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# SOUTH WYE TRANSPORT PACKAGE PROCUREMENT STRATEGY REPORT

*Herefordshire Council*

3512983BP-HHR/MPS/01



# **SWTP PROCUREMENT STRATEGY REPORT**

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## 1. INTRODUCTION

1.1.1 WSP have been commissioned by Balfour Beatty Living Places (BBLP) on behalf of Herefordshire Council (HC) to produce a Procurement Strategy Report reviewing potential procurement routes for the South Wye Transport Package (SWTP) which comprises of the Southern Link Road (SLR) together with a complimentary package of Active Traffic Measures (ATMs). This report will focus mainly on the Southern Link Road (SLR) element and will recommend the most appropriate procurement solution(s), having considered time, cost and quality implications of the procurement options available. A review of potential Contract options will also be carried out.

1.1.2 The recommendations made in this report are the optimum solutions available in order to allow HC to meet the following key objectives for the scheme.

1.1.3 The aim of the SWTP is to promote the Council's aspirations for Hereford and the wider region whilst tackling the specific problems identified within the South Wye area. Specific objectives have been identified for the SWTP study to provide key aims against which the different elements can be assessed. These are:

- Economic:
  - Reduce congestion and delay
  - Enable access, particularly to developments such as the HEZ
- Environmental:
  - Reduce the growth in emissions such as CO<sub>2</sub>, NO<sub>x</sub> and PM<sub>10</sub>s
  - Reduce traffic noise
- Health:
  - Encourage physical activity
  - Reduce accidents

## 2 DESCRIPTION OF SCHEME

2.1.1 The SWTP consists of the following key elements:

- A new Link Road linking the A465 with the A49 including the Clehonger Link to the B4349. This Road is known as the Southern Link Road (SLR).
- A package of Active Travel Measures, subject to public consultation, which may comprise of:
  - 20 mph residential areas
  - Belmont Road bus priority measures
  - Belmont Road walking and cycling improvements
  - Belmont Road weight restriction
  - Better walking and cycling routes to Hereford Enterprise Zone
  - Holme Lacy Road – further walking and cycling improvements
  - Walnut Tree Avenue / Hunderton Road traffic reduction

2.1.2 The SLR will feature a single lane carriageway of trunk road standard, approximately two miles long. The road will run east to west between the HEZ access Rotherwas Roundabout (where the A49 meets the B4399 Rotherwas Access Road) and the A465 (between the A465 junctions with the B4349 Clehonger Road). The route will predominantly go through open countryside with the following exceptions/crossings:

- Grafton Wood
- Grafton Lane
- Withy Brook
- Railway line
- Haywood Lane

2.1.4 The SLR scheme includes the construction of a composite steel/concrete overbridge to carry the road over the Hereford to Cardiff main line railway.

### 3. ISSUES AND OBJECTIVE

- 3.1.1 The approved budget for the SWTP is £35m. £27m growth funding has been secured for the project with the remainder funded through local contributions.
- 3.1.2 The latest (September 2017) high level delivery programme shows the SLR commencing on site in mid 2019 which, based on an 18 month contract, would lead to scheme completion late 2020.
- 3.1.3 HC's procurement strategy reflects the need for cost certainty, budgetary pressures and delivery in accordance with the latest programme.
- 3.1.4 A procurement route has to be adopted which will provide a completed scheme within the required timescales and within the secured funding limits.
- 3.1.5 The chosen procurement route will have to deliver the scheme in line with HC's commissioning and commercial strategy objectives of:
- Value for money and efficiency
  - Drive value for money by effective planning and robust contract monitoring and management
  - Promote responsible and sustainable procurement
- 3.1.6 The chosen procurement route will also have to align with DfT WebTAG requirements which include:
- Provision of a robust contracting and procurement strategy
  - Risk transfer supported by incentives
  - A developed market for proposed procurement approach
  - Mechanism to incentivise performance, efficiency and innovation
- 3.1.7 There are a wide range of procurement options and Forms of Contract that could be utilised to deliver the SWTP Scheme. The following section of the report focuses on potential procurement routes that are considered to be a viable means of delivering an infrastructure scheme of this value and complexity which HC either already have access to or, can be adopted at a realistic cost.



#### 4. PROCUREMENT OPTION - PUBLIC REALM CONTRACT

- 4.1.1 HC currently have a Public Realm Contract for which BBLP is the incumbent contracting *Provider*. This Contract is based on the Highways Agency's Conditions of Contract for Managing Agent Contractor (Issue 8 Model 2009), which in turn is based on the NEC family of contracts.
- 4.1.2 The Public Realm Contract is a vehicle for delivering maintenance and upgrading capital works as defined in the core services.
- 4.1.3 The Public Realm Contract states that works that are above the EU procurement limit (currently €5,548,000) or do not ordinarily fall within the core services will be dealt separately as Major Schemes. The definition of a Major Scheme within the public realm contract is set out below.
- 4.1.4 "Major schemes" - schemes of works and/or services which the *Employer* considers (acting in his absolute discretion):
- do not ordinarily fall within the scope of the Services; or
  - are agreed between the *Provider* and the *Service Manager* as having an estimated cost in excess of the relevant threshold for such work/services under the EU procurement rules from time to time; and
  - are required through a competitive tender process as a result of conditions attached to the source of funding for any such scheme
- 4.1.5 As the SWTP scheme exceeds the limit for EU procurement rules, it would be deemed to be a "Major Scheme". Having analysed the Public Realm contract, we have highlighted clauses within the contract which deal with major schemes.
- 4.1.6 It is intended that the delivery of Major Schemes will be dealt with separately from the provision of the Services and the Annual Plan will not be required to deal with the delivery of Major Schemes, unless the *Provider* is providing Services in relation to them.
- 4.1.7 Following an approach from the *Employer* under Clause 210.2, the *Provider* may opt either:
- to tender for the Major Scheme, in which case the *Employer* may request the *Provider* to provide technical assistance to enable the *Employer* to prepare tender documentation for the Major Scheme; or

- to provide support to the *Employer* in respect of such Major Scheme in which case the *Provider* will carry out services which include but are not limited to:
    - the preparation of tender documentation;
    - evaluation of tenders received from organisations which submit bids for the Major Scheme; and
    - management of the delivery of the Major Scheme
- 4.1.8 Clause 210.1 states that any Major Schemes will be dealt with separately to the main Public Realm Contract.
- 4.1.9 Clause 210.2 states that the Employer may ask the *Provider* if he is interested in the delivery of any Major Scheme. If the answer is 'yes' then we can move onto Clause 210.3.
- 4.1.10 Clause 210.3 states that the *Provider* may either:
- Tender for the Major Scheme. In which case they can also provide technical assistance to enable HC to prepare tender documentation if requested to do so; or
  - The *Provider* may elect to provide the project management, including the resources to assist HC in the procurement process, the preparation of tender documentation, evaluation of tenders and management of the delivery of the Major Scheme
- 4.1.11 The Public Realm Contract states that a Major Scheme, such as the SWTP, must adhere to the EU procurement rules. The *Provider* can be asked if he is interested in the delivery of the Major Scheme. If the answer is 'yes', BBLP have to submit a tender for the Major Scheme along with other short listed tenderers. The *Provider* may alternatively opt not to tender for the delivery of the Major Scheme, but to support the Employer (HC) in the tender process and subsequent project management of the scheme.
- 4.1.12 It is not permissible to issue a Service Order through the current Public Realm Contract instructing BBLP to deliver the SWTP Scheme.

## 5. PROCUREMENT OPTION - MIDLANDS HIGHWAYS ALLIANCE

- 5.1.1 The Midlands Highway Alliance (MHA) is an alliance of over twenty Local Authorities. The MHA is set up to procure highways schemes through a framework in order to create efficiencies through greater purchasing power and simplifying the procurement process for Local Authorities. The member organisations are supported by a MHA Manager.
- 5.1.2 The MHA is bound together by a Deed of Agreement and its legal entity is an Unincorporated Association by Agreement. The agreement covers fees, data protection and executive governance.
- 5.1.3 The MHA is a three year framework contract with a one year extension. The original MHA Framework Contract concluded in 2014 having delivered 60 projects with an anticipated value of £250m. The second MHA Framework (MSF2) was tendered again in June 2014 with three contracting Joint Venture organisations being appointed to the Framework following a competitive tender process.
- 5.1.4 The current MSF2 Framework allows for the procurement of “Medium Schemes” up to a construction value of £25m, although initial discussions have been held with an MHA representative who stated that the Framework could be used to procure higher value schemes as well.
- 5.1.5 The MHA Executive Board have approved the MSF3 Business Case for the preparation of a replacement framework and a Contract Notice has been issued with the intention that the new MSF3 Framework will start during the Summer 2018. The MSF3 Framework will have no limit to the size of project it can be used for.
- 5.1.6 The MSF3 Framework will use the NEC4 Contract.
- 5.1.7 The current MSF2 appointed Joint Venture Contractors are:
- Lafarge/Tarmac/Carillion
  - Balfour Beatty Civil Engineering
  - Galliford Try/Aggregate Industries
- 5.1.8 During the Framework tender process, the Contractors had to price five model schemes of varying complexity, location and size. The MHA then assessed which Contractor had submitted the best price for each model scheme option. It has been determined by the MHA that the Quality submissions made by the Contracting JVs were all of equally high standard, so that any subsequent decisions made regarding

recommendations for the most suitable Contractor to be used will be based on price only.

- 5.1.9 The MHA has adopted the NEC 3 Option C Target Contract with activity schedule as its default Form of Contract.
- 5.1.10 At present HC is not a member of the MHA. HC would have to sign the Deed of Agreement before the MHA procurement process could be used. There are significant costs associated with becoming a member of the MHA. An initial joining fee of £15,000 is required and in addition, there is an on-going membership fee of £10,000 per annum. A contract levy equivalent to 0.35% of the contract value is also payable, although this contract levy can be set off against the annual fee.
- 5.1.11 The process for appointing a Contractor through the MHA is as follows. HC would provide a description and details of the SWTP scheme to MHA. The MHA would then assess the SWTP scheme to determine which of the five model schemes has the most similarities to the SWTP Scheme. MHA will discuss with HC how they conclude which of the model schemes is most closely matched to the SWTP Scheme. It may be the case that the SWTP Scheme shares elements of more than one model scheme in which case, the MHA advise what proportional split between model schemes should be used.
- 5.1.12 There are then three options:

#### Direct Call Off 1

If the MHA determines that the SWTP Scheme closely matches one of the five model schemes they advise which of the Joint Venture Contractors submitted the lowest price for that model scheme. HC can then either choose to enter into Target Price negotiations with the recommended Contractor, ask MHA to inform them who was the next lowest JV Contractor and enter into negotiations with them, or decide not to award a contract through the MHA and use an alternative means of procurement.

#### Direct Call Off 2

The MHA assess that the Local Authority's scheme does not specifically match one model scheme only, but may include elements of two or more of the model schemes. The MHA will assess the proportional split between two or more model schemes and then calculate which would be the most economically advantageous Contractor to enter into negotiations with. As with Call off route 1, HC can ask for the next best Contractor, or again choose not to proceed through the MHA route.

#### Mini Competition

A mini competition between the three Framework Contractors is held, where a mini tender pack is prepared, which has new discreet contract data, Works Information, drawings, pricing schedules and a new quality price assessment based on details of the SWTP Scheme. Tender prices are submitted and HC can then assess tenders and appoint the Joint Venture Contractor of their choice.

- 5.1.13 The benefits of using Call Off methods 1 and 2 are that overall procurement timescales are reduced as there is no need for HC to have to prepare tender documentation or to carry out tender assessments. If the mini competition method is adopted, these benefits are lost as timescales are increased in line with standard competitive tendering timescales. Additional resources would be required to prepare the mini tender and the project does not gain from an early contractor involvement.
- 5.1.14 If Call Off routes 1 or 2 are used, then MHA provide the cost information for the appropriate model scheme which HC can then use as the basis of any subsequent Target Price negotiation stage.
- 5.1.15 It should be reiterated that the MHA make a recommendation regarding the most suitable JV Contractor. It remains HC's decision whether to proceed with Target Cost negotiations with the recommended Contractor or to seek alternative means of appointing a Contractor.
- 5.1.16 An indicative timescale for awarding the SWTP Scheme to a Contractor through the MHA Framework is estimated to be:
- |   |  |         |
|---|--|---------|
| • | MHA submit a Deed of Agreement for HC approval                                 | 5 days  |
| • | HC seeks financial and legal approval of the MHA deed                          | 14 days |
| • | HC obtains an authorised signatory   | 5 days  |
| • | MHA obtains an authorised counter signatory                                    | 5 days  |
| • | HC raises a purchase order for joining fee and levy                            | 5 days  |
| • | MHA raises an invoice for joining fee  | 3 days  |
| • | HC processes invoice and arranges a BACS transfer                              | 28 days |
| • | SWTP team produce works information, specification and tender drawings for MHA | 7 days  |
| • | MHA recommends preferred contractor through call-off process                   | 7 days  |
| • | Preferred Contractor prepares priced activity schedule                         | 21 days |

*Note:*

*Preferred contractor advises on buildability issues and programme (This activity can actually take place as soon as MHA recommend a preferred Contractor)*

•	Negotiation of risk ownership	7 days
•	<u>Negotiation of target cost</u>	<u>14 days</u>
	Total Nr of days required to reach Contract Award	121 days

5.1.17 These timescales are indicative as HC needs to confirm the assumed allowances for internal processes.

5.1.18 Advantages of using MHA procurement route:

- There are potential time savings in the procurement process if Call Off 1 or 2 routes are adopted.
- There is a clearly defined audit trail in terms of Contractor selection.
- MHA has significant experience and track record of procuring infrastructure schemes through its Framework.
- The appointed Framework Joint Venture Contractors represent some of the key infrastructure Contractors in the UK.
- There is the potential to gain scheme benefits through Early Contractor Involvement due to reduced procurement timescales required and the opportunity to engage with potential Contractor prior to agreement of Target Price and subsequent Contract Award.
- Once a member, HC can use this procurement route to award further schemes with the only additional cost being the specific contract levy.
- MHA's annual report claims that schemes completed in 2014 achieved an average saving of 11.2% against traditionally procured contracts.
- The early involvement of a contractor in the planning and phasing of the works may mitigate the potential impact on the remainder of the SWTP scheme.

5.1.19 Disadvantages of using MHA procurement route:

- There are significant costs associated with joining the MHA.
  - £15,000 joining Fee
  - £10,000 annual membership
  - Contract Levy which will be 0.35% of construction costs
- There is no guarantee that a Target Price agreement will be reached between HC and the recommended MHA Contractor.
- If Balfour Beatty Civil Engineering are the recommended MHA Contractor and are subsequently appointed by HC, this would prevent BBLP carrying

out the project management role due to the conditions stated in the Public Realm Contract (See section 4.1.11 above which details how BBLP can either choose to tender for the main scheme or opt to support the project management process, but cannot do both).

## 6 PROCUREMENT OPTION - CONSTRUCTING WEST MIDLANDS FRAMEWORK

- 6.1.1 The Constructing West Midlands (CWM) Framework is a similar delivery vehicle to the MHA Framework. The CWM Framework period currently runs until 2019. The CWM is a delivery vehicle for capital building works, reactive and planned repair, or maintenance works for public sector organisations throughout the West Midlands Region. Procurement timescales would be similar to that of the MHA Framework.
- 6.1.2 The framework is divided into 7 lots which are:
- Lot 1 Legionella
  - Lot 2 Legionella
  - Lot 3 Mechanical and Electrical
  - Lot 4 Mechanical and Electrical
  - Lot 5 Building Maintenance
  - Lot 6 Building Maintenance
  - Lot 7 Major Capital Works > £500k
- 6.1.3 The framework contract is based on a call-off system similar to the MHA.
- 6.1.4 Lot 7 Major Capital Works > £500k is the Lot that the SWTP Scheme could be procured through. Contracts awarded using Lot 7 use the NEC Form of Contract.
- 6.1.5 The costs of using CWM Framework are £4,000 Fee plus 0.15% of Contract value.
- 6.1.6 The appointed Lot 7 Framework Contractors are:
- Community Systems (A Joint Venture between Morgan Sindall and Lovell Partnerships)
  - Mansell Construction Services (A Joint Venture between Mansell and Balfour Beatty)
  - Thomas Vale Construction
  - Wilmott Dixon
- 6.1.7 The CWM Framework website lists a number of sectors that their Framework has been used to deliver projects:
- Education
  - Health Care
  - Housing
  - Office and Commercial
  - Leisure and Sports
  - Retail and Lifestyle
- 6.1.8 Infrastructure is not listed as one of the Framework's core sectors. Similarly none of



the Lot 7 Contractors list infrastructure as one of their core delivery specialisms.

6.1.9 Advantages of using CWM Framework:

- No direct tender costs.
- Lower procurement costs.
- Shorter procurement time period compared to OJEU process.

6.1.10 Disadvantages of using CWM Framework:

- Framework was not set up to deliver infrastructure projects.
- To date no infrastructure projects have been delivered through this Framework.
- The appointed Lot 7 Contractors do not list infrastructure as one of their core business disciplines.

## 7 PROCUREMENT OPTION - OJEU COMPETITIVE TENDER PROCESS

7.1.1 The European Public Contracts Directive applies to Public Authorities. The Directives set out detailed procedures for the award of contracts whose value equals or exceeds £4,551,413.00 (Latest threshold figure set from 1<sup>st</sup> January 2018). The SWTP scheme would fall within this category.

7.1.2 The following information takes into account changes made to the OJEU process that were published within The Public Contracts Regulations 2015 and apply to any contracts where contract notices are published after 26 February 2015.

7.1.3 Under PCR 2015 there are five options within the OJEU procurement process:

### Open Tender (Regulation 27)

7.1.4 This procedure is often used for the procurement of commodity products which do not require a complex tender process in order to be purchased. This process is open to all companies who submit a tender for the works and there is no limit or restriction on the number or type of companies who can submit tenders. This makes the resultant selection process very onerous.

### Restricted Tender (Regulation 28)

7.1.5 All interested parties may express an interest in tendering for the contract but only those meeting the selection criteria will be invited to tender. A PIN notice is issued to advertise the contract. When responding to the OJEU notice, candidates submit any information required by the Authority as part of its selection stage. Only candidates who get through the selection stage will then be invited to submit a tender.

7.1.6 The estimated time scale based on the minimum number of days required for the restricted procurement process is set out below:

- Preparation of Pre Qualification Questionnaire (PQQ) 20 days
- Preparation of tender documents 35 days
- Prior Information Notice (PIN) period  
(if sent electronically) 30 days  
*Note: PQQ can be sent at the same time as the Notice and run parallel with the Notice Period*
- Evaluation of PQQ responses and short-listing 21 days
- Invitation To Tender (if a prior PIN notice has been sent out) 30 days
- Evaluation of Tender 28 days
- Interview of Tenderers (if required) and final reporting 14 days
- Stand-still period 10 days

Total Nr of days required to reach Contract Award      188 days

If it becomes necessary in the future, the Public Contracts Regulations 2015 allows for this timescale to be shortened from 188 days to 168 days, so long as:

- Where contracting authorities have published a PIN which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders may be shortened to 10 days, provided that both of the following conditions are fulfilled:
  - The PIN included all the information required in Section I of part B of Annex V to the Public Contracts Directive insofar as that information was available at the time the PIN was published.
  - The PIN was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

#### Competitive with negotiation (Regulation 29)

- 7.1.7 This procedure can only be used in the very limited circumstances described in the Regulations, generally where it is not possible to use either the Open or Restricted Tender route and would not be applicable to the award of the SWTP scheme. It may be appropriate where: (1) the contracting authority is unable to produce an ITT/ specification without discussing its needs in detail with suppliers (but iterative discussions with bidders should allow a detailed solution to be specified); and (2) where the solution is likely to be particularly complex and will require dialogue with bidders to conclude. The competitive dialogue procedure is generally used for complex procurements such as PFI/PPP projects.

#### Competitive Dialogue (Regulation 30)

- 7.1.8 This procedure can only be used in the very limited circumstances described in the Regulations and would not be applicable to the award of the SWTP Scheme.

#### Innovation Partnership (Regulation 31)

- 7.1.9 This procedure allows for the Research & Development and subsequent purchase of a product or service within the same single procurement process. This option is not applicable to the award of the SWTP Scheme.

#### 7.1.10 Advantages of the OJEU procurement process:

- The OJEU process provides a robust procurement route that follows legal regulations.
- There is a clearly auditable procurement and award process.

- Competition is open to a wide range of contractors so competitive prices should be received.
- HC can choose which form of contract the SWTP Scheme is awarded under.

7.1.11 Disadvantages of the OJEU procurement process:

- Longer procurement period required compared to other options.
- Higher level of resources required to carry out the procurement process so HC costs will be higher than other options.

7.1.12 Cost of OJEU procurement process:

- Indicative costs associated with the OJEU procurement process are likely to be in the order of £80,000 to £90,000 based on previous schemes of a similar nature and duration.

## 8 FORM OF CONTRACT OPTIONS

8.1.1 As well as considering which procurement route is the most appropriate for delivering the SWTP Scheme, it is also necessary to consider which Form of Contract the scheme should be awarded under.

8.1.2 Available Forms of Contract include:

- JCT
- FIDIC
- ICE
- NEC

8.1.3 The JCT suite of Contracts have been written and developed primarily to administer building projects rather than infrastructure schemes so are not suitable for use on the SWTP Scheme.

8.1.4 The FIDIC Contract is published by the International Federation of Consulting Engineers (FIDIC) in association with the European International Federation of Construction (FEIC). Its conditions and processes are similar to those contained within the JCT Suite of Contracts. FIDIC is more commonly used in Europe rather than in the UK, so it may be that UK Contractors are unfamiliar with this Form of Contract and would be reluctant to enter into an agreement using this form of contract.

8.1.5 The ICE Form of Contract has traditionally been the default choice of contract for civil engineering and infrastructure projects for many years. It is a tried and tested contract but is considered to be an adversarial form of contract which does not promote collaborative best practice between Employer and Contractor.

8.1.6 The NEC Form of Contract was formally introduced in 1993. The need for an alternative to the traditional ICE Form of Contract was highlighted in both Sir Michael Latham's *Constructing the Team* and Sir John Egan's *Rethinking Construction* reports that were published in the early 1990's. The ethos of the NEC is one of simplicity of language and clarity of requirement. The NEC suite of contracts encourages foresight applied in a collaborative culture which can reduce the risks inherent in any construction project. The Contract has been endorsed by Office of Government Commerce (OGC) and its success has greatly contributed to projects being delivered on time and to budget. The NEC, with its menu of main and secondary options, can be used for any procurement method and is flexible in terms of how much design the Contractor takes responsibility for.

We would therefore recommend the NEC3 suite of contracts as the most appropriate for the administration of the SWTP Scheme.

- 8.1.7 There are five main options within the NEC3 suite as set out below. They all stimulate best practice management and encourage relationships between the two parties to the contract and hence the work involved in the contract.

Option A: Priced contract with activity schedule

- 8.1.8 An activity is a discrete part of the whole works as defined in the Works Information. Establishing the quantities of work involved to achieve the completion of each activity is the responsibility of the Contractor. The price for each activity is in effect a lump sum for that activity and must include for everything necessary to complete the activity.
- 8.1.9 Contractors are not paid for changes in quantity of the permanent work, unless an instruction changes the Works Information. This transfers the risk of accuracy of quantities to the Contractor. The sum of the tendered lump sums for each of the activities is the tendered Price for the whole of the Works.
- 8.1.10 Activity schedules are activities in the programme for which the Contractor gets paid when he has completed that activity. The activity schedule is therefore closely linked to the construction programme prepared by the Contractor. It is therefore sensible to arrange that the Contractor also prepares the detail and breakdown of the activity schedule.
- 8.1.11 It is likely that the total administrative and management input from commencement of construction to settlement of final account is slightly less under Option A compared with a conventional contract form, and slightly more under Option B. With the apparent practical advantages of activity schedules over bills of quantities there is evidence that more experienced users are moving away from Option B towards Option A.

Option B: Priced contract with bill of quantities

- 8.1.12 Under this option the Employer produces a bill of quantities which is priced by the Contractor. The contract price is the sum of prices for all items in the bill which may include lump sums for certain items. When the work is done, if it is found by remeasurement that the estimated quantity is not correct, it is corrected and payment is made to the Contractor to reflect the actual work carried out. Under this option, unlike Option A, the Employer takes the risk of the correctness of the quantities.

Option C: Target Cost contract with activity schedule

- 8.1.13 In this option the Contractor tenders a Target Price using an activity schedule. Each activity is priced as a lump sum and a Fee is also tendered as a percentage for subcontract work and for the Contractor's own direct work. The Contractor takes the

risk of quantities used in the activity schedule being correct. The Target Price is the sum of the activity prices and the Fee. During the course of the contract, the Target Price can be adjusted to cater for compensation events that are set out in the Contract. Payment is made on the basis of defined costs with an incentive mechanism for the Contractor to minimise costs. Savings and over-runs are shared between the parties. The sharing of risk in the target cost approach is likely to reduce the occurrence of disputes.

- 8.1.14 The project management can be more intensive as defined costs have to be assessed for each payment assessment rather than applying cost rates against bill items.

Option D: Target Cost contract with bill of quantities

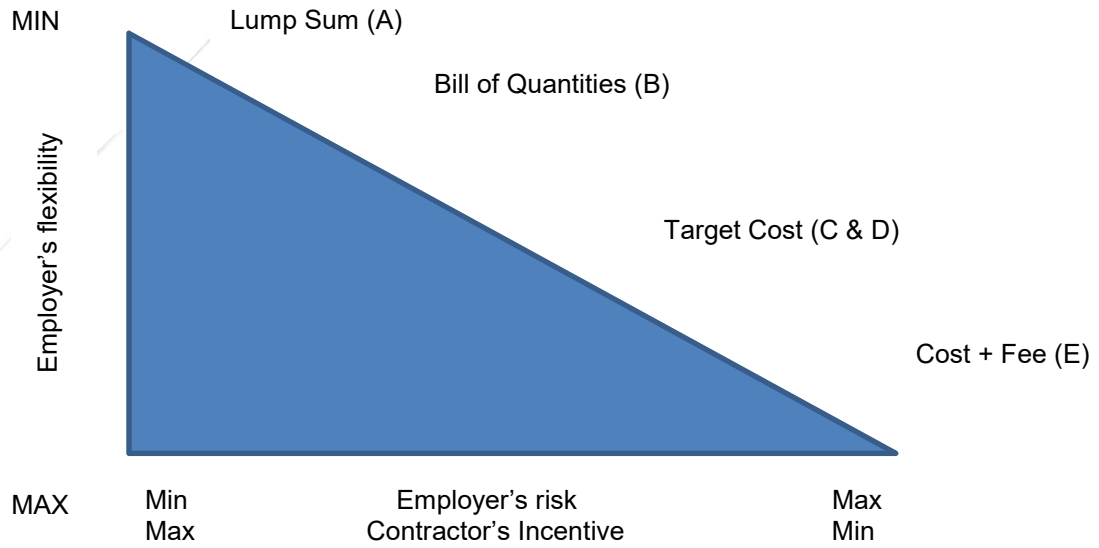
- 8.1.15 This is similar to Option C except that the Target Price is established by means of a bill of quantities rather than an activity schedule. The Employer is responsible for the accuracy of the bill of quantities. During the course of the Contract, the Target Price is adjusted to allow for changes of quantities as well as for compensation events.

- 8.1.16 Thus, the Employer carries a greater risk than with Option C. The Employer will incur additional costs in the production of the bill of quantities during the pre-tender phase.

Option E: Cost Reimbursable contract

- 8.1.17 Under this option the Contractor takes a very small risk since he is paid his defined cost plus the Fee with only a small number of constraints to protect the Employer from inefficient working or incompetence by the Contractor. It is used when the work to be carried out cannot be defined at the outset and the risks are high. It may also be used for emergency work or repairs where the scope cannot be fully ascertained.

8.1.18 The chart below indicates the overall characteristics of the different NEC Options:





## 9 EARLY CONTRACTOR INVOLVEMENT

- 9.1.1 The standard use of Early Contractor Involvement (ECI) allows a Contractor to be appointed under a two-stage NEC contract before details of what is to be constructed have been fully developed and priced. This enables the Contractor to take part in the design development and construction planning stage of a project. This approach supports improved team working, innovation and planning and is now widely recognised as beneficial for certain schemes. The NEC has developed an additional clause to be used with the NEC3 Engineering and Construction Contract (ECC) Options C and E where an ECI approach is required. This additional clause is aimed at promoting collaboration through the whole project, and sharing the benefits gained through collaboration. Note the NEC4 Contract suite has been introduced during 2017 and may be an option, although it is too early to determine whether NEC4 offers specific additional benefits compared to NEC3 .
- 9.1.2 There are two most widely used approaches to ECI. One approach is for the Employer to engage the Contractor to assist the Employer's consultant in designing the project, as well as to design specific elements. Following agreement of the Prices for the construction stage, the Employer then issues a notice to proceed to Stage Two for the Contractor to deliver the works, including any outstanding design, under standard ECC Option C (target contract with activity schedule) terms. Alternatively, the Employer can appoint the Contractor to carry out the design with assistance from the Employer's consultant. The Employer then issues a notice to proceed to Stage Two for the Contractor to deliver the works under standard ECC Option C or E (cost reimbursable contract) terms.
- 9.1.3 The detailed design for the SWTP scheme is already substantially complete, so the two approaches described above would no longer be an option. However, there can still be benefits gained from engaging a Contractor to "value engineer" the design prior to commencement of construction:
- The Contractor can review the design and identify potential value engineering opportunities
  - The Contractor can advise on any buildability issues associated with the design
  - It allows the Contractor more time to plan and prepare the construction programme, identifying optimum opportunities for discrete activities such as utility diversions or discharging planning conditions
  - It enables the Contractor to plan for the resourcing of the scheme, identifying key supply chain partners and source any long lead-in items required, rail possessions etc
  - If the initial Target Cost exceeds the Employer's budget the Contractor can work closely with the Designer to come up with a solution that brings it within budget

- It allows the Employer's team to include Contractor / Construction expertise when dealing with a Public Inquiry, if appropriate

For the SWTP scheme, the above opportunities would be of benefit if the Employer and Designer believe that further efficiency savings can be made from the current design solution. To realise the potential opportunities the Contractor would need to be incentivised as the Target Price would be reduced to reflect any more efficient design changes made as a result of any Value Engineering proposals identified.

WSP are engaged through a Framework Agreement with Northampton CC. One of the highway schemes that is currently being delivered through this framework is the Isham Bypass scheme. Northampton CC chose to adopt an ECI procurement route for the delivery of this scheme. Although the contractor for this scheme was appointed at a much earlier point during design development there have been a number of benefits realised that could also be applicable to the SWTP Scheme.

- The contractor carried out a design review, identifying best options for construction
- This added value engineering process benefited from the contractor's experience and expertise in assessing construction risks and opportunities
- Once the Client and the contractor were satisfied that the best design and construction options had been identified, the contractor produced a target cost for agreement
- During the value engineering stage the contractor was only paid for instructed works such as surveys and ground investigation. The contractor did not get paid for his own staff time working with the client's team, until the Target cost had been agreed

## 10 CONCLUSION – PROCUREMENT OPTIONS

10.1.1 A review has been carried out comparing the following procurement route options:

- Public Realm Contract
- Midland Highways Alliance (MHA)
- Constructing West Midlands (CWM) Framework
- OJEU competitive tender process

10.1.2 It is not possible to award the SLR element of the SWTP Scheme through the Public Realm Contract as this constitutes a “Major Scheme”. It is intended that the delivery of Major Schemes will be dealt with separately from the provision of services provided through the Public Realm Contract.

10.1.3 It is possible to award the SWTP Scheme through the MHA Framework. This framework has a proven record of delivering infrastructure schemes and has appointed Joint Venture Contractors consisting of some of the major civil engineering contractors in the UK. The MHA procurement period is shorter than that of the standard OJEU competitive tender procurement process. However, HC are not currently members of the MHA and the timescales required for HC to become a member still need clarification.

10.1.4 Although possible to award the SWTP Scheme through the CWM Framework, the Framework has not previously delivered infrastructure schemes. The contractors who have been appointed to this Framework do not carry out infrastructure works as part of their core business.

10.1.5 It is possible to award the SWTP Scheme through the OJEU competitive tender process. The most suitable option would be to follow the Restricted Tender route. This is a recognised procurement route for awarding construction projects. The OJEU requires the longest timescales to reach the point of Contract Award, and will result in HC incurring higher direct procurement costs than it would with the other alternative options.

10.1.6 Table of available procurement options

Procurement Option	Advantages	Disadvantages	Timescale	Cost
Midland Highways Alliance (MHA)	<ul style="list-style-type: none"> <li>• Established process.</li> <li>• Infrastructure Contractors.</li> </ul>	<ul style="list-style-type: none"> <li>• Additional resource required for HC</li> </ul>	<ul style="list-style-type: none"> <li>• Timescales required are shorter than</li> </ul>	<ul style="list-style-type: none"> <li>• Direct costs to HC for tender process lower</li> </ul>

	<ul style="list-style-type: none"> <li>• NEC3 Form of Contract.</li> <li>• Opportunity for Early Contractor Involvement</li> </ul>	<p>to become member of MHA.</p> <ul style="list-style-type: none"> <li>• No guarantee that agreement on Target Price will be reached</li> </ul>	<p>OJEU Process, once HC have become member of Alliance.</p> <ul style="list-style-type: none"> <li>• Approximate timescale is 121 days</li> </ul>	<p>than OJEU, but increased costs for Joining Fee, Annual membership and Contract Levy (0.35%)</p>
OJEU Competitive Tender Process	<ul style="list-style-type: none"> <li>• Fully compliant with EU procurement legislation.</li> <li>• Clear audit trail to demonstrate award to most economically advantageous tender.</li> <li>• Ability to select list of tendering Contractors <ul style="list-style-type: none"> <li>• Opportunity for Early Contractor Involvement</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Highest level of pre-tender administration required.</li> <li>• Highest level of direct HC procurement costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Procurement timescale is the longest of the possible options. However the revised scheme delivery programme incorporates this.</li> <li>• Approximate timescale is 188 days.</li> </ul>	<ul style="list-style-type: none"> <li>• Higher direct procurement costs due to the increased level of resources required to carry out tender process. (Approx £80-£90k)</li> <li>• No additional joining Fees or Contract Levies</li> </ul>

## 11 RECOMMENDATIONS

- 11.1.1 The SWTP is comprised of the Southern Link Road (SLR) together with a complimentary package of Active Travel Measures (ATMs). The ATMs are still being developed and we therefore recommend that these elements of the overall SWTP scheme are procured separately once the full extent of the works is determined. This should enable programme efficiencies to be gained through early commencement of ATM works. The procurement route for the ATM works will be determined at the appropriate time.
- 11.1.2 With regard to the SLR, which is the major element of the SWTP scheme, we have made the following considerations.
- 11.1.3 The procurement timescale is not a deciding factor when selecting the most suitable procurement route.
- 11.1.4 The remaining key objectives would be sourcing a wider pool of potential tenderers and ensuring a clearly visible audit trail to demonstrate award having been made to the most economically advantageous tender. Accordingly the OJEU competitive restricted tender process would become the most suitable procurement route.
- 11.1.5 The benefits of using the OJEU route are as follows:
- It is fully compliant with EU procurement legislation
  - It provides a clear audit trail to demonstrate award to the most economically advantageous tender
  - It provides the widest selection choice of potential contractors
  - Procurement costs are comparable with alternative framework procurement route options
  - It allows flexibility of choice of contract form and option
  - Timescales to complete contract award are compatible with the SWTP scheme delivery programme requirements
  - It allows ECI to be included even at this late stage with a detailed design in place so that construction expertise and planning is maximised
- 11.1.6 Having considered the available NEC3 Contract options, we would recommend that HC consider the use of:
- Option C: Target Cost contract with activity schedule with Contractor Value Engineering phase
- 11.1.7 Option C is one of the two NEC Contract options that allows the incorporation of an Early Contractor Involvement type procurement route. This option allows for the most

appropriate allocation of risks, with the financial risks of the scheme being shared by the Contractor and HC. This generates a risk and reward approach that encourages both parties to work collaboratively together in line with NEC Core Clause 10 Mutual trust and co-operation. This option delivers the balance required between cost certainty and the opportunity to provide incentivisation of the Contractor in order to generate cost savings that can be shared by both Contractor and HC.

- 11.1.8 An allowance for inflation can be included within the Target Price so there would be no need to include Secondary Option X1 Price adjustment for Inflation. If required by HC, Secondary Option X7 Delay Damages could be incorporated within the contract provisions. However we would recommend that HC follow latest Highways England approach which is not to include any Delay Damages clauses. The intention of this is that it also encourages a collaborative approach to delivery from both Contractor and HC.
- 11.1.9 Option C also allows for the inclusion of Secondary Option X16 Retention if required, but in a similar vein to above we would recommend that this Secondary Option is not used for this scheme. This makes interim assessments of Defined Costs and payment more efficient to administer and facilitates more timely agreement of final costs and pain/gainshare calculations, which should reduce HC staff costs in carrying out contract administration duties.
- 11.1.10 A Value Engineering phase incentivisation process can be introduced as follows:
- Tenderers submit Target Price submissions
  - Tender assessment is carried out and the contract awarded
  - The successful contractor then submits value engineering proposals which are worked through with the project team (including the Designer) to ensure that proposals are viable and can be delivered
  - The savings are then applied to the Target Price to provide a revised Target Price by way of a negative compensation event
  - The net saving i.e. the reduction in construction cost less any increase in design costs and auxiliary costs is assessed and the Contractor is paid an incentive (as a % of net saving).
  - The advantages of this process is that the value engineering exercise is kept separate from the initial tender assessment. It enables the client to establish a clear auditable saving generated from the value engineering exercise and also, it allows the Contractor to be paid his proportion of savings identified at the start of the construction process.
  - The Contractor still has to deliver identified savings as part of his defined costs and holds the risk of going into pain if savings cannot actually be realised.
- 11.1.11 In summary the adoption of the OJEU Restricted Tender route using the Option C: Target Cost contract with activity schedule will provide the following benefits to HC:

- Wide selection of potential contractors
- Clear audit trail to demonstrate award to most economically advantageous tender
- Procurement timescales align with overall scheme completion timescales
- Early Contractor Involvement will provide opportunities to identify value engineering efficiencies
- Most efficient option relating to allocation and management of risk
- Encourages collaborative behaviour from both Contractor and HC
- Provides incentivisation to deliver cost savings