internet services by transmitting information as light pulses and can carry information at greater data rates than copper wire, the main alternative form of fixed-line broadband.
Request for tender	A published notice inviting suppliers who satisfy the conditions for participation to submit a tender in accordance with requirements of the request for tender and other request documentation.

Value for money

The Commonwealth Procurement Guidelines, current at the time of the Regional Backbone Blackspots Program procurement, explained that value for money in procurement required a comparative analysis of all the relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life costing).¹ Value for money is enhanced in government procurement by: encouraging competition; promoting the efficient, effective and ethical use of resources; and making decisions in an accountable and transparent manner.

¹ Australian Government, *Commonwealth Procurement Guidelines*, Department of Finance and Deregulation, Canberra, p.10.

Summary and Recommendations

Summary

Introduction

1. Broadband is considered worldwide to be an important technology that enables the achievement of productivity gains and economic and social development via vastly enhanced communications capacities compared to previous communications technologies.

2. In 2007, the Government announced its intention to facilitate the construction of a National Broadband Network (NBN) which would be available to all Australians. A request for proposals process to construct the NBN was undertaken in 2008, but as the Government considered that the proposals did not provide value for money, on 7 April 2009, the Government announced its decision to terminate the process.

3. At the same time, the Minister for Broadband, Communications and the Digital Economy (the Minister) announced the establishment of a company² to build and operate a new, superfast NBN; and also announced a measure to develop a backbone network for broadband where there was a lack of competitive wholesale backbone infrastructure and services. This measure was intended to improve broadband services and to fast-track the installation of some NBN infrastructure. Details of the measure, the \$250 million Regional Backbone Blackspots Program (RBBP), were announced by the Minister on 23 April 2009.

Regional Backbone Blackspots Program

4. Under the RBBP, the Government has funded the construction of a network of fibre-optic transmission backhaul across Australia, with the Government retaining ownership of the backhaul infrastructure.³ Backhaul transmission links (also known as 'backbone') carry the Internet traffic

² The company, NBN Co Limited (or 'NBN Co') was established on 9 April 2009 as a government business enterprise, wholly owned by the Commonwealth Government. Its responsibilities are to plan, roll out and operate the NBN, and as a wholesaler, provide access to high speed broadband. The Government's initial investment of \$4.7 billion in the NBN included \$4.45 billion for an equity injection into NBN Co, as well as an investment in the early rollout of a broadband network in Tasmania and the Regional Backbone Blackspots Program.

³ Optical fibre delivers broadband Internet services by transmitting information as light pulses and can carry information at greater data rates than copper wire, the main alternative form of fixed-line broadband.

between urban locations, and competitive backhaul is a critical element in the provision of an affordable broadband service to users. Under the RBBP, the backhaul infrastructure passes through specific regional locations, selected by the Government, where there was a lack of competitive backhaul services, that is, a 'competitive blackspot' for backhaul. Competitive blackspots occur where there is a single provider of backhaul infrastructure and, as a result, there is little competitive pressure on the existing provider, and limited opportunity for others, to deliver cheaper or better services.

5. The RBBP network comprises some 6000 kilometres of fibre-optic backhaul across six states and territories, with service-ready points of interconnection for 100 regions. There is provision for further access points approximately every 10 kilometres along each backhaul route.

6. Enhancing the competitive supply of backhaul in specific locations via RBBP was intended to assist broadband and telephony providers to improve the range, quality and prices of the services they offered in rural and regional areas. The Government's objectives for the RBBP were to:

- deliver an economic stimulus in the short to medium term;
- encourage better service outcomes for consumers in regional communities, including higher quality services and reduced costs, by improving the supply of backbone transmission services into regional communities in the short to medium term; and
- put in place key infrastructure in the medium to long term that would contribute to the NBN.

RBBP implementation

7. The RBBP is administered by the Department of Broadband, Communications and the Digital Economy (DBCDE). The program is multifaceted, with implementation involving: the selection of priority locations for the installation of fibre-optic transmission backhaul services; procurement of a firm to design and construct the backhaul infrastructure; and subsequently, the management of the funding agreement with that firm to operate and maintain the network for at least five years.

8. Following the Minister's announcement of the RBBP on 7 April 2009, DBCDE invited submissions on a public consultation paper and held discussions with stakeholders to identify and determine the priority locations to be serviced by the RBBP. DBCDE assessed submissions against criteria, such

as the extent to which the locations were served by competitive optical fibre links and the potential population or economic activity that could benefit from the infrastructure suggested. The department provided a list of priority locations to the Minister, indicating that there was a rational basis for providing funding to each of the locations identified, and requesting that the Minister identify up to six locations.

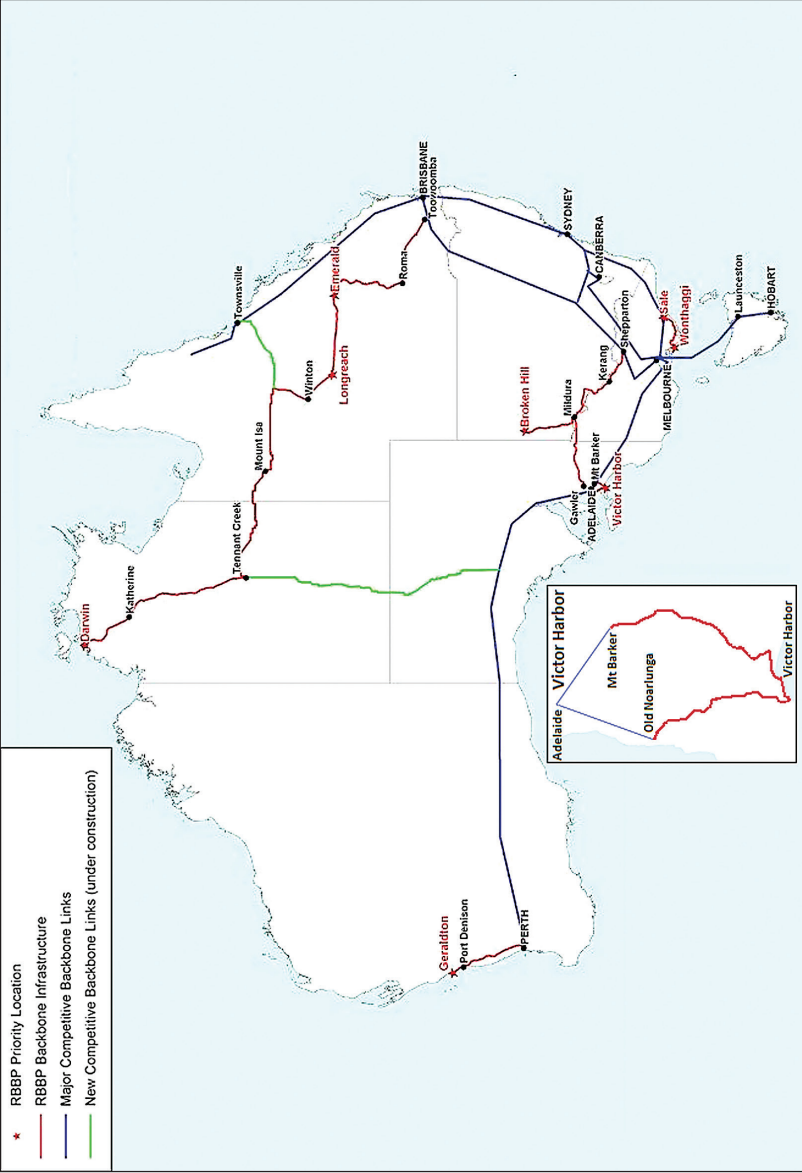
9. The Minister's office, in consultation with the department, selected the following six priority locations from the department's list for the rollout of the backhaul network: Geraldton; Victor Harbor; South West Gippsland; Broken Hill; Emerald and Longreach; and Darwin. The RBBP funds five fibre-optic transmission routes to service the six priority locations, with one of the routes passing through two priority locations—the Darwin, and the Emerald and Longreach locations. Figure S1 (next page) illustrates the routes funded under the RBBP.

10. DBCDE conducted an open tender to procure a firm to design and build the network of backhaul infrastructure to service the six priority locations and then to manage, operate and maintain it. Nextgen Networks Pty Ltd was selected as the successful tenderer and the \$249.67 million funding agreement between the Commonwealth, represented by DBCDE, and Nextgen Networks Pty Ltd ('the contractor')⁴ was signed on 4 December 2009.

⁴ Construction was undertaken by the contractor's construction partner.

Figure S1

RBBP priority locations and routes



Source: DBCDE information April 2010. DBCDE informed the ANAO in June 2012 that the new competitive backbone links under construction (separate from the RBBP) have now been completed.

Note: The map highlights the RBBP locations and infrastructure, additional new competitive backbone links (separate from the RBBP) and the major competitive backhaul links between the capital cities. The map does not illustrate the location of all backhaul in Australia.

The agreement with the contractor

11. The fixed price RBBP agreement provides for three distinct phases of activity: design and construction of the network (Phase 1); management, operation and maintenance of the network for at least five years at no cost to the Commonwealth (Phase 2); and continued management, operation and maintenance of the network for a period after that, contingent on the progress of the implementation of the NBN (Phase 3).

12. Consistent with the Government's objectives for the RBBP and the intention that the RBBP would also fast-track the installation of some NBN infrastructure, the Government specified ambitious timeframes for the design and construction of the RBBP. Accordingly, the design work for the network commenced in late 2009, construction began in early 2010, and the first routes were completed in March 2011. As the construction of the individual routes was completed, the contractor commenced operation of the network. The contractor completed the final route, and Phase 1 of the RBBP, in January 2012, with activity now focusing on the management, operation and maintenance of the RBBP network (Phase 2) until 2017.

13. The current agreement refers to arrangements for Phase 3, but these are contingent upon the progress of implementation of the NBN. While the Commonwealth currently owns the RBBP infrastructure, the intention is that ownership will ultimately be transferred to NBN Co. The specific use of the RBBP infrastructure by NBN Co in Phase 3 is, however, subject to further government consideration, and arrangements are to be settled with NBN Co. In addition to its access to backhaul through the RBBP, NBN Co has also obtained increased access to backhaul infrastructure through agreements negotiated with Telstra in mid-2011.⁵

Audit objective and criteria

14. The objective of the audit was to assess the effectiveness of the Department of Broadband, Communications and the Digital Economy's administration of the Regional Backbone Blackspots Program (RBBP), involving the establishment and ongoing management of the program.

15. The audit assessed whether DBCDE's:

⁵ The terms of these agreements, including the extent to which NBN Co will access backhaul infrastructure, are commercially sensitive and have not been publicly disclosed.

- arrangements for administering the program, including stakeholder relationship management, were robust and effective;
- processes for tendering and contract development were sound; and
- management of the contract for the construction and operation of the network was effective.

16. The RBBP operations commenced progressively from March 2011 as the RBBP routes were completed, and will continue until 2017. Given the early stage of operations, the ANAO's examination did not seek to determine whether the RBBP's objectives had been achieved, but assessed whether DBCDE had processes in place to progressively monitor and report on achievements against the program's objectives.

Overall conclusion

17. In April 2009, the Government announced the \$250 million Regional Backbone Blackspots Program (RBBP) as part of its policy for the National Broadband Network (NBN). The RBBP was designed to enhance the competitive supply of wholesale backbone transmission infrastructure and services in selected, priority regional locations and to fast-track the installation of some NBN infrastructure. Enhancing the competitive supply of the backbone transmission links (also known as backhaul) in locations in which there was a competitive 'blackspot' was considered to be critical to the delivery of affordable broadband services to users.

18. The RBBP involves 6000 kilometres of fibre-optic backhaul cable over five routes servicing the six priority locations, with service-ready points of interconnection for 100 regions. As well as improving the supply of competitive backhaul services, the program was intended to provide a fiscal stimulus in the short to medium term, and this was reflected in the ambitious timeframes set for the procurement and construction phases of the RBBP. The Government intended that the procurement of a firm to design, construct and operate the RBBP network would be finalised by the last quarter of 2009 and that the construction of the backhaul transmission infrastructure would be completed progressively from March 2011, with all routes completed by mid-2011.

19. In December 2009, the Commonwealth entered into a fixed price funding agreement with the successful tenderer to design and build the backhaul infrastructure, and to manage, operate and maintain the RBBP assets

(including providing wholesale transmission services to customers) for at least five years, at no cost to the Commonwealth. The RBBP routes were completed progressively from March 2011, with all routes completed by January 2012, in accordance with the established budget and agreed timelines (the original timelines for two routes were extended due to extreme weather events, including flooding in 2011–12). The completion of the construction of the routes marked the end of Phase 1 of the RBBP. The contractor is responsible for managing, operating and maintaining the RBBP network (Phase 2) until 2017.

20. DBCDE has established effective arrangements to administer the RBBP. Program implementation involved the selection of priority locations, the procurement of a firm to design, construct and operate the backhaul infrastructure and, subsequently, the management of the agreement with the selected firm. DBCDE developed and implemented appropriate and effective procurement arrangements and established a well-designed agreement, with features promoting quality construction and competitively priced and reliable backhaul services. The department also put in place sound systems and processes to manage the agreement for the initial construction phase and the ongoing operations phase, which, as previously noted, will continue until 2017. Without detracting from the effectiveness of the department's program administration to date, there is scope for the department to enhance its administration of such programs in the future through the early development of implementation plans that cover the projected life of the program, and establish the basis on which to monitor and report performance against program objectives. Accordingly, the ANAO has made one recommendation directed to this end.

Key findings

Program implementation (Chapter 2)

21. DBCDE's approach to program implementation planning incorporated sound elements. The department's initial planning for the RBBP focused on procurement tasks until the completion of procurement processes in 2009. DBCDE's subsequent program planning for the RBBP involved, among other things, preparing and periodically updating project management plans relating to the implementation of discrete aspects of the RBBP as the program progressed through the construction phase into the operations phase. The department's approach to program implementation planning would have been improved by: developing an overarching implementation plan at the program

level that incorporated the various task and project management plans mentioned above; and by establishing earlier the processes, including performance data requirements, to monitor progress and performance against the RBBP objectives.

22. The department's implementation of the RBBP was underpinned by sound and well-structured approaches to stakeholder engagement. These approaches involve developing and updating an RBBP communication strategy and applying tailored stakeholder engagement processes addressing the different phases of activity and the various parties involved in the RBBP over time. There were also effective governance arrangements to support the program, including monitoring and reporting to the Minister for Broadband, Communications and the Digital Economy (the Minister) and oversight by the department's Performance Reporting Committee. The department adopts a structured approach to business planning and risk management at the corporate, division and branch levels.

23. DBCDE has reported on the performance of the RBBP through successive annual reports, with coverage of the program expanding as the routes were progressively completed. The department assessed the RBBP's performance against its program objectives at the end of the construction phase of the program in April 2012. The departmental review did not make an overall conclusion as to the extent to which the program had achieved its objectives.

24. The April 2012 review provided a detailed and positive analysis of the RBBP performance against program objectives. As mentioned previously, determining data requirements for monitoring the achievement of objectives earlier in the implementation of the RBBP, and establishing a more robust approach to measuring the stimulus effect of the RBBP, would have better placed the department to monitor this aspect of the program's performance.⁶

Program procurement processes (Chapter 3)

25. DBCDE established appropriate arrangements when preparing to approach the market for the RBBP procurement including: undertaking

⁶ Detailed attention to the effects of a fiscal stimulus measure is consistent with the approach applied by the Parliament when examining in 2010, and later, other fiscal stimulus measures. It is also consistent with the prominence given to the employment effects of the RBBP, particularly regional employment and regional spending effects, in the Minister's public statements and DBCDE's annual report case studies in 2010 and 2011.

community consultations; assessing community submissions; providing options and advice to the Minister on the potential priority locations for the rollout of the fibre-optic backhaul network locations; and seeking legal, commercial and technical specialist advice. The request for tender (RFT) clearly outlined the agency's procurement requirements and the basis on which tenders would be assessed, with the RFT published on AusTender on 1 July 2009.⁷ The department's approach to the market complied with the requirements of the Commonwealth Procurement Guidelines (CPGs) to conduct the process openly and transparently.⁸

26. DBCDE and its advisers undertook a thorough and consistent tender assessment process, in accordance with the Tender Evaluation Plan and the CPGs, to identify a preferred tenderer and provide advice to the Minister. The Minister approved the agreement on 30 November 2009 and the Minister and the contractor signed the agreement on 4 December 2009. The agreement incorporated commercial incentives for the contractor to promptly commence the project and to undertake a quality construction. It also facilitated the Commonwealth's oversight of the contractor, while providing the contractor with flexibility to manage the day-to-day construction and subsequent operation activities.

27. DBCDE's procedures for concluding the procurement process, including providing timely and consistent information on the RFT outcome and feedback to unsuccessful tenderers, also complied with the CPGs regarding efficiency, transparency and ethical practice.

Management of the funding agreement with the contractor (Chapter 4)

28. DBCDE implemented appropriate arrangements for managing the construction phase and the early elements of the operations phase of the agreement. These included: effective management of the relationship between the parties; appropriate engagement and use of a technical construction adviser to provide assurance that the contractor had complied with the technical requirements of the agreement during the construction phase, complementing DBCDE's other compliance arrangements; and suitable financial and project milestone monitoring arrangements. The department also

⁷ AusTender is the Government's tender website.

⁸ The CPGs were replaced by the Commonwealth Procurement Rules on 1 July 2012.

implemented a comprehensive reporting regime to monitor the contractor's progress in the construction and operations phases of the program.

29. The department's review of the initial two quarterly service reports received from the contractor in 2011 concerning activities during the operations phase provided only limited assurance regarding the contractor's compliance with the agreement. The department used its technical adviser extensively during the construction phase. However, pending the development of its compliance strategy covering the operations phase, DBCDE did not adopt independent testing of the activities undertaken during the operations phase in 2011. The completion in February 2012 of a compliance strategy covering the operations phase, and the implementation of proposed field-based compliance activities in mid-2012, will better position the department to monitor compliance with the requirements of the agreement for the operations phase.

30. DBCDE implemented appropriate processes to manage complaints, queries and concerns. Considering the nature, scale and complexity of the RBBP, there were very few matters raised during the construction phase and no reported complaints or concerns regarding the RBBP or the department's administration during the operations phase. DBCDE effectively managed the low number of complaints raised.

Summary of agency response to the proposed report

31. The proposed report was provided to DBCDE for formal comment. The department provided the following summary response, with the full response included at Appendix 1.

The department notes that the ANAO has found that the department established effective arrangements to administer the Regional Backbone Blackspots Program (RBBP) through the construction phase and the ongoing operations phase.

The department agrees with the Australian National Audit Office's (ANAO) recommendation that to ensure transparency and accountability, new programs may benefit from the preparation of a single overarching implementation plan, and having access to sufficient data for measuring progress and performance. In the case of the RBBP, there were a set of linked project plans and an extensive schedule of reports.

Recommendations

Recommendation No.1

Paragraph 2.44

To enhance the transparency and accountability of new departmental programs, the ANAO recommends that the Department of Broadband, Communications and the Digital Economy:

- develop overarching implementation plans to guide program administration and to monitor progress and performance against program objectives; and
- identify performance information requirements and collect data from an early stage of program implementation to support the monitoring and reporting of program performance.

DBCDE response: *Agreed.*

Audit Findings

1. Background and Context

This chapter provides background information on the Regional Backbone Blackspots Program and its wider context. It also sets out the audit objective and approach.

Introduction

1.1 Broadband is considered worldwide to be an important technology that enables the achievement of productivity gains and economic and social development via vastly enhanced communications capacities compared to previous communications technologies.⁹ The Government's approach to improving broadband telecommunications involves three broad forms of intervention and activity: telecommunications regulation¹⁰; direct support to enhance the provision of broadband services through government-funded programs; and specific measures to enhance the competitive environment within the broadband telecommunications sector.

1.2 As part of its 2007 election commitments, the Government announced its intention to make available \$4.7 billion to facilitate the construction of a National Broadband Network (NBN). In April 2008, the Minister for Broadband, Communications and the Digital Economy (the Minister) announced the release of the request for proposals to build the NBN. The request attracted proposals from six proponents, but none was found to offer value for money, and the Minister announced the termination of the request for proposals process on 7 April 2009.¹¹

1.3 In terminating the request for proposals process, the Minister announced a new policy approach with regard to the NBN, including the

⁹ Broadband can be defined as an 'always-on' Internet connection with an access speed equal to or greater than 256 kilobits per second. The term 'broadband' is derived from 'broad bandwidth'. Broadband provides greater data carrying capacity than narrow bandwidth Internet connections.

¹⁰ The regulatory mechanisms include: the *Telecommunication Act 1997* (regarding the licensing of carriers and carriers' powers and immunities); the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (regarding consumer protections such as wholesale performance standards for carrier service providers and the Telecommunications Industry Ombudsman); and the *Competition and Consumer Act 2010* (concerning the regulation of the telecommunications industry, including measures to promote the long-term interests of end users of carriage services and to counter anti-competitive conduct).

¹¹ ANAO Audit Report No. 20 2009–10, *The National Broadband Network Request for Proposal Process* examined key aspects of the NBN request for proposals process.

establishment of a company to build and operate a new, superfast NBN.¹² The Government also announced as part of the new policy approach, a measure to enhance the competitive supply of wholesale backbone transmission infrastructure and services in regional Australia and to fast-track the installation of some NBN infrastructure. Details of the measure, the \$250 million Regional Backbone Blackspots Program (RBBP), were announced by the Minister on 23 April 2009.

Regional Backbone Blackspots Program

1.4 Backbone transmission links (also known as ‘backhaul’¹³) are the ‘broadband highways’ that carry Internet traffic between exchanges and between cities, thereby connecting rural areas, towns and cities to the wider world. Backhaul links are a critical input for the delivery of affordable broadband services to users.

1.5 Under the RBBP, the Government has funded the construction of a network of fibre-optic¹⁴ transmission backhaul across Australia, passing through specific regional locations selected by the Government where there was a lack of competitive backhaul services. The infrastructure, the ownership of which is retained by the Government, involves some 6000 kilometres of fibre-optic backhaul with service-ready points of interconnection for 100 regions. There is provision for further access points approximately every 10 kilometres along each backhaul route.

1.6 A rationale for the RBBP was to improve the supply of fibre-optic transmission backhaul services to a number of regional centres where competitive backhaul did not exist. In the context of the RBBP, the Department

¹² The company, NBN Co Limited (or ‘NBN Co’) was established 9 April 2009 as a government business enterprise, wholly owned by the Commonwealth Government. Its responsibilities are to plan, roll out and operate the NBN, and as a wholesaler, provide access to high speed broadband. The Government’s initial investment of \$4.7 billion in the NBN included \$4.45 billion for an equity injection into NBN Co, as well as an investment in the early rollout of a broadband network in Tasmania and the Regional Backbone Blackspots Program. The Government indicated at the same time that NBN Co would invest up to \$43 billion over eight years to build the NBN. More recent figures from NBN Co’s Corporate Plan 2011–2013 indicate that total capital expenditure for the NBN (to December 2020) is estimated to be \$35.9 billion.

¹³ Backhaul refers to the medium and long distance optical fibre and microwave transmission networks that connect local exchanges, main exchanges and mobile and fixed wireless towers between all population centres in Australia. Backhaul networks carry voice and data transmissions.

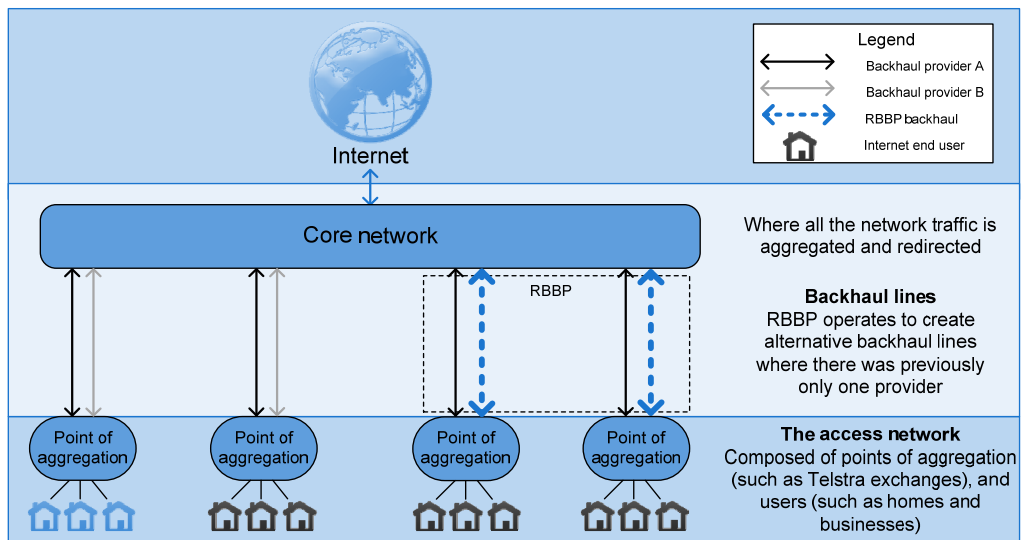
¹⁴ Optical fibre delivers broadband Internet services by transmitting information as light pulses and can carry information at greater data rates than copper wire, the main alternative form of fixed-line broadband.

of Broadband, Communications and the Digital Economy (DBCDE), which administers the program, uses the term ‘blackspot’ to refer to locations where there is an absence of competition in backhaul infrastructure. Enhancing the competitive supply of backhaul via the RBBP was intended to assist broadband and telephony providers to improve the range, quality and prices of the services they offered in rural and regional areas.¹⁵

1.7 The RBBP’s place in the wider broadband telecommunications context is illustrated in Figure 1.1, highlighting the role that backhaul, and the RBBP in particular, has in supporting communications and users’ access to the Internet.¹⁶ The figure also highlights that the RBBP backhaul infrastructure is located in areas where there was previously only one provider of backhaul.

Figure 1.1

RBBP in the wider, broadband telecommunications context



Source: ANAO analysis of DBCDE information.

¹⁵ The significance of having a single provider of backhaul infrastructure is that there is little competitive pressure on the provider, or opportunity for others, to deliver cheaper or better services. Backhaul is not usually acquired by end users of broadband. However, the availability of backhaul has an impact on the range, quality and price of services.

¹⁶ Backhaul lines are high-capacity links from points of aggregation, such as Telstra exchanges, to the core network that links to the Internet internationally.

1.8 The Government's objectives for the RBBP were to:

- deliver an economic stimulus in the short to medium term¹⁷;
- encourage better service outcomes for consumers in regional communities, including higher quality services and reduced costs, by improving the supply of backhaul transmission services into regional communities in the short to medium term; and
- put in place key infrastructure in the medium to long term that would contribute to the NBN.

1.9 The improved supply of backhaul transmission services was expected to encourage retail service providers to further invest in local access infrastructure and to further differentiate their services. The improvements expected for residential, business and public sector users such as local government, health and educational institutions included: lower prices, greater choice, more generous download allowances and greater access to fixed broadband services; higher quality and increased availability and choice of mobile broadband services; and lower cost data services for small and medium enterprises and businesses with regional offices. DBCDE estimated that, ultimately, there would be approximately 395 000 regional residential and business consumers benefitting from RBBP.

The implementation of RBBP

1.10 RBBP is a multifaceted program, with implementation involving: the selection of priority locations; the procurement of a firm to design, construct and operate the backhaul infrastructure; and, subsequently, the management of the agreement between the Commonwealth and the selected firm.

Determining the selected locations to be serviced by RBBP

1.11 Following the Minister's announcement of RBBP on 7 April 2009, DBCDE invited submissions on a public consultation paper and held discussions with stakeholders to identify and determine the priority locations to be serviced by RBBP. DBCDE assessed submissions against criteria, such as the extent to which the locations were served by competitive optical fibre links and the potential population or economic activity that could benefit from the

¹⁷ The economic stimulus objective reflected the context of the RBBP and the Government's fiscal measures following the onset of the global financial crisis in 2008.

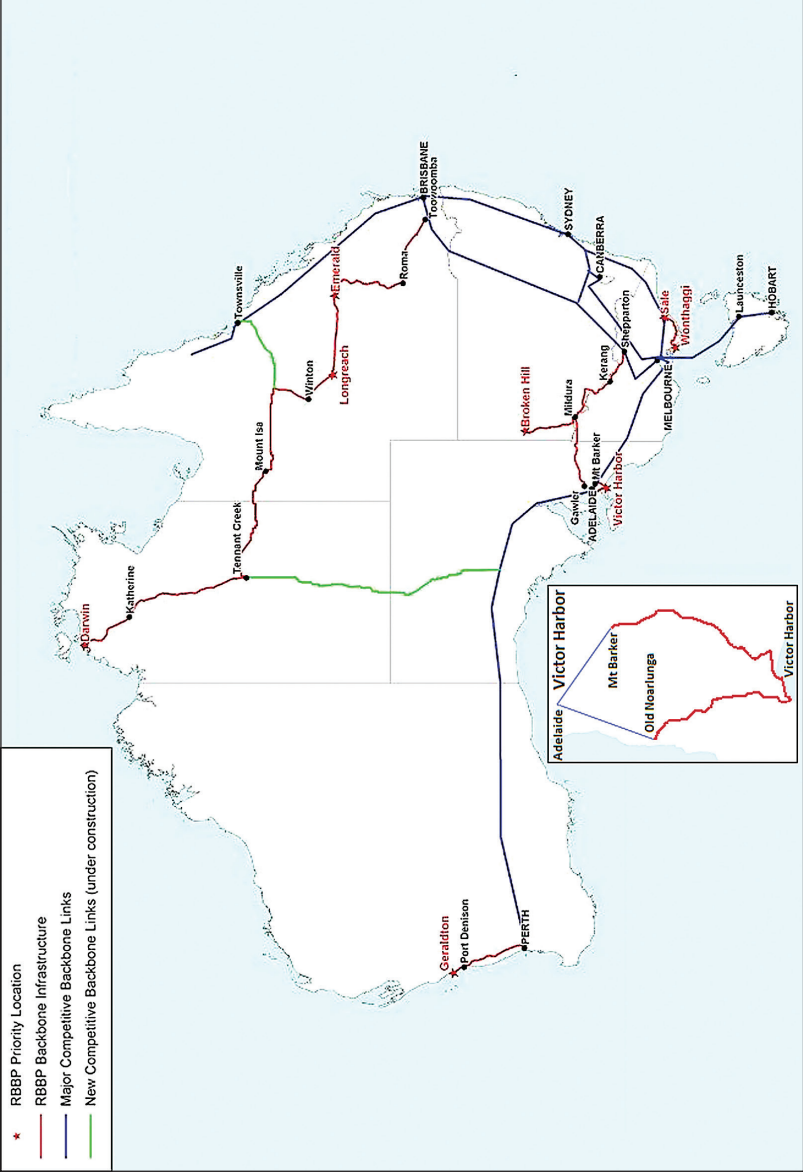
infrastructure suggested. The department provided a list of priority locations to the Minister, indicating that there was a rational basis for providing funding to each of the locations identified, and requesting that the Minister identify up to six locations.

1.12 The Minister's office, in consultation with the department, selected the following six priority locations from the department's list for the rollout of the backhaul network: Geraldton; Victor Harbor; South West Gippsland; Broken Hill; Emerald and Longreach; and Darwin. The RBBP funds five fibre-optic transmission routes to service the six priority locations, with one of the routes passing through two priority locations—the Darwin, and the Emerald and Longreach locations. Figure 1.2 illustrates the routes funded under the RBBP.¹⁸

¹⁸ The RBBP is funded by the Building Australia Fund as an 'eligible national broadband network matter' under section 23 of the *Nation-building Funds Act 2008*. The Government established the Building Australia Fund in 2009 under the *Nation-building Funds Act 2008*, to fund critical infrastructure in the transport, communications, water and energy sectors of the economy. The *Nation-building Funds Act 2008* provides the legislative authority for the program's funding. Expenditure on the completed the RBBP network totalled \$249.67 million.

Figure 1.2

RBBP priority locations and routes



Source: DBCDE information April 2010. DBCDE informed the ANAO in June 2012 that the new competitive backbone links under construction (separate from the RBBP) have now been completed.

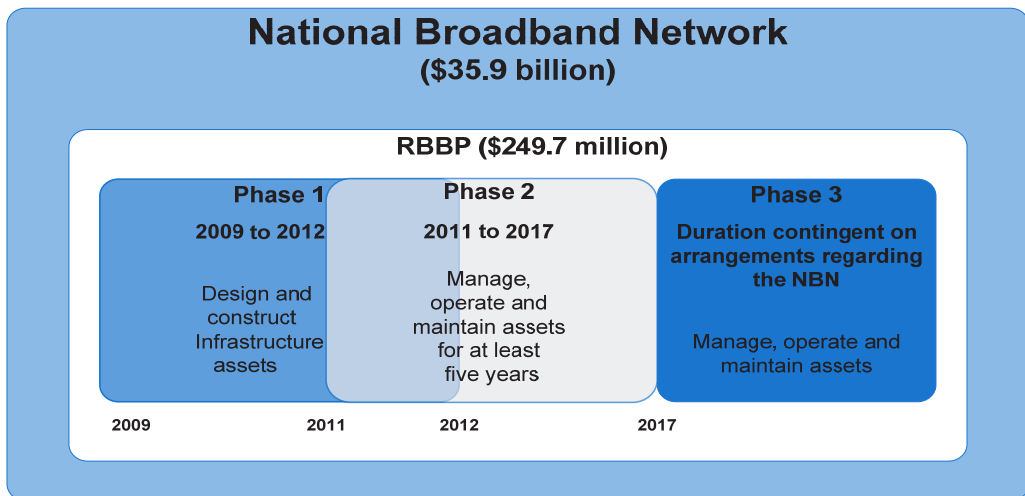
Note: The map highlights the RBBP locations and infrastructure, additional new competitive backbone links (separate from the RBBP) and the major competitive backhaul links between the capital cities. The map does not illustrate the location of all backhaul in Australia.

Tendering and negotiating the RBBP agreement

1.13 The request for tender (RFT) for the RBBP was released on 1 July 2009, and attracted 14 tender responses. The tender evaluation occurred in the second half of 2009 and the successful tenderer, Nextgen Networks Pty Ltd¹⁹, was announced in December 2009. The Commonwealth, represented by DBCDE, subsequently entered into a \$249.67 million funding agreement with Nextgen Networks Pty Ltd ('the contractor') to roll out the regional backhaul fibre-optic links to the six priority locations. The fixed price agreement described the terms and conditions under which DBCDE provided funding and the services to be delivered by the contractor.²⁰ The agreement provides for three distinct phases of activity, within the larger context of the NBN, as illustrated in Figure 1.3 and outlined in the following paragraphs.

Figure 1.3

RBBP phases and the larger NBN context



Source: ANAO analysis of DBCDE information.

¹⁹ Nextgen Networks Pty Ltd is a national telecommunications carrier specialising in data services for the corporate and government markets. The firm is part of Leighton Holdings, a group of companies that provides development, construction, and operation and maintenance services to the infrastructure, resources and property markets. In the remainder of this report, Leighton Holdings is identified as the 'parent company'.

²⁰ In some instances, funding agreements can be closer to 'grants of moneys with conditions' than to contracts. Features of the RBBP funding agreement, such as the Commonwealth owning the RBBP assets, make it a contract.

Phase 1—Design and construction

1.14 The agreement with the contractor contained ambitious design and construction deadlines, with the Government intending that all routes would be completed by mid-2011. Following preparatory and design work in late 2009 and early 2010, the contractor commenced construction on the RBBP backhaul routes in 2010.²¹ The Geraldton and Victor Harbor routes were completed in March 2011, the South West Gippsland route in April 2011, the Broken Hill route in November 2011, and the Darwin route in January 2012. As the construction on each route was completed, the operation of this route commenced and the agreement's terms relating to the operations phase applied, and continue to apply. In this way, although the phases of the agreement involved distinct activities, they overlapped. The activity meant that for most of 2011, DBCDE was required to 'contract manage' the contractor's concurrent construction and operations activities.

1.15 Under the agreement, the Commonwealth paid the contractor to install the passive infrastructure assets, for example, the optical fibre and physical structures such as ducts and equipment shelters. In general, the Commonwealth owns these infrastructure assets. The contractor owns the active transmission equipment, for example, amplifiers and optical line termination equipment.

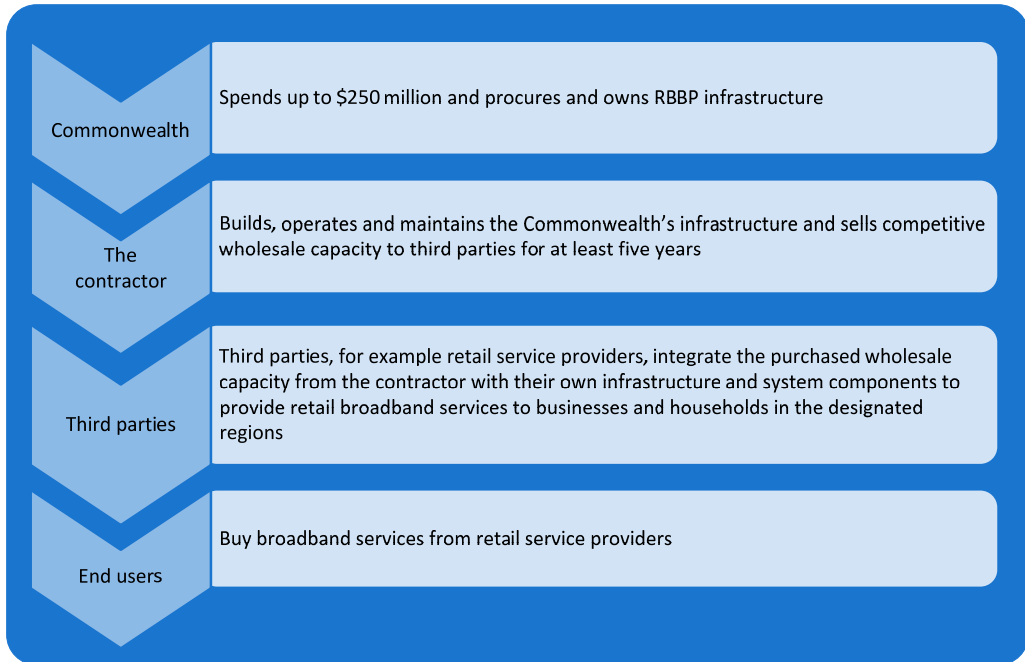
Phase 2—Management, operation and maintenance

1.16 The agreement provides that the contractor is to operate and maintain the Commonwealth-owned backhaul for at least five years from the completion of the construction at no cost to the Commonwealth. The contractor can retain all revenue from those operations. The transition from the construction to the operation of the infrastructure requires DBCDE to monitor the contractor's provision of services in line with the agreement. These services include the contractor's 'third party services' (for example, managed optical fibre and wavelength services, and wholesale Internet access services). These wholesale services, in turn, support consumers at the retail level. Figure 1.4 outlines the elements of the RBBP and the relationships between them. It also illustrates the parties directly affected by the RBBP agreement as well as the end users.

²¹ Construction was undertaken by the contractor's construction partner.

Figure 1.4

Conceptual elements of the RBBP arrangements



Source: ANAO analysis of DBCDE information.

Phase 3—Management, operation and maintenance after the five-year operations period

1.17 The continued management, operation and maintenance of the network after the five-year operations period occur under Phase 3. Although the current agreement establishes the framework outlining responsibility for the RBBP infrastructure following the operations period²², the terms of any future arrangements following the operations period are contingent upon the progress of the implementation of the NBN. As noted earlier, the Commonwealth owns the infrastructure, but the intention is that the ownership of the infrastructure will ultimately be transferred to NBN Co. In the interim, NBN Co and other service providers are currently using the RBBP backhaul infrastructure and wholesale services provided by the contractor on terms specified in the agreement, including terms regarding pricing.

²² Section 30 of the agreement.

1.18 When determining its future needs for backhaul to support the NBN, NBN Co has taken into consideration current and future access to the infrastructure constructed under the RBBP, with relevant details reflected in its Corporate Plan 2011–2013.²³ As at June 2012, DBCDE and NBN Co were discussing the terms of future arrangements for the RBBP infrastructure under Phase 3. However, these arrangements are subject to further consideration, with the Government yet to make any announcements in relation to the specific use of the RBBP infrastructure by NBN Co.

1.19 NBN Co has also obtained increased access to backhaul infrastructure through agreements negotiated with Telstra. In mid-2011, NBN Co reached agreement with Telstra for access to its facilities and infrastructure, including components of its backhaul infrastructure network, over a minimum 35-year period. The terms of the binding Definitive Agreements reached at that time—including the specific Infrastructure Services Agreement relating to NBN Co’s access to backhaul—were broadly outlined by the parties. However, the detailed terms of these agreements, including the extent to which NBN Co will access backhaul infrastructure, have not been publicly disclosed.

Administration of the RBBP

1.20 DBCDE, as the administering agency, is responsible for the implementation of the RBBP. The program represented a significant procurement and agreement management exercise for DBCDE. The procurement was undertaken in a compressed timeframe, as required by the Government, and was completed in eight months from the initial funding announcement. In managing the agreement, the department oversaw the construction of the network and continues to oversee its operation and maintenance.

1.21 The administration of the RBBP occurs in a complex and dynamic commercial and technical environment and involves a considerable number of stakeholders, including: ministers and other members of Parliament; federal, state and local governments; participants in the telecommunications industry;

²³ The corporate plan indicates that ‘In determining the requirement for transit backhaul, NBN Co has considered the routes currently being constructed as part of the Government’s Regional Backhaul Blackspots Program. Where these routes overlap with NBN Co’s transit backhaul requirements, the costs of NBN Co acquiring the routes in the future have been factored in to NBN Co’s capital expenditure forecasts.’ See NBN Co, *Corporate Plan 2011–2013*, NBN Co, 17 December 2010, p. 64, available from: <<http://www.nbnco.co.au>> [accessed 29 May 2012].

landowners affected or potentially affected by construction work; households and businesses using broadband in the regions; and other members of the public.

Program reviews

1.22 In the latter part of 2010, DBCDE's Internal Audit area undertook an audit of the management of the RBBP agreement. The objective of the audit was to consider the RBBP agreement and DBCDE's practices to manage it to achieve the program's objectives. The audit report concluded that DBCDE had made significant efforts to establish a thorough and documented process for the management of the agreement, finding that:

- the key controls and good practices created a sound foundation for the management of the agreement to date; but
- there were challenges for DBCDE in managing the agreement as the nature of the contractor's services under the agreement would change from building the infrastructure to operating and maintaining it.

1.23 The internal audit report endorsed DBCDE's approach for managing the RBBP agreement, and made two recommendations to improve the controls and recordkeeping. However, it also concluded that, given the nature of the agreement, it would be prudent for DBCDE to maintain a consistent level of focus and discipline in managing the agreement over its lifetime.²⁴

*Parliamentary interest*²⁵

1.24 The former Senate Select Committee on the National Broadband Network, which operated between June 2008 and June 2010, prepared four interim reports and a final report. The committee referred to the RBBP, observing that, although separate from the broader NBN processes involving NBN Co, the RBBP made an early start to improving broadband infrastructure

²⁴ Department of Broadband, Communications and the Digital Economy, *Internal Audit of the Regional Backbone Blackspots Program*, Deloitte, 2010.

²⁵ The Parliamentary Standing Committee on Public Works conducts inquiries on public works referred to it. However, the committee did not conduct an inquiry into the RBBP. An exemption motion was passed in the House of Representatives on 17 September 2009 removing, on the grounds of expediency, the requirement for the RBBP to be referred to the committee. The then Minister for Finance and Deregulation considered that it was expedient for the RBBP works to be carried out without reference to the committee, so that improved services and effective and timely stimulus could be delivered to regional locations as soon as possible. The Minister for Finance and Deregulation also noted that the RBBP had already been the subject of parliamentary scrutiny and public comment.

in regional and remote areas. More recently, the Joint Committee on the National Broadband Network conducted site inspections on the Broken Hill RBBP route in July 2011.

Related ANAO audits

1.25 The ANAO has undertaken two audits relating to broadband that covered the NBN request for proposals process and the Australian Broadband Guarantee program.²⁶ The reports highlighted issues in procurement and program administration, such as risk management, and performance management and reporting.

1.26 The RBBP is also an area of focus in the ANAO's annual audits of DBCDE's financial statements. The ANAO's audit of DBCDE's 2010–11 financial statements provided assurance regarding: invoice payments; recognition and measurement of the RBBP assets; and the Communications Portfolio Special Account used for making the RBBP payments.

Audit objective, criteria and methodology

1.27 The objective of the audit was to assess the effectiveness of the Department of Broadband, Communications and the Digital Economy's administration of the Regional Backbone Blackspots Program, involving the establishment and ongoing management of the program.

1.28 The audit assessed whether DBCDE's:

- arrangements for administering the program, including stakeholder relationship management, were robust and effective;
- processes for tendering and contract development were sound; and
- management of the contract for the construction and the operation of the network was effective.

1.29 Given the early stage of program operation²⁷, the audit did not seek to determine whether the RBBP's objectives had been achieved, but assessed

²⁶ ANAO, Audit Report No. 20 2009–10, *The National Broadband Network Request for Proposal Process* examined key aspects of the discontinued procurement process. Audit Report No. 28 2010–11, *Management of the Australian Broadband Guarantee Program* assessed the program designed to provide residential and business premises with access to high quality, reasonably priced broadband services in locations where such services were not commercially viable.

²⁷ The RBBP operations commenced progressively from March 2011 as the RBBP routes were completed, and the operations phase will continue until 2017. The main focus of the audit was DBCDE's administration until December 2011, when the bulk of the fieldwork was concluded.

whether DBCDE had processes in place to progressively monitor and report on achievements against the program's objectives.

Audit methodology

1.30 In undertaking the audit, the ANAO reviewed program documentation, interviewed relevant DBCDE staff and consulted with a range of stakeholders including the contracted parties and wholesale and retail regional service providers using, or intending to use, the RBBP. State and local government representatives involved in the RBBP community consultations and the rollout of the RBBP and peak community and industry representatives and a consumer advocacy body were also consulted.

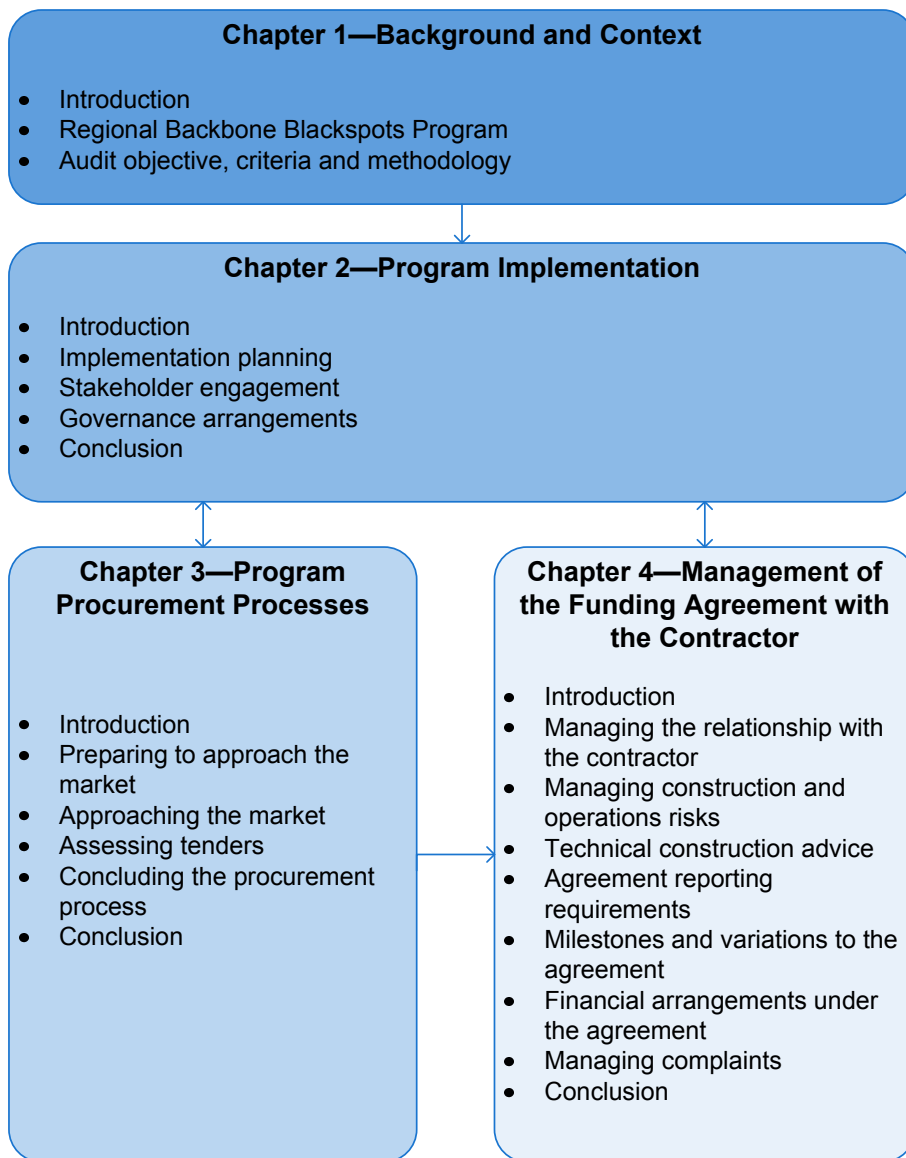
1.31 The audit was conducted in accordance with the ANAO Auditing Standards at a cost of \$432 000.

Report structure

1.32 The structure of the report is illustrated in Figure 1.5.

Figure 1.5

Structure of the report



Source: ANAO.

2. Program Implementation

This chapter examines DBCDE's implementation of the RBBP, including the department's engagement with stakeholders and governance arrangements supporting the program.

Introduction

2.1 The effective implementation of a program, such as the RBBP, is underpinned by appropriate planning and engagement with stakeholders and sound governance arrangements.

2.2 The ANAO examined whether DBCDE had:

- effective implementation planning arrangements;
- appropriate mechanisms to engage with stakeholders; and
- suitable governance structures and processes to support the delivery of the program.

Implementation planning

2.3 DBCDE's approach to the initial planning of the RBBP implementation involved liaison, decision-making and review activities to establish the program. The initial program planning and management process, particularly in relation to the request for tender (RFT) procurement processes in 2009, reflected discussions and decisions around key tasks and their timing, with input from across the department and relevant advisers.²⁸ This early program planning for the RBBP was undertaken to develop, and publicly announce in the RFT, indicative dates for key stages of the procurement process in the first half of 2009.

2.4 DBCDE prepared project management plans relating to the implementation of the broader NBN and, more specifically the RBBP. The RBBP project management plans outlined the governance and administrative arrangements for DBCDE staff, including important procedural arrangements

²⁸ DBCDE advised that the RBBP implementation planning (essentially dealing with activities in 2009, which related to the period of program initiation and the subsequent procurement processes) was based on a 'workshop model' of rolling consultations and activity by departmental staff and the advisers engaged for the RBBP, rather than one, up-front major planning exercise and the production of an implementation plan.

for monitoring contractor progress and milestones. The plans do not, however, clearly show how planned activities contribute to the achievement of the program's objectives or establish a capacity to monitor performance at the program level and respond accordingly. In addition, the program management plans (or other plans such as the stakeholder communication strategy) are not linked, and are not aligned, to the program's objectives. While recognising that the plans usefully cover specific program activities, stronger linkages between plans and better alignment with the program's objectives would enhance their capacity to support the monitoring of program progress and performance against program objectives.

2.5 Developing an overarching implementation plan at the program level that incorporated the program's objectives, milestones, resources and measures of success, as well as consideration of the performance information required to monitor the achievement of RBBP's objectives would have better positioned the department to monitor the progress and success of the RBBP. Program monitoring and reporting are examined later in this chapter.

Stakeholder engagement

2.6 DBCDE developed an RBBP communication strategy in 2010 and updated it in 2011 and 2012 as the program progressed. In outlining the communication objectives, activities, the parties with whom DBCDE should communicate, and the broad timing of activities, the RBBP communication strategies provided, and continue to provide, a structured approach to engaging with stakeholders over the course of the evolving program.

2.7 DBCDE's communication and stakeholder engagement processes covered the different phases of activity and parties involved in the RBBP over time. These included engagement with ministers and other members of Parliament at the federal and state levels, other government agencies and bodies, industry, the community and the media.

2.8 A key mechanism for engaging with the community was the work of Regional Coordinators.²⁹ Eight Regional Coordinators were recruited, trained and supported, to engage with stakeholders in the particular regional locations

²⁹ Regional Coordinators were originally termed Rural National Broadband Network Coordinators, an initiative announced in the 2009–10 Budget at a cost of \$5 million over four years. The name was changed to emphasise that their role was distinct from NBN matters and that they were not part of NBN Co.

in which the RBBP infrastructure was to be installed. Each Regional Coordinator serviced, or shared the service of, a designated RBBP route to encourage local government, community and business usage of broadband in the context of the installation of the new infrastructure. The Regional Coordinators also distributed information relating to other DBCDE activities of community interest, such as cyber safety and the switchover to digital television.

2.9 Most of the stakeholders that the ANAO consulted during the audit were supportive of the department's approaches to stakeholder engagement. A small number indicated that they would have appreciated more information on the program's construction and the likely benefits of the NBN in their region, in the initial stages of community consultations. Stakeholders were supportive of the work by the contractor, and the effects that the RBBP was having, or was likely to have, on the price and availability of broadband services at the retail level.

Governance arrangements

2.10 Appropriate and accountable administration of programs requires sound governance arrangements to guide and support program implementation and to monitor and report performance. The ANAO assessed the following elements of DBCDE's ongoing governance arrangements for the RBBP: the oversight of program delivery by the Performance Reporting Committee (PRC); monitoring and reporting to the Minister; business planning; risk management; and performance monitoring and reporting.

Performance Reporting Committee

2.11 The role of the PRC³⁰ was to oversee the performance of the department's major budget-funded programs, and to provide assurance that programs, major policy initiatives and major capital projects were on time and budget. The PRC's oversight of the RBBP was primarily through the committee's monitoring of the two-monthly program status summary reports—the Traffic Light Reports (TLR)—prepared for all programs, including the RBBP. TLR contained program information, such as: program objectives;

³⁰ The PRC comprised the Secretary, all Deputy Secretaries and First Assistant Secretaries, the Chief Financial Officer and the Assistant Secretary Research and Statistics. The PRC had documented terms of reference and structured operational processes involving pre-determined meeting schedules and structured approaches to the conduct of meetings, records and follow-up action.

performance indicators and deliverables as set out in the Portfolio Budget Statements; budgets; and milestones. They also contained narratives regarding risk and action required to address milestone slippages. TLR were circulated and considered by the PRC. With the RBBP no longer being an administered expense item for the department, and with the completion of construction of the last RBBP route and final payments made in early 2012, the committee no longer received TLR for the RBBP.

2.12 The PRC also followed up the RBBP matters where appropriate. An example of an RBBP issue examined by the PRC was the re-phasing of the RBBP funding across financial years, given that actual progress on the procurement and construction differed from that first envisaged in 2009 when the budget was developed.

The Minister

2.13 DBCDE provided weekly RBBP briefs, monthly progress reports and raised other issues with the Minister, as necessary. Monitoring and reporting to the Minister occurred at all phases of the RBBP, including on the community consultations in early 2009, procurement activities, construction processes and the achievement of milestones. The extent of monitoring and reporting to the Minister during the planning, procurement and agreement management phases was in keeping with the financial and strategic significance of the program.

2.14 The RBBP information provided by DBCDE to the Minister focused on project status and issues and included briefing on matters relevant to the RBBP's objectives, such as: information and updates on project expenditure; the contractor's estimates of employment linked to its construction activity on some routes³¹; anecdotal information on the retail price and service offerings in regions in which the RBBP was in place; the extent of infrastructure completed; and the interaction of the RBBP and the larger NBN initiative.

2.15 In relation to the ongoing monitoring of RBBP over the remainder of the program, DBCDE informed the ANAO in May 2012 that in addition to weekly updates on issues, it intended to provide the Minister with quarterly

³¹ The contractor's information on its employment impact was provided in response to specific requests from DBCDE from time to time, for use in preparing media releases or materials relating to the completion of particular the RBBP routes.

activity status reports on the RBBP (instead of the monthly status reports it provided during the procurement and construction phases of the project).

Business planning

2.16 Effective business planning at the strategic and operational levels provides an agency with a strategic overview and outlook for future years, as well as a focus on the key priorities and programs that contribute to the achievement of departmental outcomes.

2.17 In the period between 2009 and 2011, DBCDE had a hierarchy of organisational planning documents comprising the:

- agency's three-year corporate plans³²;
- division (or major project) plans; and
- branch plans. The RBBP was administered by a dedicated branch in 2009 until mid-2010, at which time the RBBP staff were included in the NBN Implementation Policy and Program Branch in the NBN Implementation Division.³³

2.18 DBCDE has a structured and hierarchical approach to business planning. The various planning documents outlined DBCDE's strategic priorities and intended major activities, planned resources, milestones, risks and related activities as well as the scope, purpose and the processes for reviewing the various planning documents.

2.19 The RBBP featured in each level of business planning, with business plans referring to the RBBP's relevance as a strategic priority, and to associated objectives and tasks in the operational-level plans. The plans outlined some high-level performance objectives, and the NBN Implementation Policy and Program Branch Plan 2011–12 improved on the earlier RBBP Branch Plan by

³² These were Strategic Directions 2009–11 and the Corporate Plan 2011–13, which replaced it as the department's statement of corporate purpose and strategic priorities. The RBBP was not specifically mentioned in the *Strategic Directions 2009–11*, although the wider NBN priorities were included. The RBBP was mentioned in the *Corporate Plan 2011–13*.

³³ The RBBP was included in the relevant branch business plans (the RBBP Branch Plan and the NBN Implementation Policy and Program Branch Plan). As previously noted in the context of implementation planning, DBCDE also prepared the RBBP Project Management Plans. The RBBP Project Management Plans focused on the contractor's deliverables and milestones in constructing and operating the network; they did not detail DBCDE's RBBP tasks, objectives and milestones.

including measures of the RBBP success.³⁴ However, DBCDE's business plans between 2009 and late 2011 did not include specific performance measures or performance indicators that would provide a means by which to communicate clear performance expectations and assess progress against the plan.

Risk management

2.20 DBCDE's corporate risk frameworks and documentation include:

- the branch and division risk registers, which incorporate operational risks and higher-level risks³⁵;
- regular TLR provided to the PRC to monitor program activity, risks and results;
- the DBCDE work plan of internal audit activity to manage risks, including the RBBP risks; and
- departmental annual risk management plans.

2.21 These measures, in turn, supported a range of the RBBP risk management activities including: the RBBP branch identifying and monitoring risks through risk logs; the division Executive reviewing risks across the division, for completeness and appropriateness; and the Audit Committee assessing and monitoring division risk documents and other risk materials. DBCDE did not prepare a discrete 'RBBP risk management plan'; however, as outlined above, the department conducted appropriate RBBP risk management planning as part of its governance arrangements. DBCDE's risk management processes for the RBBP were: appropriate in scope; based on relevant information; aligned with responsibilities; regularly monitored and updated; and appropriately documented. The management of construction risks was part of DBCDE's management of the agreement with the contractor, and the management of operations risks continues to be a part of managing the agreement, as examined in Chapter 4.

³⁴ The measures of success nominated in the NBN Policy and Program Branch plan were 'effective program management in line with departmental policies and the Financial Management and Accountability framework, positive ANAO audit outcome and positive working relationship with the contractor'.

³⁵ Examples of these higher-level risks were 'appropriate use of public resources' and 'the necessary strategic alignment between the RBBP infrastructure and the requirements of the NBN'.

Monitoring and reporting program performance

2.22 The principal formal mechanisms for monitoring and reporting program performance to external stakeholders are agency Portfolio Budget Statements (PBS) and annual reports. The content of PBS and annual reports are guided by government instructions³⁶, with a key focus being on actions (including the proposed allocation of resources) to achieve government outcomes and on the performance of government programs.

Performance measures—Portfolio Budget Statements

2.23 The RBBP contributes to DBCDE's Program 1.1 in the PBS, Broadband and Communications Infrastructure, which has the objective to:

facilitate the increased availability of fast, affordable and reliable broadband and communications infrastructure across Australia.³⁷

2.24 The RBBP featured in the PBS 2009–10, 2010–11 and 2011–12 as a deliverable under Program 1.1. The RBBP was not included in the PBS 2012–13 as a deliverable, because the construction of all the RBBP routes was completed in January 2012.³⁸ Table 2.1 sets out the key performance indicators (KPIs) and targets for the RBBP for the period 2009–10 to 2011–12. The specified KPI for the RBBP was, however, an activity measure and the department did not indicate how achievement would contribute to securing the objectives of Program 1.1.

³⁶ Instructions to agencies on the purpose and content of annual reports are set out in *Requirements for Annual Reports*, issued by the Department of the Prime Minister and Cabinet, available from: <<http://www.dpmc.gov.au>> [accessed 10 January 2012]. Guidance on the purpose and content of the PBS is set out in instructions issued by the Department of Finance and Deregulation, for example, *Guidance for the Preparation of the 2010–11 Portfolio Budget Statements* and *Guidance for the Preparation of the 2011–12 Portfolio Budget Statements*.

³⁷ Portfolio Budget Statements 2009–10 Broadband, Communications and the Digital Economy Portfolio p. 39. The objective was expressed in similar terms in the PBS 2010–11 and PBS 2011–12.

³⁸ The RBBP is still included in other parts of the PBS 2012–13 and will be included in DBCDE's Financial Statements in 2011–12 and 2012–13 to the extent required to reflect the ongoing asset and depreciation expenses.

Table 2.1

Performance measures for the RBBP in PBS

PBS year	PBS Key Performance Indicator (KPI)	PBS target
PBS 2009–10		
Deliverable: progress the implementation of the RBBP initiative	No KPIs	Not applicable
PBS 2010–11		
Deliverable: providing oversight of rollout of the RBBP Number of routes ready for third party service 2010–11: 3 routes (Geraldton, Victor Harbor and South West Gippsland) 2011–12: 2 routes (Broken Hill and Darwin)	The RBBP meets contractual milestones	3 routes ready in 2010–11 2 routes ready in 2011–12
PBS 2011–12		
Deliverable: providing oversight of rollout of the NBN and the RBBP Number of routes ready for third party service 2010–11: 3 routes (Geraldton, Victor Harbor and South West Gippsland) 2011–12: 2 routes (Broken Hill and Darwin)	The RBBP meets contractual milestones	2 routes ready in 2011–12

Source: PBS Broadband, Communications and the Digital Economy Portfolio, various years.

Performance reporting—annual reports

2.25 DBCDE’s annual reports for 2009–10 and 2010–11 contained information on the RBBP in the context of Program 1.1 and there was an appropriate alignment between the PBS and the relevant annual report. DBCDE’s annual reports provided information on: the RBBP project progress and status, for example the procurement exercise and the construction activity under the agreement with the contractor; and administered capital expenditure for the relevant period.

2.26 The coverage of the RBBP in the annual reports has expanded over time, with the 2009–10 and 2010–11 reports including RBBP case studies. The 2009–10 Annual Report highlighted the department’s objectives and activity, and the contractor’s expectation that the project would generate 1000 full-time equivalent positions. The 2010–11 Annual Report outlined the contractor’s estimated employment opportunities and regional spending involved in its

work on the Geraldton route and provided instances of improved price and/or service offerings by the Internet service providers operating in Geraldton and in South Australia with the commencement of the RBBP.

2.27 Although in narrative format and based on partial, anecdotal information, the case study in DBCDE's Annual Report 2010–11 provided insights into RBBP performance, especially in relation to performance against two of the three objectives of the RBBP. It will be important for DBCDE to continue to provide accountability to external stakeholders on the performance of the RBBP, including by analysing and reporting on the achievement of the RBBP objectives. DBCDE informed the ANAO in May 2012 that it intends to include RBBP material in its 2011–12 Annual Report.

Program achievements against objectives

2.28 To effectively monitor RBBP achievements against the program's objectives, DBCDE required performance information relevant to the three RBBP objectives (economic stimulus, improved prices and services for regional communities, and infrastructure contributing to the NBN) and the capacity to analyse that information to assess such program performance.

2.29 As noted earlier, over 2010 and 2011, DBCDE obtained some data relating to the achievement of program objectives, including ad hoc data from the contractor and publicly available data. DBCDE used this data to gain insights over time into the extent to which the RBBP had achieved its objectives. The Minister's press releases and speeches at the launches of the completed routes in 2011 also highlighted some of the achievements of the RBBP against its objectives in similar terms.³⁹

2.30 In the first quarter of 2012, with the completion of the construction of the last RBBP route in late January 2012, the department prepared an assessment of the RBBP's performance against its program objectives as at the end of the construction period. In March 2012 the department provided a briefing to the Minister with its analysis of the performance of the RBBP against program objectives and finalised the review report in April 2012.

³⁹ For example, relevant to the RBBP's stimulus objective, the Minister highlighted the economic impact of the RBBP construction on the Geraldton route by referring to the number of people the contractor employed on the construction of the route and the amount the company spent on these workers for accommodation and meals. Relevant to the RBBP's retail service objective, the Minister highlighted the new (improved) services for retail consumers in Geraldton, citing better service with better speeds and double the download quota at the same retail price.

2.31 The review examined the RBBP's performance against its three objectives, disaggregating the three program objectives into six specific performance measures. The analysis did not make an overall conclusion as to the extent to which the program had achieved its objectives, but the specific elements were positive.⁴⁰ The review highlighted that the:

- timely awarding of the agreement, the timely completion of the construction, Australian business participation and the new infrastructure supported the economic stimulus objective;
- improved services (including new offerings and better prices) for consumers along the RBBP routes supported the service objective; and
- the alignment of the RBBP with the NBN Co's technological and geographical requirements supported the objective to put in place infrastructure contributing to the NBN.

2.32 The data underlying DBCDE's analysis included periodic activity reports from the contractor, estimates of employment from the contractor provided in ad hoc reports (as discussed in Chapter 4), information relating to the prices and service offerings made in areas served by the RBBP and information on NBN Co's activities highlighting the alignment of the RBBP with the NBN.

2.33 While recognising the department's structured approach in its April 2012 review of the RBBP, there was scope for DBCDE to have undertaken a more comprehensive assessment of the RBBP, particularly in relation to: the timeliness of determining the data required to assess the performance of the program against objectives; and the department's approach to gathering data to measure the stimulus impact of the RBBP.

2.34 DBCDE only commenced work on developing its performance measures to assess the achievement of the RBBP objectives in 2011 and 2012. When negotiating its reporting requirements with the contractor in 2009, the department did not consider and include in the agreement (in conjunction with the contractor) the performance data it required to adequately assess the achievement of the program's objectives (including the stimulus objective).

⁴⁰ Separate from DBCDE's review, but also indicative of the effectiveness of the RBBP, Telstra submitted in 2011 to the Australian Competition and Consumer Commission's inquiry dealing with price regulation, that the RBBP had increased competitive pressure at the retail level and that Telstra had faced consequential price reductions. See Telstra submission to the Public Inquiry to make Final Access Determinations for the Domestic Transmissions Capacity Service, 5 August 2011, p. 16, paras 71–74.

2.35 In assessing RBBP performance in respect of its stimulus objective since 2009, DBCDE has focused on aggregate expenditure as its primary measure to provide a high-level perspective on stimulus, but this is only one perspective. More detailed data, such as the numbers of people the contractor and its construction partner employed on a full-time equivalent basis, and specific expenditure on labour, equipment hire and asset purchase would have allowed for a more detailed analysis of the RBBP's stimulus effect. This information could have been collated from the contractor and its construction partner and sub-contractors on a regular basis had DBCDE considered performance information requirements when formulating the reporting provisions in the agreement.⁴¹ DBCDE advised the ANAO in November 2011 that, overall, the RBBP expenditure was the most convenient indicator of the RBBP's economic stimulus effect and it was on this basis that the department collected and analysed data during the construction period.

2.36 Although the construction of the RBBP routes has been completed, the operations phase of the program will continue to 2017. It will, therefore, be important for DBCDE to continue to undertake work to evaluate the extent to which the RBBP is achieving its objectives. In addition, the department's administration of departmental programs in the future would be improved by the identification of performance measures and data needs in the early phases of program implementation.

Conclusion

2.37 DBCDE's implementation planning for the RBBP has sound features with higher level planning work and project management plans relating to the implementation of the broader NBN and RBBP, more specifically. Developing an overarching implementation plan at the program level that incorporated the program's objectives, milestones, resources and measures of success, as well as consideration of the performance information required to monitor the achievement of the RBBP's objectives, would have better positioned the department to monitor progress and performance against the RBBP objectives.

⁴¹ Detailed attention to the effects of a fiscal stimulus measure is consistent with the approach applied by the Parliament when examining in 2010, and later, other fiscal stimulus measures. It is also consistent with the prominence given to the employment effects of the RBBP, particularly regional employment and regional spending effects, in the Minister's public statements and DBCDE's annual report case studies in 2010 and 2011.

2.38 The administration of the RBBP involved a range of RBBP stakeholders, with DBCDE effectively engaging with stakeholders through a variety of mechanisms across the different phases of the RBBP activity. Considering the scale and nature of the RBBP, there were few questions and complaints from the public regarding the program, with DBCDE effectively responding to the small number of issues raised. Stakeholders were generally supportive of the RBBP, the work of the contractor and the effects the RBBP was having, or was likely to have, on the price and availability of broadband services at the retail level.

2.39 The governance arrangements supporting the management of the RBBP involved oversight by the PRC and monitoring and reporting to the Minister. The department used the PRC and regular briefings to the Minister as its key mechanisms for monitoring and reporting performance to internal stakeholders, particularly during the procurement processes and the construction phase of the program. DBCDE advised that it will provide the Minister with quarterly RBBP activity status reports and that internal reporting on governance matters will be the responsibility of the head of the NBN Implementation Division.

2.40 The RBBP featured in each level of DBCDE's structured approach to business planning. Although the business planning documents outlined some high-level performance objectives, DBCDE's documentation did not include specific performance measures. As a consequence, DBCDE's business planning documentation did not provide a clear means by which to communicate performance expectations and assess progress against the plan.

2.41 The coverage and focus of DBCDE's risk management frameworks, documentation and activities indicate that DBCDE's RBBP risk management approach is suitable in scope, based on relevant information and appropriately aligned with responsibilities. Risks are also regularly monitored, updated and documented.

2.42 DBCDE obtained data and performance information to inform an assessment of program performance and used this data to report partially on the extent to which the RBBP has achieved its objectives in its 2010 and 2011 annual reports. In April 2012, DBCDE reported an assessment of RBBP performance against program objectives, following the completion of construction of the last RBBP route. This analysis is structured and detailed and although some of the underlying data is approximate, estimated or

anecdotal, the analysis highlights positive results against the program's objectives.

2.43 While recognising the department's structured approach in its April 2012 review of the RBBP, there was scope for DBCDE to have undertaken a more comprehensive assessment of the RBBP, particularly in relation to: the timeliness of determining the data required to assess the performance of the program against objectives; and the department's approach to gathering data to measure the stimulus impact of the RBBP.

Recommendation No.1

2.44 To enhance the transparency and accountability of new departmental programs, the ANAO recommends that the Department of Broadband, Communications and the Digital Economy:

- develop overarching implementation plans to guide program administration and to monitor progress and performance against program objectives; and
- identify performance information requirements and collect data from an early stage of program implementation to support the monitoring and reporting of program performance.

DBCDE response: *Agreed.*

2.45 The department considers that new programs may benefit from the preparation of an overarching implementation plan as noted in the first part of the ANAO's recommendation. Implementation planning does, however, need to take account of the risks, scale and complexity of each program and form the basis of an overall approach to project management. Caution needs to be taken as layer-upon-layer planning can encourage undue process, and although this is not intended under the recommendation, it may in some cases affect the genuine consideration of risk.

2.46 The department notes that for RBBP its approach to planning was effective in guiding the program's administration and an extensive reporting regime was established with the contractor.

3. Program Procurement Processes

This chapter examines DBCDE's processes to procure a contractor to build, operate and maintain competitive fibre-optic backhaul infrastructure and services under the RBBP.

Introduction

3.1 A key element of DBCDE's administration of the RBBP involved the department procuring a contractor to design and construct the backhaul infrastructure, and then to operate and maintain the network for at least five years. Agencies which are governed by the *Financial Management and Accountability Act 1997* (FMA Act), such as DBCDE, are required to comply with the Government's core procurement policy framework, which at the time of the RBBP procurement, was outlined in the Commonwealth Procurement Guidelines (CPGs).⁴² The four procurement principles underpinning the CPGs were: encouraging competition; value for money; efficient, effective and ethical use of resources; and accountability and transparency.

3.2 To assess DBCDE's procurement processes for the RBBP, the ANAO examined whether the department complied with the requirements of the CPGs, with a focus on:

- preparing to approach the market;
- approaching the market;
- assessing tenders (including finalising the agreement); and
- concluding the process.

3.3 The ANAO also examined the features of the funding agreement between the Commonwealth and the contractor.

Preparing to approach the market

3.4 As noted in Chapter 1, DBCDE sought stakeholder views in April and May 2009 on a range of matters, including the blackspot locations that should be prioritised, technical design matters, and operation and ownership issues.

⁴² The Commonwealth Procurement Guidelines 2008 were issued under the Financial Management and Accountability Regulations 1997. The CPGs were replaced by the Commonwealth Procurement Rules in July 2012.

The department invited submissions on a public consultation paper and held discussions with stakeholders to identify and determine the priority locations to be serviced by the RBBP. DBCDE assessed submissions against criteria, such as the extent to which the locations were served by competitive optical fibre links and the potential population or economic activity that could benefit from the infrastructure suggested.

3.5 The department provided a list of priority locations to the Minister, indicating that there was a rational basis for providing funding to each of the locations identified, and requesting that the Minister identify up to six locations. The Minister's office, in consultation with the department, selected the six priority locations for the rollout of the fibre-optic backhaul network.

Procuring and using advisers

3.6 DBCDE identified the need for commercial, technical and legal advice to support the department to undertake the tender and finalise an agreement with the successful tenderer. Three firms were sourced to meet the department's requirements through DBCDE's existing, competitively sourced panels of advisers and the department's Legal Section acted as the probity adviser for the procurement.

3.7 In undertaking the adviser procurement process, DBCDE fulfilled the requirements of the CPGs by:

- inviting advisers listed on the department's panels to quote for providing advice on the RBBP, allowing advisers to demonstrate their capacity and experience and to provide assurance that they did not have apparent or real conflicts of interest relating to the RBBP;
- outlining to prospective advisers the services required and the department's specific evaluation criteria for each adviser role; and
- subsequently preparing reports evaluating the quotes and providing feedback at the conclusion of the procurement process to the unsuccessful firms.

Use of advisers

3.8 DBCDE and its advisers prepared the request for tender (RFT), which was lodged on AusTender⁴³ on 1 July 2009. Subsequent activities involved the

⁴³ AusTender is the Government's tender website.

advisers assisting DBCDE to: develop the draft agreement which was provided to all tenderers to inform their tender preparations; prepare an evaluation plan and evaluate the tenders against the plan; shortlist tenders; and undertake final negotiations on the agreement. The advisers worked collaboratively in undertaking these tasks and included DBCDE in their deliberations.

3.9 DBCDE allowed the advisers to use their professional judgement in managing their work. However, in order to manage deadlines, the department maintained extensive contact and sought regular updates on the progress of tasks. The department paid invoices on confirmation that sufficient budget was held and that the required services had been delivered during the invoice period.⁴⁴ The engagements of the advisers were extended a number of times as the tender process progressed. DBCDE staff obtained the appropriate approvals from the relevant senior departmental officer for the ongoing advice and the revised funding required.

Procurement planning and risk management

3.10 The then Department of Finance and Administration's procurement guidance indicated that agencies undertaking procurements subject to the CPGs should prepare a procurement plan. Although DBCDE did not prepare a discrete, documented procurement plan, the department had documented a description of the procurement, conditions of participation, evaluation criteria and governance arrangements, before it approached the market. While these are suggested elements of a procurement plan, developing a procurement plan for future procurements would provide the department's senior executive with greater assurance that the planned work elements and processes support compliance with legislative, government policy and departmental procedural requirements.

3.11 DBCDE's procurement planning, and its processes concerning the procurement and use of advisers, indicated the way in which the department managed risks in preparing to approach the market. Although the department did not prepare a specific procurement risk management plan, DBCDE demonstrated that risks were considered and managed during the procurement activities, as required by the CPGs.

⁴⁴ DBCDE spent \$1 461 300 on advisers to assist the department with the RBBP procurement process. This involved: \$299 800 for advisers associated with preparing to approach the market and approaching the market; and \$1 161 500 for advisers associated with evaluating the tender and concluding the process.

Approaching the market

3.12 A successful approach to the market to procure a service is underpinned by a clear and comprehensive RFT. The RFT is intended to clearly state the agency's procurement requirements and to supply the same information to all potential providers as the basis for their tender preparation.

3.13 In evaluating DBCDE's processes to develop and publish the RFT on AusTender, the ANAO assessed whether:

- DBCDE complied with the procurement principles of the CPGs; and
- the features of the RFT were appropriate and facilitated the selection of a suitable firm to construct and operate the RBBP backhaul network, consistent with the Government's objectives.

Compliance with the CPGs when developing and lodging the RFT

3.14 DBCDE's public consultation process throughout April and May 2009 identified several projects offering partial options for infrastructure. After considering these projects, DBCDE determined that an open tender was the preferable approach in conducting the procurement. An open tender was not only consistent with the requirements of the CPGs, but could provide a better outcome for the Government by identifying options that potentially connected more homes and businesses in regional Australia than would be achieved under the particular projects identified.

3.15 The department prepared the RFT documentation and the draft funding agreement in consultation with the specialist advisers engaged to assist with the procurement. DBCDE complied with the requirements of the CPGs to conduct tenders openly and transparently and published relevant procurement documentation on AusTender for the information of all tenderers. The RFT was lodged on AusTender on 1 July 2009 and the period for lodging tenders closed on 5 August 2009. In accordance with the department's decision that it would prepare proposed schedules to the draft agreement and would discuss these with shortlisted tenderers at a later stage of the procurement process, DBCDE lodged the draft agreement on AusTender shortly after the RFT was released.⁴⁵

⁴⁵ The schedules outlined proposed specific operational requirements of the successful contractor, such as the contractor's detailed works and reporting requirements. DBCDE's application of this approach is examined later in this chapter.

3.16 The RFT included specific requirements such as: the Commonwealth's preferred ownership model; the evaluation criteria; procedures and times for responses; and the requirement that the contractor selected to build a route must also operate and maintain it for at least five years. DBCDE also provided tenderers with the option of tendering for one or more of the routes, creating opportunities for smaller organisations to tender, which further encouraged competition. Issuing an RFT to the open market encouraged competition between potential suppliers, while including specific requirements in the RFT helped to provide comparability between applications and assisted in the assessment process.

3.17 The RFT required each tenderer to detail a proposed contribution of non-program funds as part of their tender. The contribution, either financial or in-kind, was intended to make an offset against the overall cost of construction and to demonstrate the tenderer's commitment to the partnership model. DBCDE's request for a partnership contribution from the successful tenderer provided an incentive for the tenderer to undertake a quality construction and, therefore, contribute to the achievement of value for money from the procurement.

3.18 Other DBCDE processes that effectively supported compliance with the procurement principles of the CPGs included the:

- use of departmental resources and advisers in preparing the RFT and responding to potential tenderers' requests for clarification, supporting the efficient and effective use of resources;
- clearance of all responses to tenderers' requests for clarification by the probity adviser, and the placement on AusTender of responses with general relevance to potential tenderers, supporting fairness and transparency; and
- comprehensive departmental documentation on the formulation of the RFT, which demonstrated accountability and transparency.

Design features of the RFT

3.19 Although the audit did not assess the technical content of the RFT, the ANAO examined whether its terms would support the selection of a suitable contractor to successfully deliver and operate the RBBP infrastructure.

3.20 As well as containing relevant administrative content, such as a summary of the project and the conditions and timeframes for tendering, the

RFT also contained a range of design features intended to facilitate the selection of the most appropriate tenderer. These features included:

- setting clear evaluation criteria, which supported the preparation of comparable tenders addressing the Commonwealth's requirements; and
- requiring the party that built the infrastructure, which was to be owned by the Commonwealth, to maintain and operate it for at least five years following completion, at no cost to the Commonwealth, with the operator retaining revenues during this operations period. This provided an incentive for a quality construction and effective operation.

3.21 These, and other features of the RFT, appropriately balanced the need for the Commonwealth to establish clearly its requirements with the need for sufficient flexibility to encourage innovative responses from tenderers. The RFT's design features were reflected in the proposed agreement (examined later in this chapter).

Assessing tenders

3.22 Assessing tenders in accordance with procurement policy requirements and the procedures and criteria outlined in the RFT is fundamental to securing an outcome that represents value for money from a procurement. Negotiations with the preferred tenderer(s) and making related assessments and judgements determine the final contract and, therefore, the basis on which the service is provided.

3.23 In examining the tender assessment process, the ANAO considered whether DBCDE:

- complied with the CPGs when assessing the tenders, including arrangements for managing probity, security and conflicts of interest; and
- effectively managed the process of developing and finalising the agreement.

Compliance with the CPGs when assessing tenders

3.24 The tender assessment was undertaken by: program staff; DBCDE's Legal Section (acting as the probity adviser); legal, technical and commercial advisers; and a tender evaluation panel (the Evaluation Committee). The

Evaluation Committee comprised two senior departmental officers and an external member from the Australian Communications and Media Authority.

3.25 A Tender Evaluation Plan was developed by DBCDE and its advisers and was approved by the Evaluation Committee on 4 August 2009. The Tender Evaluation Plan detailed the roles of the Evaluation Committee, departmental staff and the advisers. The plan also set out tasks to be undertaken when assessing the tenders and the criteria for assessment. The plan reflected the processes and criteria specified in the RFT and the requirements of the CPGs.

3.26 The CPGs and associated guidance indicated that agencies may prepare a probity plan. Although DBCDE did not prepare a probity plan, the department addressed probity issues in the assessment process by referring to probity issues in the Tender Evaluation Plan and by involving the probity adviser in all aspects of the assessment process. The register established by DBCDE to track requests for clarification from potential tenderers and the processing of requests demonstrated the close involvement of the probity adviser in reviewing requests and DBCDE responses. The involvement of the probity adviser helped to promote fairness and the equitable assessment of tenders. There were no complaints lodged with the department regarding the assessment process.

3.27 DBCDE also required advisers and the external Evaluation Committee member to identify actual or potential conflicts of interest and to declare any conflicts of interest as part of the initial process of their selection. Participants in the Evaluation Committee meetings were required to notify the committee Chair of any potential conflicts of interest at the beginning of each meeting. There were no conflicts raised by committee members and advisers.

Managing tender documentation

3.28 A restricted access electronic file was established within the department's electronic record system to hold information for use by the Evaluation Committee and selected DBCDE staff. DBCDE also sought confirmation from advisers that they had suitable, segregated accommodation for staff working on the tender assessment and sought confirmation that both paper and electronic information could be held securely. The department also sought written confirmation from the advisers at the completion of the tender assessment phases that electronic and paper-based information that was no longer required had been securely destroyed. Restricting access to tender documentation increased the likelihood that the information prepared by

tenderers would remain confidential to the Evaluation Committee and would respect the commercial-in-confidence nature of the submissions.

Conducting the assessment

3.29 The Tender Evaluation Plan required:

- DBCDE to undertake the initial screening of tenders;
- the advisers to complete a detailed assessment of tenders against the evaluation criteria; and
- the Evaluation Committee to assess the tenders overall, including making assessments of value for money, preparing an evaluation report and providing the Minister, as the RBBP delegate, with the evaluation report and a recommendation to enter into negotiations with the preferred tenderer(s) or to terminate the RFT process.

3.30 DBCDE received 14 responses to the RFT, with six responses assessed by the department as non-compliant with the evaluation criteria. The remaining eight tenders were subject to a detailed assessment against the criteria, then a value for money comparison and an assessment as to which tender best met the objectives of the RBBP. DBCDE considered value for money in terms of the total package that tenderers offered. In assessing value for money, the proposed use of the assets during the operations phase of the RBBP was a key factor differentiating tenders. Assessment of the proposals regarding the use of the assets underpinned the identification of the tender that offered the best value for money, and was therefore the preferred tender.

3.31 The Evaluation Committee met nine times between 14 August 2009 and 16 October 2009 to discuss the compliant tenders, areas where further clarification was required from tenderers, and the advisers' assessments. DBCDE's minutes of the meetings detailed the committee's deliberations and the advice provided by DBCDE staff and the advisers. The probity adviser was involved in all aspects of the assessment process.

3.32 The department's and the Evaluation Committee's assessment of the eight tenders culminated in the department advising the Minister on 15 September 2009 of the Evaluation Committee's two recommended shortlisted tenderers, and seeking approval to commence negotiations with these tenderers. The Minister agreed with the recommendations on 16 September 2009.

3.33 DBCDE maintained comprehensive records of the assessment process that showed that the shortlisted tenderers were identified after a fair, thorough and consistent review process. These records also demonstrated the transparency of the assessment processes, the discussions with the shortlisted tenderers, and the considerations of the Evaluation Committee.

Managing the process of developing and finalising the agreement

3.34 After the two shortlisted tenderers were identified, DBCDE undertook a negotiation and assessment process to finalise the agreement. Negotiations with the shortlisted tenderers were based on the draft agreement. The department and its advisers prepared schedules to the proposed agreement, outlining specific operational requirements based on the tenders submitted by the two shortlisted tenderers. The schedules included matters such as the scope of works, milestones, reporting requirements, and exclusive use of optical fibres. DBCDE sent a proposed schedule to each shortlisted tenderer in advance of the negotiations and the department then used the schedule as a basis for the detailed negotiations and the development of the final agreement.

3.35 DBCDE met with the shortlisted tenderers individually to negotiate an arrangement of mutual, optimal benefit to both the Commonwealth and the tenderer based on the Commonwealth's key requirements as detailed in the RFT. The preparation of key points for the negotiations with the shortlisted tenderers supported a consistent and fair approach to the negotiations, which were conducted by senior departmental officers with support from the advisers.

3.36 The two tenders differed in several key respects. These were the technical design, construction and maintenance arrangements for the RBBP network including their proposed contributions of non-program funds as required in the RFT. When undertaking the final assessments, DBCDE considered these differences and the number of households and businesses that could potentially receive broadband as a result of the RBBP. These assessments resulted in the department identifying the tenderer it considered would provide the best value for money for the Commonwealth.

3.37 Once the department had completed its negotiations with the shortlisted tenderers, the Evaluation Committee issued its final assessment on 19 October 2009. This assessment identified Nextgen Networks Pty Ltd as the recommended tenderer and DBCDE finalised details of the agreement with that firm. The Minister was advised on 25 November 2009 that final

negotiations with the firm had been concluded, with the recommendations that, among other things, the Minister approve the spending of public money⁴⁶ and agree to the Commonwealth entering into the proposed agreement with Nextgen Networks Pty Ltd ('the contractor') under the RBBP. The Minister approved the agreement on 30 November 2009 and the agreement was signed by both parties on 4 December 2009.

3.38 The contractor informed the ANAO that it considered that the tender assessment and agreement finalisation processes were intense, though productive.

Internal review of the RBBP procurement processes

3.39 In 2009, DBCDE reviewed the RBBP procurement processes from the development of the tender to finalisation of the agreement. The review report, issued in December 2009, provided the department with assurance concerning procurement processes, identified achievements and highlighted administrative improvements that could be made for future procurement activity. The results of this review were subsequently shared across the department.

Concluding the procurement process

3.40 After awarding a tender, an agency is required by the CPGs to inform all tenderers of the decision and to provide feedback to unsuccessful tenderers. Also, as a contract is only legally binding after the completion of any conditions precedent, it is important to appropriately manage this process.⁴⁷

Concluding the procurement process—timely, equitable and appropriate information

3.41 At the conclusion of the tender assessment process, DBCDE notified tenderers of the outcome and provided consistent, structured feedback to the unsuccessful tenderers that accepted the department's offer of feedback on the strengths and weaknesses of their tenders. The department's notification, feedback and explanations to unsuccessful tenderers and associated recordkeeping processes were comprehensive, and met the CPG principles of

⁴⁶ Under Regulation 9 of the Financial Management and Accountability Regulations 1997.

⁴⁷ Conditions precedent are a set of requirements/conditions that must be met before a contract is deemed to be enforceable.

timeliness, transparency, consistency and accountability. The notice of the award of the tender was listed on AusTender on 18 December 2009.

3.42 In addition to completing the procurement, DBCDE also reassessed its adviser arrangements and the need for advisers in the subsequent phases of the RBBP activity. DBCDE determined that it required specialist technical assistance during the construction phase of the RBBP and undertook an RFT procurement process to source and select a technical construction adviser.

Managing the conditions precedent period

3.43 DBCDE's processes to conclude the RBBP procurement also involved the department managing the agreement's conditions precedent period. The agreement specified the conditions precedent period as 60 business days after the date of the agreement. The conditions precedent period provided a degree of certainty for both parties and allowed the contractor time to finalise detailed documentation, gather guarantees and prepare for the commencement of construction. This was primarily the contractor's responsibility, involving finalising project documentation, such as design documents and a project management plan containing the detailed program of works, and providing performance and financial guarantees.⁴⁸ The agreement became binding when the Commonwealth accepted the completion of these requirements.

3.44 DBCDE maintained regular contact with the contractor to manage the conditions precedent processes and to monitor progress. The department provided feedback to the contractor on draft documents and provided input into other documents to assure itself that the content met the needs of the Commonwealth. DBCDE concluded on 4 March 2010 that it was satisfied that the conditions precedent had been met and it advised the contractor of this accordingly.

Features of the agreement

3.45 As well as including appropriate administrative features, such as arrangements for the management of the agreement, dispute resolution and

⁴⁸ The performance guarantee was a guarantee from the parent company, guaranteeing the Commonwealth that the agreement would be fulfilled, and indemnifying the Commonwealth against damages and losses. The financial security was security from the contractor up to a maximum dollar amount payable to the Commonwealth to reimburse it for any 'unused' part of the Commonwealth's advance payment, if the agreement were terminated and the contractor had not completed the work funded by the Commonwealth's advance.

insurance and indemnities, the agreement with the contractor contained a number of design features that were important to the RBBP achieving its objectives and the Government's interests being protected. These features included:

- a fixed price for the completion of construction;
- payment for construction work being in arrears, on completion of milestones;
- once construction was completed, the successful tenderer being required to maintain and operate the network for at least five years at no cost to the Commonwealth;
- the agreement formally documenting the basis on which the parties agreed to use certain optical fibres as part of the infrastructure. This related to, among other things, the contractor's in-kind contributions towards the RBBP⁴⁹;
- the agreement specifying maximum wholesale prices at which the successful tenderer was allowed to on-sell broadband capacity;
- the contractor being required to offer its RBBP wholesale services on an open and equivalent basis to all its RBBP customers; and
- the Commonwealth retaining ownership of the RBBP assets, but the successful tenderer being entitled to retain revenues during its five-year operations period.

3.46 The design features incorporated into the agreement with the contractor facilitated the construction of a competitive backhaul network, provided commercial incentives for performance and enabled the Commonwealth to maintain oversight of the agreement, while giving the contractor flexibility to manage the day-to-day construction and subsequent operation activities.

⁴⁹ Schedule 13 of the agreement documents the basis on which the Commonwealth has rights to use a certain number of optical fibres in the contractor's or another party's established network to contribute to the RBBP infrastructure; and the contractor's rights to use a certain number of fibres of the RBBP infrastructure. These formal arrangements for the exclusive, secure right to use another's asset on terms and conditions are called 'indefeasible rights of use'.

Conclusion

3.47 Overall, DBCDE's procurement practices for the RBBP were appropriate and complied with the requirements of the CPGs and other procurement guidance. The department encouraged competition, secured value for money, used resources efficiently, effectively and ethically, and demonstrated accountability and transparency in its processes.

3.48 DBCDE followed appropriate processes in managing the different phases of the procurement. The department:

- met the requirements of the CPGs in preparing to approach the market, including in its procurement and use of advisers;
- complied with the CPGs in approaching the market by developing the RFT with the input of specialist advisers and lodging it on AusTender;
- applied and documented suitable evaluation processes in assessing tenders and finalising the agreement; and
- concluded the procurement process by notifying tenderers of the tender outcome, providing feedback to unsuccessful tenderers, and managing the conditions precedent.

3.49 Provisions in the RFT and the final agreement supported the selection of a suitable contractor to deliver and operate the RBBP infrastructure. Key features of the Commonwealth's agreement with the contractor included: a fixed price for the completion of construction; on completion of construction, the successful tenderer being required to maintain and operate the network for at least five years at no cost to the Commonwealth; and the agreement specifying maximum wholesale prices for the on-selling of broadband capacity.

3.50 Future procurement processes would be improved by DBCDE completing a procurement plan and a risk management plan for procurement processes. These plans would help to support structured and comprehensive consideration and documentation of the required procurement activities.

4. Management of the Funding Agreement with the Contractor

This chapter examines DBCDE's management of the agreement with the contractor for the construction and operation of infrastructure and services under the RBBP.

Introduction

4.1 The RBBP construction involved the technically complex design and installation of fibre-optic backhaul infrastructure, across geographically dispersed locations with highly varied terrain. The funding agreement with the contractor is the primary mechanism by which DBCDE is to secure the outputs and program results specified by the Government for the RBBP. Managing this agreement involves managing the rights and obligations of both parties to the agreement, and gaining assurance that the goods and services are delivered according to the terms specified.

The RBBP agreement

4.2 The agreement between the Commonwealth, represented by DBCDE, and the contractor became legally enforceable in March 2010 when the conditions precedent were met and will continue until 2017. The agreement requires the contractor, having designed and built the backhaul infrastructure, to manage, operate and maintain the RBBP assets (including providing wholesale transmission services to third parties) for a period of at least five years.⁵⁰

4.3 The agreement covered both the construction and the operations phases of the RBBP, with these phases requiring different activities by the contractor and its construction partner. Although the agreement relates to two different phases of activity, these phases overlapped because, as some routes were completed and commenced operating, the contractor continued the construction work on the remaining routes. Construction on the first route was completed in early March 2011, with the final route completed in late January 2012. Under the agreement, the operations phase commenced

⁵⁰ The operations phase of the agreement involves maintaining the assets (for example the fibre, ducts, towers and buildings), selling wholesale capacity to third parties, and operating the telecommunications backhaul network.

when the construction of individual routes was completed. Therefore, for most of 2011 DBCDE was required to ‘contract manage’ the contractor’s concurrent construction and operation activities under the agreement.⁵¹ DBCDE’s management of the agreement now focuses entirely on the oversight of the contractor’s activities in the operations phase.

4.4 Figure 4.1 illustrates subcontractors laying the RBBP fibre-optic cable with a cable plough and commencing works to reinstate the site as part of the RBBP construction phase.

Figure 4.1

Laying the fibre-optic cable and starting to reinstate the site



Source: Photo courtesy of DBCDE.

4.5 To assess DBCDE’s management of the agreement with the contractor for the construction and operation of the RBBP infrastructure, the ANAO reviewed the nature of the agreement and examined the:

- management of the relationship with the contractor;
- management of construction and operations risks;

⁵¹ Appendix 2 presents a chronology of activities for the RBBP between 2009 and early 2012, incorporating agreement management and the earlier activities associated with the RBBP procurement.

- engagement of the technical construction adviser;
- agreement reporting requirements;
- milestones and variations to the agreement;
- financial arrangements under the agreement; and
- management of complaints.

Managing the relationship with the contractor

4.6 Effective relationship management underpins the formal requirements of any agreement, and is particularly important for the RBBP agreement, which covers multiple, distinct activities spanning at least six years over two phases.

4.7 DBCDE and the contractor fostered an effective working relationship during the procurement and have established formal and informal mechanisms for managing the RBBP agreement. In terms of formal mechanisms, the agreement established: the objectives of the RBBP and the roles and responsibilities of the parties; payment arrangements; the works to be constructed; a consultation process; dispute resolution procedures; and the documentation and reports required. These provisions set out a clear basis for the conduct of both parties to the agreement. A Program Committee was also established 'to openly discuss, monitor and evaluate the contractor's performance under the agreement and to consider each party's compliance with the agreement'.⁵² The committee was the primary consultation and monitoring mechanism guiding the activities of each party under the agreement.

4.8 The first Program Committee meeting was held in December 2009, with subsequent meetings held approximately monthly during the construction phase, either in Canberra (where DBCDE's office was located) or Melbourne (where the contractor's central office was located). Regular agenda items included a monthly update on the construction of the routes and an item on agreement management covering milestone achievement and reporting. Other ad hoc issues were raised at meetings, as necessary.

⁵² The purpose, membership and conduct of the Program Committee were specified in section 16 of the agreement. The committee comprised two representatives from the Commonwealth and two representatives from the contractor. The committee was required to meet at least quarterly and at other times as required by the Commonwealth.

4.9 During 2011, the Program Committee discussed issues connected to both operations and construction at its regular meetings. The completion of the final route in late January 2012 meant that the committee's meetings from that time focused exclusively on managing the operations phase.

4.10 DBCDE and the contractor also maintained effective informal communication arrangements during the construction and operations phases of the agreement, with key staff participating in face-to-face meetings and having frequent telephone and email contact. The informal contact provided timely information on the progress of construction and related issues and enabled the resolution of emerging issues⁵³ and the very few complaints from the public regarding construction work, without the need to escalate the matters (to the Program Committee or other parties). DBCDE's management of complaints is discussed later in this chapter.

4.11 DBCDE and the contractor maintained essentially the same key personnel for the operations phase as the construction phase, which facilitated the maintenance of established relationships. The nature and frequency of DBCDE's informal contact with the contractor indicated that the department established, and has maintained, a sound working relationship and, to date, neither party has invoked the agreement's dispute resolution provision.⁵⁴

Managing construction and operations risks

4.12 Under the agreement, the contractor was responsible for managing all risks concerned with construction and operation of the network. DBCDE's responsibilities during the construction and operations phases involved the department overseeing the contractor's risk management processes and considering risks relevant to managing the agreement across the two phases.

4.13 The contractor identified and assessed the risks associated with the RBBP construction and operation and completed project risk management

⁵³ Difficulties discussed by DBCDE and the contractor over the two years of construction included: delays due to flooding; an incident when a Telstra cable was accidentally cut; and the possible effects on the RBBP construction of a serious workplace accident in the Northern Territory involving a separate construction company.

⁵⁴ Section 21 of the agreement.

planning, in accordance with the agreement.⁵⁵ The contractor managed its risks via an electronic risk management system—Active Risk Manager—and provided DBCDE with access to the system, as required under the agreement, to assist the department to monitor the project’s performance. The department periodically reviewed the contractor’s Active Risk Manager system using the secure link provided.

4.14 Although the contractor was responsible for managing the construction and operations risks, DBCDE was informed of issues, as necessary, as part of regular communication and project management processes, including regular meetings of the Program Committee. For example, DBCDE was informed of construction risks and issues arising from construction delays due to weather conditions and the status of access to native title lands. It was also informed of sales issues in the early stages of the operations phase, such as the contractor’s service offerings and sales.

4.15 In addition, DBCDE also considered risks related to the construction phase of the agreement via the department’s operational-level risk monitoring.⁵⁶ These processes involved DBCDE reviewing the relevance of the risks on its RBBP risk register to the construction phase and considering whether the construction risks identified by the contractor were relevant to the department’s responsibilities. Project management meetings were also held to discuss identified the RBBP risks and associated issues.

4.16 DBCDE’s management of risks during the construction phase appropriately reflected the responsibilities of both parties under the agreement, with the department providing appropriate oversight of the contractor’s risk management processes. DBCDE’s risk monitoring processes, risk logs and risk register also considered risks relating to the operations phase, including program-level risks such as the contractor ceasing operation or wholesale transmission prices not encouraging entry of other participants at the retail level.

⁵⁵ Risk management was addressed under Schedule 3 of the agreement. Risks to the construction included management of sub-contractors, procurement of infrastructure and fulfilment of occupational health and safety requirements. Risks to the operations included maintenance, performance of infrastructure, and the viability of operations if downward pressure on wholesale backhaul prices due to competition eroded the viability of the contractor’s operations.

⁵⁶ In addition to risks at the level of the RBBP construction ‘project’, DBCDE also sought to manage risks at the program level. DBCDE’s risk management approaches and processes for managing program risks are reviewed in Chapter 2.

Technical construction advice

4.17 As previously noted, at the completion of the RBBP procurement, DBCDE reviewed its need for technical advisers. The department concluded that it was necessary and cost-effective to engage an expert adviser with technical skills to monitor the contractor's construction and operations activities. In accordance with the principles of the CPGs, DBCDE conducted an appropriate procurement process and the successful tenderer was engaged on 19 March 2010 as the technical construction adviser. A formal agreement outlined the nature of the adviser's tasks, and the terms and conditions of the engagement.⁵⁷

4.18 The RBBP agreement allowed DBCDE to conduct independent testing to verify the completion of a milestone, prior to accepting the work undertaken and commencing the payment process.⁵⁸ DBCDE used the technical construction adviser to obtain the required independent validation that: the claimed construction had occurred and had met the industry technical standards prior to payment; and that the contractor had complied with the technical terms of the agreement.

4.19 The technical construction adviser prepared suitable reports and advice for DBCDE, detailing the tests and methodology underpinning its recommendation or advice. The adviser also undertook the validation of monthly invoices submitted by the contractor and provided additional advice to DBCDE as required. For example, advice on the acceptability of the contractor's request in 2010 for a formal variation to the agreement following delays related to flooding in South West Gippsland and Queensland.⁵⁹

⁵⁷ The technical construction adviser's role was to: review reports and provide advice on the ongoing agreement management, compliance and assurance activities; and provide advice on technical aspects of construction, operation and maintenance of the backhaul infrastructure and services. The technical construction adviser's agreement with DBCDE was extended from mid-2011 to the end of 2011 in the expectation of aligning the technical adviser's term of engagement with the anticipated completion of construction on the last route. The last route was completed in late January 2012.

⁵⁸ Section 11.2 of the agreement.

⁵⁹ Each month, the contractor submitted to DBCDE: its invoice; the relevant testing report showing the technical suitability and performance of the construction; sub-contractor and equipment invoices; and various other documents to support its claim that the specified project milestones had been achieved. The technical construction adviser reviewed the claim against the specific technical requirements via audits of the supporting material (desktop audits) or field audits to provide an opinion as to whether the contractor had met the milestones stated. The processes related to the variation of the agreement after the flooding are discussed later in this chapter.

4.20 The department has comprehensive records relating to the management of its adviser's activities, including a formal agreement specifying functions, a log documenting tasks allocated to the adviser and appropriate records relating to the tasks completed.

Use of the technical adviser in the operations phase

4.21 Although it is the contractor's responsibility under the agreement to maintain, manage and operate assets, provide services in the operations phase and to report this to DBCDE, the agreement provides for DBCDE to have an independent party to test the services for compliance with the agreement.⁶⁰ In addition, the technical construction adviser provided advice to DBCDE in July and September 2011 to assist the department in developing a compliance strategy and audit plan for the operations period.

4.22 The compliance strategy involves a mix of compliance techniques such as desktop audits, reviews of operations and field audit checks in specific circumstances. The purpose of the compliance strategy and the audit plan is to provide DBCDE with reasonable assurance that the contractor adequately maintains the Commonwealth assets funded under the RBBP and provides services in accordance with the agreement. The technical construction adviser is to assist with compliance-related activities in the early stages of the operations phase and to transfer these skills to the department's technology advisory unit during 2012, with the unit assuming responsibility for compliance checks from late 2012.

Agreement reporting requirements

4.23 The agreement specifies the records and reporting requirements of the contractor, as well as DBCDE's right to review and audit such reports and to use them to assess the contractor's performance and to evaluate the RBBP.⁶¹

4.24 The contractor maintained records of construction activities during the construction of the backhaul network. These records also reflected the operational and sales activities required to undertake the RBBP operations

⁶⁰ Section 13.4 of the agreement.

⁶¹ Section 17 and schedule 10 of the agreement.

activities.⁶² The department's records demonstrated that the contractor was able to meet requests for ad hoc information and data on the RBBP construction and operations matters, as well as supply the regular reports required.

4.25 Departmental records also demonstrated general management and oversight of the RBBP and its extensive monitoring of the contractor during the construction phase, including:

- the activities, discussions and decisions involving the contractor and its construction partner at meetings of the Program Committee;
- reviews of the contractor's regular project and progress reports;
- field visits to construction sites by the technical construction adviser and departmental officers; and
- reviews of information for media announcements and other purposes.

4.26 DBCDE's records of activity during the construction phase were broadly fit-for-purpose, with the department improving its records and management practices where specific shortcomings were identified.⁶³

Reports required under the agreement

4.27 The agreement specified that the contractor was to provide reports to DBCDE outlining the construction activities undertaken and progress achieved.⁶⁴ These included the:

- Quarterly Project Report;
- Monthly Milestones Acceptance Report;
- Monthly Progress Claim Spreadsheet;
- Monthly Asset Report;

⁶² The agreement permitted access to: the RBBP records and construction sites; locations where the RBBP assets were sited; and the company's risk management software containing the RBBP risk records. During the construction phase, these records included: network design and construction plans; records of progress against milestones; records and accounts relating to the receipt and expenditure of the RBBP funds; and the inventory of assets.

⁶³ The internal audit of 2010 endorsed DBCDE's approach to managing the RBBP agreement, but recommended the department improve specific control and documentation relating to the contractor's insurance policies, having found that the collection of current documentation from the contractor was not comprehensively monitored.

⁶⁴ Sections 17.2 and 17.3 and schedule 10 of the agreement.

- Technical Construction Adviser's Review Report; and
- Financial Reports.

4.28 The contractor provided the required reports in accordance with its contractual obligations and DBCDE monitored the receipt and quality of the reports against the agreement's requirements.⁶⁵ The department used these reports as the principal tool to: monitor the progress of construction; identify and resolve issues of concern; inform the Minister on the project's progress; and as the basis for paying the contractor for the work completed.

4.29 The agreement also required the contractor to prepare reports to demonstrate its performance in the operations phase of the agreement.⁶⁶ These included the:

- Quarterly Services Report;
- Monthly Asset Report; and
- Financial Statements.

4.30 In the period to December 2011, which represented the main focus of the audit fieldwork, DBCDE reviewed the two quarterly services reports provided by the contractor relating to activities in the operations phase.⁶⁷ Other than reviewing the two reports, the department did not apply other measures to assure itself of the validity of the reports and the contractor's compliance with the agreement in undertaking its RBBP operations activities. As discussed previously, the contractor undertook RBBP operations activities under the agreement for most of 2011 as routes were completed.⁶⁸

4.31 The finalisation in February 2012 of DBCDE's RBBP compliance strategy which covers the operations phase, better places the department to gain an assurance of the validity of the reports and the contractor's compliance

⁶⁵ Section 17.5 of the agreement provided, among other things, that DBCDE would review these reports to monitor the achievement of the objectives of the RBBP, including the contractor's performance under the agreement.

⁶⁶ Section 17 and schedule 10 of the agreement.

⁶⁷ The first services report, relating to the June quarter 2011, was provided to the Program Committee meeting in July 2011. In September 2011 DBCDE asked the contractor for some additional information and clarification, such as the meanings of technical terms and clarification of pricing and fault resolution data. DBCDE received the second services report, relating to the September quarter 2011, on 4 November 2011.

⁶⁸ The Geraldton and Victor Harbor routes were completed in March 2011; the South West Gippsland route was completed in April 2011 and the Broken Hill route was completed in November 2011.

with the agreement in undertaking its RBBP operations activities. The assurance measures envisaged include desktop reviews of records and reports, field inspections at the RBBP sites, and inspections of the contractor's operations centre to assess aspects of the contractor's operations systems. DBCDE advised that its field-based compliance program commenced in May 2012 and its broader, desktop compliance work commenced prior to that time.

Milestones and variations to the agreement

4.32 Payments under the RBBP agreement were retrospective and were made on the condition that the contractor achieved established milestones (payment milestones).⁶⁹ DBCDE used the review of the contractor's performance against milestones, as evidenced in submitted reports, as the basis for seeking approval from the financial delegate to make payments to the contractor. DBCDE's management of the finances under the agreement are examined later in this chapter.

4.33 The contractor informed DBCDE of progress against milestones in monthly project progress reports and monthly milestone acceptance reports. Progress against milestones was also reported in quarterly project reports, in which the contractor reported on: progress on the preparation of detailed route plans; activity related to construction; actions to address the delays in any missed milestones; and forecast milestones to be met in the following quarter.

4.34 DBCDE reviewed the contractor's reports against the department's records of construction activity and had the technical aspects of the contractor's reports and claims for payment validated by the technical construction adviser. Progress against milestones was also addressed during the Program Committee meetings to enable both parties to discuss issues.

⁶⁹ Milestones and variations to the agreement applied in the construction phase of the agreement; they do not apply in the operations phase. Sections 8.3 and 8.4 and schedule 4 of the agreement related to milestones, payment arrangements associated with milestones, and penalties for non-achievement of milestones. Payment milestones, set out in the agreement's Milestone Schedule, were milestones for which the satisfactory completion of work could result in payment. The agreement designated some milestones as 'stop payment milestones'. Identified in the Milestone Schedule, the stop payment milestones were key milestones, in that failure to achieve those milestones could result in the Commonwealth withholding all payment on those RBBP routes until the milestones were achieved.

Variations to the agreement

4.35 The agreement provided for variations to the agreed RBBP works and project documentation and outlined the procedures to be followed regarding requests for material variations and non-material variations.⁷⁰ The ability to vary the agreement provided DBCDE and the contractor with the flexibility to address unforeseen events. During the construction of the RBBP, the contractor requested 15 variations to the agreement (comprising seven material and eight non-material variations).⁷¹

4.36 The following case study (Figure 4.2) illustrates DBCDE's management of the variations approval process. The contractor experienced significant delays in South West Gippsland and on the Darwin route in Queensland. A major factor was the extensive flooding in these areas in the latter half of 2010.

⁷⁰ Sections 8.6–8.10 of the agreement. A material variation was one that changed the substance of the project by changing, for example, the agreed works. A non-material variation was one that did not materially affect the substance of the RBBP project, that is, did not affect the contractor's ability to perform its obligations under the agreement. One of the RBBP non-material variations was a minor route variation to avoid an area of persistent water logging.

⁷¹ The requests for material variations included one requested by both parties, one that was withdrawn by the contractor and another (an extension of time) that was superseded by a further request. All requests, barring those that were withdrawn or superseded, were granted.

Figure 4.2

Application of the variations clause in the RBBP agreement—South West Gippsland

Case Study

Construction in South West Gippsland

In mid-2010, the area of South West Gippsland in Victoria experienced abnormally high levels of rainfall, resulting in the contractor being unable to achieve the construction milestones along this route. The contractor notified DBCDE that it was considering requesting a variation to the agreement. DBCDE sought legal and technical advice as to the validity of the request and implications for the project. DBCDE maintained regular dialogue with the contractor regarding the delays and the contractor informed the department of its activities to reduce the consequences of the flooding for its construction work. These activities included the redeployment of construction teams in flooded areas to other RBBP construction work, where possible.

On assessing the variation request, the department's advisers considered that the unavoidable delays were weather-related, but that the delays would mean a change in the project's agreed milestones and therefore the requested variation constituted a material variation to the agreement.

The contractor and DBCDE negotiated revised milestones and stop payment milestones. DBCDE prepared a deed of variation reflecting the agreed amendments. Following clearance by the department's legal adviser, the deed was signed by the contractor and DBCDE on 18 November 2010.

While the formal positions with respect to the variation and associated agreement management matters were being clarified, DBCDE continued to pay the contractor for the construction work undertaken, but reserved the department's right to stop payments should future milestones be missed.

Source: DBCDE information.

4.37 The contractor and DBCDE followed the required request and approval procedures in respect of both material and non-material variations (including making the request and commencing the required processes before the milestones were due). The department also retained appropriate documentation regarding the variation approval process. In addition, DBCDE maintained regular contact with the contractor while the variations were being considered and also sought legal and technical advice, where necessary, to: confirm that the requests were within the scope of the variation sought; assess the merits of the request; and confirm the Commonwealth's position.

Financial arrangements under the agreement

4.38 The financial management arrangements established for the construction phase of the RBBP involved DBCDE paying the contractor by instalments up to the fixed price of \$249.67 million, following the completion of agreed milestones and verification by the technical construction adviser of

the satisfactory completion of work.⁷² The financial management arrangements during the construction phase involved:

- DBCDE paying the contractor an advance (a mobilisation payment to assist with necessary construction set-up tasks and costs);
- the contractor's progressive invoices for work being offset against the advance;
- with the advance exhausted, DBCDE paying the contractor in arrears for work undertaken, after having satisfied necessary technical and procedural requirements; and
- payments for the RBBP being sourced ultimately from the Building Australia Fund.⁷³

4.39 DBCDE received a monthly statement of intended claim from the contractor for works completed during the month, along with supporting documentation in the form of copies of invoices from sub-contractors and suppliers and the required monthly reports informing the department as to which milestones had been achieved. The statement of intended claim detailed the sums claimed for each milestone on each route.

4.40 As discussed earlier, the technical construction adviser independently validated the contractor's technical documentation, the compliance of the construction activity with the agreement and industry standards, and the achievement of milestones. The technical construction adviser's reviews and related reports, in turn, supported DBCDE's payment processes, which involved the preparation of a minute to the financial delegate, requesting approval of the amount specified. The department then paid the invoice in accordance with the agreement's terms, with payments made using funds from the Building Australia Fund Communications Portfolio Special Account. DBCDE documentation demonstrated that financial management processes were applied appropriately and in a timely way.

⁷² Section 11 of the agreement. Financial management arrangements are only relevant to the construction phase of the agreement. The agreement does not require the Commonwealth to pay the contractor during the operations phase. Expenditure on the completed the RBBP backhaul network matched the fixed price specified in the agreement.

⁷³ The Building Australia Fund was set up by the Government to fund critical infrastructure. Funding for the RBBP was provided from the Building Australia Fund Communications Portfolio Special Account and, in turn, the Building Australia Fund.

4.41 The ANAO's audit of DBCDE's financial statements 2010–11 provided additional assurance regarding the financial administration of the RBBP. The program was a focus area of the audit, with the audit indicating that invoice payment transactions were correctly accounted for and that infrastructure assets completed or under construction were not materially misstated in the financial statements. Similarly, the ANAO's financial audit testing of the Special Accounts in DBCDE in 2010–11 included the Building Australia Fund Communications Portfolio Special Account from which the RBBP payments were sourced. The audit found that payments were made in accordance with the requirements established for Special Accounts.

Managing complaints

4.42 In managing the RBBP agreement, DBCDE's role was to oversee the construction and operations phases, including managing any complaints or issues.

4.43 The agreement did not contain a specific provision relating to complaints management. However, provisions concerning the required recording and reporting of the works (for the construction period) and aspects of the services (for the operations period), and provisions regarding other aspects of dispute resolution were relevant to complaints and issues management.⁷⁴

4.44 Considering the nature, scale and complexity of the RBBP, there were very few complaints, queries or concerns raised with DBCDE during the construction phase. The contractor's approach to construction, such as seeking and agreeing terms for access from land owners and dealing with community concerns, its resolution of issues, and arrangements for notifying DBCDE promptly of construction incidents meant that DBCDE was alerted promptly to any potential matters that might cause concern and lead to a complaint. DBCDE was notified promptly by the contractor or the originator of the few complaints, queries or concerns from external parties. These matters related to:

⁷⁴ Sections 17.1 and 17.2 of the agreement required the contractor to keep records of the conduct of works and the provision of services, including material issues and incidents and to provide reports as specified, including: material issues in relation to the works; statistics and details of disputes with third parties to whom the contractor had sold wholesale capacity; major faults or incidents and operational environmental performance. The agreement's section 21.1 specified procedures to apply to resolve disputes between the contractor and DBCDE while section 13.5 specified dispute resolution procedures for disputes between the contractor and parties to whom it had sold wholesale capacity (that is, disputes over third party services).

- alleged damage to sensitive habitat designated by the South Australian State Government and several complaints about property damage from cable installation;
- questions from the media or the public concerning the RBBP in broad terms and its likely effect on the development of regions, or queries regarding consultations with councils or land owners; and
- some matters of specific route design or infrastructure.

4.45 The department was actively involved in the resolution and management of each matter. For example, departmental investigations found that the RBBP construction work was not in the designated, sensitive habitat area and that the damage from cable installation related to a different construction project that was not connected with the RBBP. DBCDE effectively resolved these concerns relating to route design and infrastructure.

4.46 Documentation relating to complaints, queries and concerns was not retained centrally to support the management of the matter and to track resolution. In light of the relatively few complaints, an elaborate complaints management framework setting out detailed arrangements to document and handle complaints and issues was not warranted. However, the ANAO suggests that DBCDE consider, for future projects, having fit-for-purpose arrangements to enable the various types of questions or feedback to be recorded in an accessible location.

4.47 Stakeholders consulted by the ANAO raised few concerns or complaints regarding the RBBP, although two highlighted perceived shortcomings in aspects of DBCDE's early community consultation activities prior to the construction activity (discussed in Chapter 2.) There were no reported complaints or concerns regarding the RBBP or DBCDE's administration of the program during the operations phase.

Conclusion

4.48 DBCDE followed appropriate processes in managing the construction phase and the early elements of the operations phase of the agreement. These included: effective management of the relationship between the parties; appropriate engagement and use of a technical construction adviser to provide assurance that the contractor had complied with the technical requirements of the agreement during the construction phase, complementing DBCDE's other compliance arrangements; and suitable financial and project milestone

monitoring arrangements. The department also implemented a comprehensive reporting regime to monitor the contractor's progress in the construction and operations phases of the program.

4.49 In general, DBCDE's arrangements for managing the agreement in the early stages of the operations phase are broadly appropriate. However, DBCDE's review of the initial, two quarterly service reports received from the contractor in 2011 relating to activities in the operations phase provided only limited assurance regarding the contractor's compliance with the agreement. While the department used its technical adviser extensively during the construction phase, DBCDE did not adopt independent testing of the activities undertaken during the operations phase, although the contractor was undertaking operations activities on three completed routes. The completion in February 2012 of a compliance strategy for the operations phase and the implementation of proposed compliance activities in mid-2012, will better position the department to monitor compliance with the requirements of the agreement for the operations phase.

4.50 DBCDE implemented appropriate processes to effectively manage complaints, queries and concerns. Considering the nature, scale and complexity of the RBBP, there were very few matters raised during the construction phase and no reported complaints or concerns regarding the RBBP or the department's administration during the operations phase.



Ian McPhee
Auditor-General

Canberra ACT
30 August 2012

Appendices

Appendix 1: Agency response to the proposed report



Australian Government
Department of Broadband, Communications
and the Digital Economy

Peter Harris

Secretary

Ms Barbara Cass
Group Executive Director *BCU*
Performance Audit Services Group *1/8/2012*
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Ms Cass

Performance audit of the administration of the Regional Backbone Blackspots Program

I refer to your letter of 12 July 2012 providing the proposed final performance audit report for the *Administration of the Regional Backbone Blackspots Program* and seeking agency comments by 9 August 2012.

The Department of Broadband, Communications and the Digital Economy (the department) welcomes the ANAO's performance audit. I note that the ANAO has made one recommendation for future programs regarding the development of an overarching implementation plan, and the collection of data to support performance monitoring for future programs. Our formal response to the report, its recommendation, and a number of suggested editorial changes are attached.

I am pleased to note the report's conclusion that the department developed and implemented appropriate and effective procurement arrangements, established a well-designed agreement with the contractor covering the construction and operations of the network, and put in place sound systems and processes to manage the agreement. The audit report also notes the RBBP's role in encouraging retail service providers to offer new and improved services to end users by improving the supply of competitive backbone infrastructure in priority regional locations.

I would like to express my appreciation for the professional and collaborative approach the ANAO has taken in conducting this audit. I would appreciate being advised in advance of the tabling date for the report.

38 Sydney Avenue, Forrest, Canberra ACT 2603 Australia • telephone 02 6271 1872 • facsimile 02 6271 1077
website <http://www.dbcde.gov.au>

Should you need further clarification or information as you are finalising the report for tabling in Parliament, please contact Mr Danny McCarthy, Assistant Secretary, Shareholder and Technical Advice Branch on (02) 6171 1455.

Yours sincerely


Peter Harris
6 August 2012

Formal Response to the Report

The Department of Broadband, Communications, and the Digital Economy (department) agrees with the Australian National Audit Office's (ANAO) observation that the department established effective arrangements to administer the Regional Backbone Blackspots Program (RBBP) through the construction phase and the ongoing operations phase.

The department also agrees with the ANAO's recommendation that new programs could benefit from the preparation of a single overarching implementation plan, and ensuring they have access to sufficient data for measuring progress and performance. In the case of the RBBP, the department maintained several linked management plans which were effective in guiding the RBBP's administration.

Extensive planning was conducted across each stage of the RBBP and recorded in a set of project plans, registers and other project management documents, each serving a specific purpose. Relevant plans and documents were hyperlinked as appropriate to provide a cohesive approach to program administration across distinct work streams. For example, the project management plan stated the program objectives, contained clear links to the department's risk management plan, outlined the specific approach to risk management, contained links to the RBBP risk register and also contained links to the program's compliance strategy, which in turn referenced key risks to achieving the program's objectives.

In negotiating the terms of the RBBP funding agreement, the department ensured that it would have access to an extensive schedule of reports, which it subsequently used to provide information to key stakeholders, and ultimately to review the program's performance.

Summary of Response

The department notes that the ANAO has found that the department established effective arrangements to administer the Regional Backbone Blackspots Program (RBBP) through the construction phase and the ongoing operations phase.

The department agrees with the Australian National Audit Office's (ANAO) recommendation that to ensure transparency and accountability, new programs may benefit from the preparation of a single overarching implementation plan, and having access to sufficient data for measuring progress and performance. In the case of the RBBP, there were a set of linked project plans and an extensive schedule of reports.

Summary Response to Recommendation

1. *'To enhance transparency and accountability of new departmental programs, the ANAO recommends that the Department of Broadband, Communications and the Digital Economy:*

'Develop overarching implementation plans to guide program administration and to monitor progress and performance against program objectives; and

'Identify performance information requirements and collect data from an early stage of program implementation to support the monitoring and reporting of program performance.'

- **Agree** – the department considers that new programs may benefit from the preparation of an overarching implementation plan as noted in the first part of the ANAO's recommendation. Implementation planning does, however, need to take account of the risks, scale and complexity of each program and form the basis of an overall approach to project management. Caution needs to be taken as layer-upon-layer planning can encourage undue process, and although this is not intended under the recommendation, it may in some cases affect the genuine consideration of risk.

The department notes that for RBBP its approach to planning was effective in guiding the program's administration and an extensive reporting regime was established with the contractor.

Appendix 2: The RBBP procurement and agreement management chronology

Event	Date
Announcement of NBN initiative, including the RBBP	7 April 2009
Request for expression of interest for legal adviser issued	17 April 2009
Release of stakeholder public consultation paper	23 April 2009
Response to request for expression of interest for legal advice	24 April 2009
Request for quotation sent to commercial and technical design advisers on panels	6 May 2009
Closing date for request for quotation for commercial and technical design advisers	11 May 2009
Closure of stakeholder public consultation process	12 May 2009
Approval of RFT by Minister	26 June 2009
Issue of RFT	1 July 2009
Approval of agreement outline by Minister	7 July 2009
Signature of RFT Evaluation Plan by Panel	4 August 2009
Close of RFT	5 August 2009
Finalisation of Evaluation Report by Panel	19 October 2009
Advice to successful tenderer—Nextgen Networks Pty Ltd	2 December 2009
Advice to unsuccessful tenderers	2 December 2009
Execution of agreement with Nextgen Networks Pty Ltd (the contractor) and public announcement	4 December 2009
Notice of awarding tender to the contractor posted on AusTender	18 December 2009
Commencement of the RBBP activities by the contractor	late 2009
Issue of RFT for technical construction adviser	4 January 2010
Satisfaction of agreement's conditions precedent	4 March 2010
Execution of agreement with the technical construction adviser	19 March 2010
Commencement of construction Darwin route	17 February 2010
Commencement of construction Broken Hill route	17 May 2010
Commencement of construction Geraldton route	21 May 2010
Commencement of construction SW Gippsland route	1 June 2010
Commencement of construction Victor Harbor route	8 June 2010
Completion of Geraldton route	3 March 2011
Completion of Victor Harbor route	3 March 2011
Completion of South West Gippsland route	8 April 2011

Event	Date
Completion of Broken Hill route	21 November 2011
Completion of the Darwin route	27 January 2012

Source: DBCDE information.

Key:

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