ATKINS
Member of the SNC-Lavalin Group

GREATER CAMBRIDGE PARTNERSHIP

Cambridge South East Transport Phase 2 (CSET Phase 2)

Procurement Strategy

S0

Notice

This document and its contents have been prepared and are intended solely for the Client's information and use in relation to Cambridge South East Transport Phase 2 (CSET Ph2) scheme.

SNC Lavalin assumes no responsibility to any other party in respect of or arising out of or in connection with this document and/or its contents

This document has 34 pages including the cover.

Document history

Revision	Suitability	Purpose description	Originated	Checked	Reviewed	Authorised	Date
P01.1	S0	Draft for client review	MO	RD		---	---
P01.2	S0	Revised Draft for client review	MO	RD	IT	RD	01/08/22
P01.3	SO	Client Issue	MO	RD	IT	RD	07/12/22

Client signoff

Client	Greater Cambridge Partnership
Project	Cambridge South East Transport Phase 2 (CSET Phase 2)
Job number	5213407
Client signature/date	

Contents

Tables

Figures

Executive Summary

This Procurement Strategy sets out the proposed Delivery and Contracting Model for the Cambridge South East Transport Phase 2 (CSET Phase 2) (the “Project”). As matters stand it is recommended that a design and build type delivery approach is adopted by the Greater Cambridge Partnership (GCP) to deliver the scheme.

1. Introduction

1.1. Overview

This Procurement Strategy sets out Faithful+Gould' s (F+G)'s current view as to the correct Delivery and Contracting Model for delivering the Cambridge South East Transport Phase 2 (CSET Phase 2) (the "Project").

The Project, its potential procurement, as well as commercial matters generally are at Outline Business Case (OBC) stage, naturally therefore there will be a degree of development and refinement of these matters over the coming months.

1.2. Scheme Background

The wider CSET scheme extends from Cambridge Biomedical Campus at its North Western edge to the junctions of the A11 with the A1307 and A505, providing improved connectivity for peripheral communities such as: Linton, the Abingtons, Babraham, Pampisford, Sawston, Stapleford and Great and Little Shelford.

It is proposed that Phase 2 will deliver a new dedicated public transport route between a new Travel Hub near the A11/A1307/A505 junction and the Cambridge Biomedical Campus via Sawston, Stapleford and Great Shelford.

In addition, it is proposed that connections will be provided from the Travel Hub to Babraham, Babraham Research Campus and Granta Park. At the Biomedical Campus, the new route is proposed to run on dedicated public transport lanes on Francis Crick Avenue, connecting to the existing Guided Busway, enabling services to continue to the station and Cambridge City Centre via the Busway.

Stops on the new route are proposed for the Biomedical Campus, Great Shelford, Stapleford, Sawston and the new Travel Hub site. The Biomedical Campus stop would be located near to the proposed Cambridge South Station to enable easy interchange with rail services in the future. All stops would have the following facilities:

- Platforms with shelter and real-time passenger information;
- Drop off facilities;
- Disabled parking; and
- Cycle parking and cycle lockers.

The route will connect to a new Travel Hub facility that will be delivered near the A11/A1307/A505 junction to supplement capacity and facilities at the Babraham Road Park & Ride site.

The name Travel Hub has been used as the site is intended to provide an interchange between different modes of transport such as walking, cycling and existing bus services. This is in addition to the site being a means to access the new public transport route by car.

The Travel Hub will be similar to a Park & Ride and offer the same facilities which can be found at a Park & Ride site such as indoor waiting areas. However, the Travel Hub proposed for this scheme is intended to be more sustainable than a typical Park & Ride design and flexible to allow it to be expanded or increased in size as future demand requires.

The Travel hub would have 200 cycle parking spaces and will provide:

- Covered waiting areas with toilets;
- Real time information;
- Covered, secure cycle storage;
- Electric vehicle charging points;
- Disabled parking spaces; and
- Lighting and CCTV.

A new multi-user path, generally 3-4 metres wide, would also be provided along the length of the public transport route. The multi-user path will serve a range of non-motorised uses, such as cycling, walking, horse riding and for use by mobility scooters and electric bikes. The path will be hard surfaced to enable use during all weathers for both commuting and leisure.

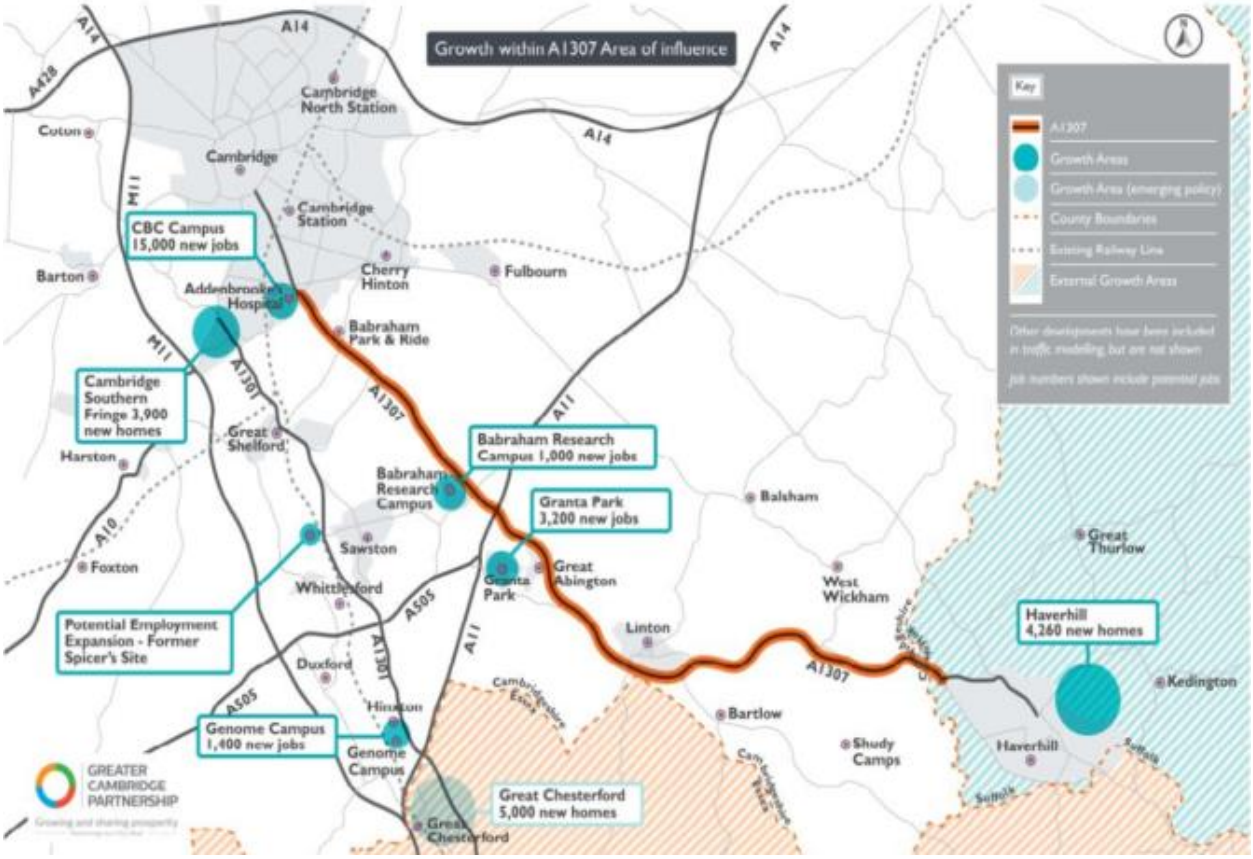


Figure 1-1 - Cambridge's Southern Fringe Major Development Sites

2. Methodology

2.1. General

The procurement strategy for the Scheme has and will continue to be developed using best practice - making use of such tools and guidance as the Cabinet Office's Construction Playbook, HM Treasury Business Case guidance, Infrastructure Projects Authority guidance, internal GCP guidance and so on.

All such tools and guidance however must be utilised within the context of the Scheme; the utmost regard must be given to the outcomes and objectives of the Scheme.

Of key consideration has and will continue to be the development of the right Delivery Model, and in turn the commercialisation of that Delivery Model into the right Contracting Model.

2.2. Key Information

Prior to any consideration of the Delivery Model and Contracting Model there needs to be a succinct understanding of the Project's characteristics in key areas:

- The Project's Objectives
- The Project's Risks
- The Project's likely position and attractiveness in the market; and
- The capacity and capability of the procuring organisation to deliver the Project.

The following section of this procurement strategy considers the above items and sets out the understanding as matters stand in June 2022. Naturally matters will evolve over the future months. It should be noted that the final bullet point is not considered at this juncture – rather the same will be progressed as the management case is developed through the business case process.

2.2.1. The Project's Objectives

Five key objectives have been set for the CSET scheme as a whole. The Project will need to contribute positively towards each of the following objectives.

i. Support the continued growth of Cambridge and south Cambridge's economy by:
- Deliver journey time savings for commuters travelling by public transport to job opportunities in south east Cambridge and central Cambridge.
- Improve journey time reliability for users of the A1307 corridor.

ii. Relieve congestion and improve air quality in south east Cambridge by:
- Encourage use of sustainable transport modes for journeys through south east Cambridge and into central Cambridge.
- Enhance quality of life by relieving congestion and improving air quality in south east Cambridge.

iii. Improve active travel infrastructure and public transport provision in south east Cambridge:

- Deliver a High-Quality Public Transport (HQPT) offer between Cambridge and Haverhill.
- Increase frequency of public transport services during peak periods.
- Reduce severance for cyclists, pedestrians and equestrians.
- Increase uptake of sustainable transport modes for commuter journeys.

iv. Improve road safety for all users of the A1307 corridor:

- Reduce the number of accidents at identified accident clusters along the corridor.
- Reduce the number of speed related incidents along the corridor.
- Improve the safety of crossing movements for cyclists, pedestrians and equestrians

v. Improve connectivity to employment sites in south east Cambridge and central Cambridge:

- Provide improved access to the Granta Park, Addenbrooke's Hospital, Cambridge Biomedical Campus (CBC) and a number of other employment sites in south east Cambridge.
- Increase modal options for commuters travelling to and from employment sites in south east Cambridge and central Cambridge by delivering a HQPT network and improved active travel routes for users.

2.2.2. The Project's Risks

At this stage of developing the procurement strategy for the Scheme, the risks from a procurement perspective will largely reflect those of the Project generally – these being augmented by specific procurement risks.

The Scheme's key risks at this stage include:

- Political Considerations – Influencing the preferred delivery option.
- GI Results – Not available for the preliminary design.
- Land acquisition costs and compensation
- Third Party Technical Approvals - Delay pending processing of approvals.
- Continued availability of scheme funding
- Challenge on procedural grounds
- Affordability of Preferred Option
- Interface with promoters of other transport schemes (e.g., East West Rail)
- Planning consent
- National and Local Planning regime
- Location of Utilities e.g., High Pressure Gas Main
- Available technology – currently not permitted by TWAO
- Environmental Conditions and consents
- Market appetite and capacity

2.2.3. Capacity and capability to deliver the scheme

Success on any major infrastructure project will not be forthcoming without the alignment and matching of capacity and capability to the project and delivery environment. Ultimately the Delivery Model and Contractual Model deployed must be deliverable in the face of the capacity and capability available.

During the next stage, it will be important to ensure that this necessary alignment and matching is in place – as mentioned above this will be progressed as the management case is developed through the full business case process.

3. The Delivery Model

As set out in the Cabinet Office's Construction Playbook the correct delivery model for a project or scheme enables clients and industry to "work together to deliver the best possible outcomes by determining the optimal split of roles and responsibilities". The procurement strategy for the Project will develop so as to identify, utilising evidence and analysis, how GCP should structure the delivery of the Project. As also set out in the Construction Playbook, the importance of this strategic decision cannot be underestimated.

3.1. The methodology to be used

The Methodology used (and which will continue to be used) to identify the appropriate Delivery Model for the Scheme can be found here. Put succinctly a 3 Step process is followed, albeit it is not fully sequential, focusing on the elements of Definition, Appraisal and Engagement.

The Definition step sees the emergence of GCP's actual requirements and desired objectives – see paragraphs 1.2 and 2.2.

Having defined these aspects, consideration was then given to the models that may be used to bring about those requirements and objectives.

Finally, Engagement as to the Preferred Model is to take place with the market and wider stakeholders. It is expected that this Engagement phase will be undertaken prior to development of the tender documents.

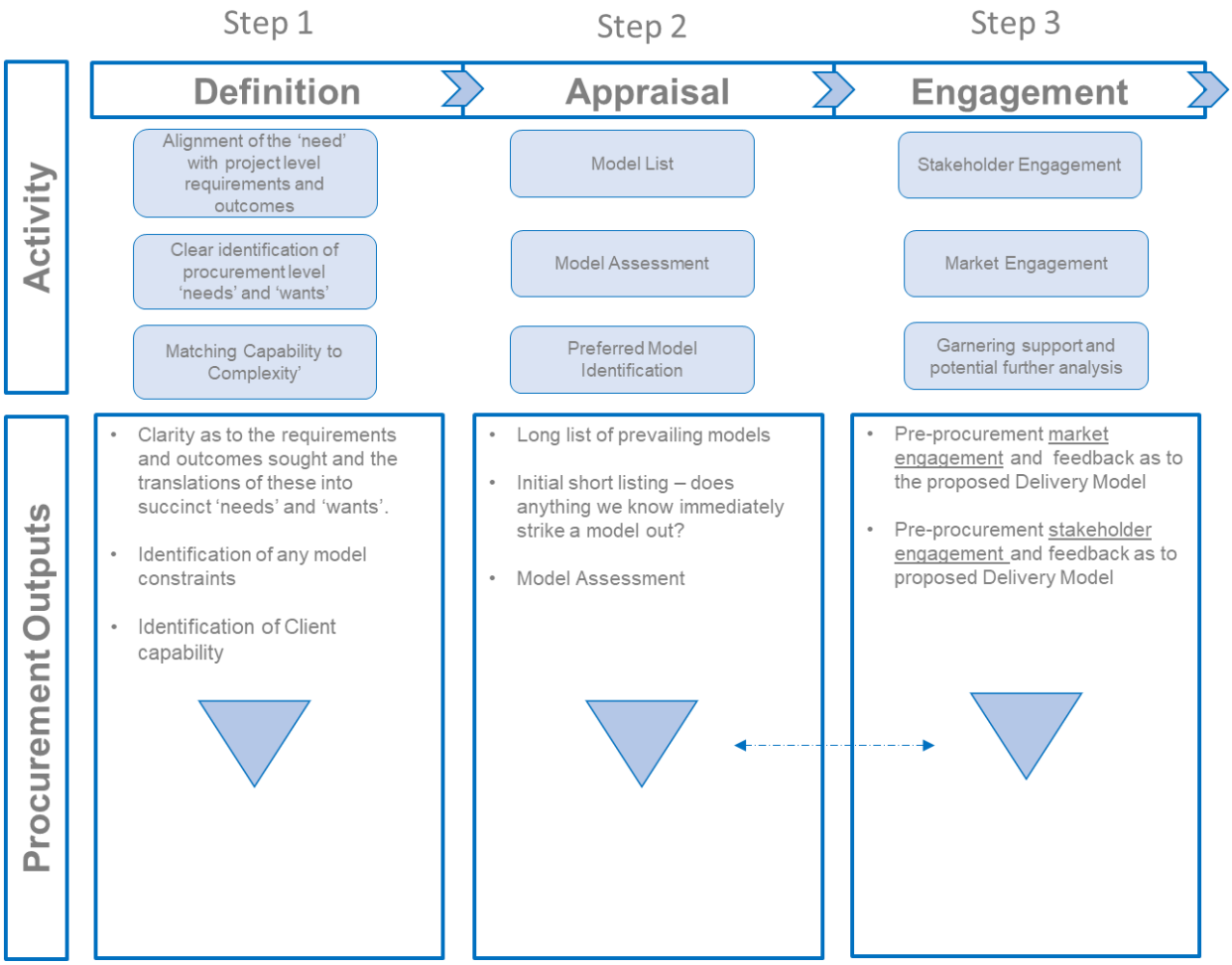


Figure 3-1 - Delivery Model Methodology

The objectives and requirements (in the form of the Project objectives set out in 2.2) have largely been framed, though it will of course be necessary as the Project evolves to continually revisit the same. So too has the regional context of the Scheme.

3.1.1. Delivery Model Typology considered

Viewing matters through the lens of complexity and environment, set out below in Figure 3-2 are the delivery models which have been considered as part of this analysis.

It should be noted however that Alliancing is included in Figure 3-2 below as a reference point for GCP as to where they are vis-a-vis this model. F+G are of the view that it is highly likely that the Alliancing model may be raised by stakeholders, given its use in other parts of the World, its use by National Highways here in the UK, as well as the drive by some industry / representative bodies to advocate this model.

However, alliancing is a highly complex model which requires legally binding contractual agreements between all parties. The time and resources required for the procurement and inception of such agreements in terms of legal input and governance is disproportionately high for a scheme of this scale and complexity. Likewise, the client resources required to manage an alliancing model for the Project would be significantly higher than other models.

F+G are of the view that Alliancing is not an appropriate model for the delivery of the Project and as such it has been removed from the analysis. Further detail on the benefits and disbenefits of alliancing are included in Appendix A, Delivery Model Options Report.

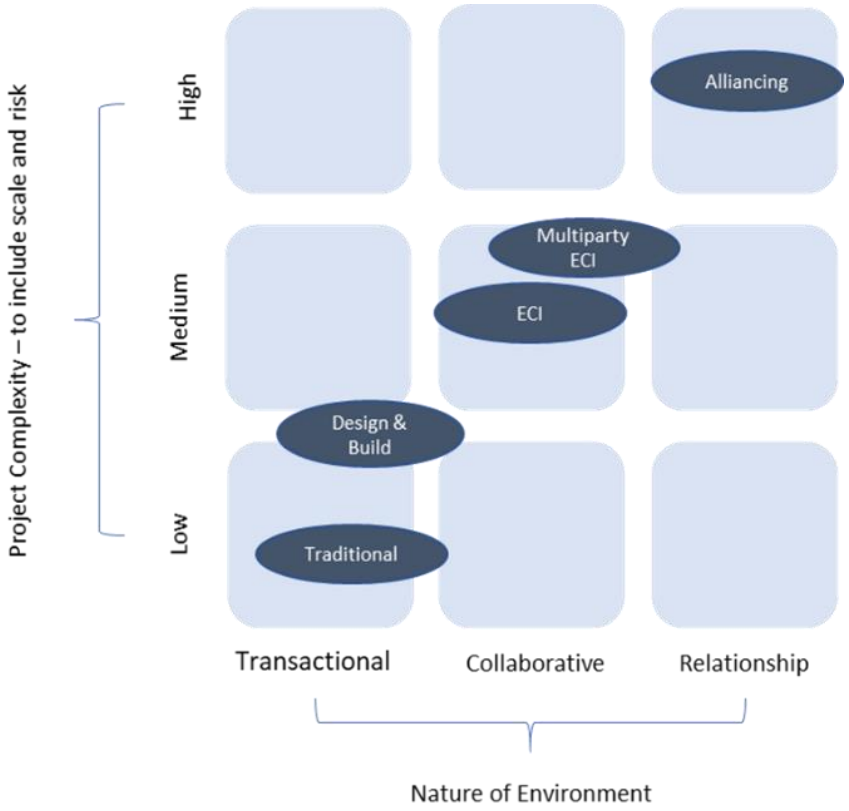


Figure 3-2 - Delivery Models

Two models for Traditional, and two models for D&B have been considered.

Traditional 1: this model sees the appointed Contractor being responsible for construction only, with all Key Risks (e.g., physical conditions, statutory authorities, weather) being allocated/ transferred to the Contractor.

Traditional 2: this model sees the appointed Contractor being responsible for construction only, with all Key Risks being allocated to GCP.

D&B 1: this model sees the appointed Contractor being responsible for detailed design and construction.

D&B 2: this model again sees the appointed Contractor being responsible for detailed design and construction, however it envisages an early phase of ECI advice.

Note that the variations of traditional and D&B would fit within the general descriptions in Figure 3-2.

3.1.2. Delivery Models – Key Information

Please refer to Appendix A – Delivery Options Report, for key information on models considered for the project.

3.2. Evaluation Method

Having established the project characteristics, appropriate evaluation criteria can be developed for assessment of potential delivery models.

The criteria utilised to assess the potential delivery models are set out in Table 3-1 below.

Table 3-1 - Evaluation Criteria

	Criteria Detail
C1	Will the Delivery Model deliver within the Project's funding constraints?
C2	Will the Delivery Model deliver within the Project's programme constraints?
C3	Can the Model deal with the complexity of the Project as it now stands?
C4	Does the client have the resources in-house to manage the Delivery Model - given the proposed model's complexity/ will the organisation be acceptant of the model on day one?
C5	Will the Delivery Model provide clarity around the key risk of design responsibility?
C6	Does the Delivery Model typically see an equitable and palatable allocation of key risks ("Key Risks") – physical conditions, weather, programme risk pertaining to statutory authorities, scope creep and scope change?
C7	Given the current position of the Project within the project lifecycle, is the Delivery Model capable of taking on the Project in its current state?
C8	Is the Delivery Model going to deliver on local and national policy objectives, e.g., Social Value, the use of MMC, Digitalisation, Net zero and so on?
C9	Is the Delivery Model capable of managing change should it be required – for whatever reason, be that technical, stakeholder driven, legislative driven etc.

Each Delivery Model was considered against each of the above criteria, with a score of High (5), Medium (3) or Low (1) being given.

The analysis of each Delivery Model was conducted twice (x2). Firstly, it was done based on 'principle' knowledge around the models – essentially the establishment of a baseline position for each model. Thereafter that assessment was repeated, calibrating the scoring to take account of material factors.

The material factors used to calibrate were as follows:

Table 3-2 - Calibration – Material Factors

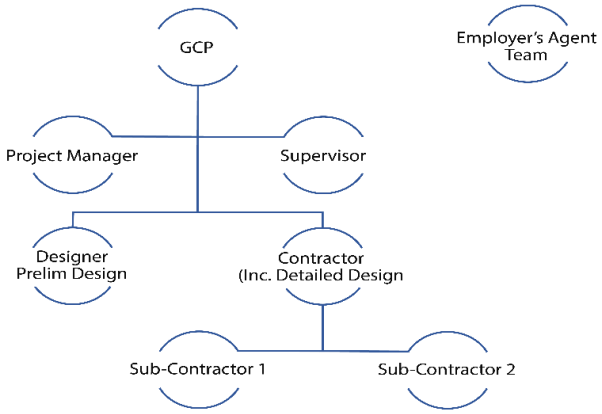
	Material Factor Detail
MF1	Market intelligence - knowledge of the civil/ infrastructure sector and what is and is not palatable in the market at present
MF2	Market intelligence – knowledge of the behaviours prevalent across the civil/ infrastructure sector at present
MF3	Market intelligence – is true delivery against policy aspirations likely to materialise

MF4	Likely perception around the model, not only in the marketplace, but also at a local/ central government level across England and Wales – particularly should the Project be audited at a local or national level
MF5	Client risk appetite (consideration being given to GCP appetite for risk in the context of the Project)

4. Evaluation Results

The detailed analysis undertaken can be found in Appendix A to this report.

As such it is recommended that the Project progresses utilising the **"Design and Build 2"** Delivery Model. The model is illustrated below, extracted from the delivery model options report presented in Appendix A.

Model Type	Key Characteristics (Summary)
Design and Build 2 	• Preliminary design has been developed by the GCP design consultants. • The Contractor in turn is responsible for detailed design and construction. However, it is also typical for the contractor to take on responsibility for the preliminary design work upon appointment[1] . • Risk around other matters such as Statutory Undertakes, engagement with complex stakeholders etc. would typically sit client side, i.e., the Great Cambridge Partnership (GCP) in this context – but not always • The model can be used with differing pricing mechanisms e.g., lump sum or target cost. • Typically, an Employer's Agent ("EA") would be appointed to help assist and likely administer the contract on the client side. The EA has no contractual link with the contractor. The EA would include the likes of Technical Design Assurance, Project Manager, Quantity Surveyor, Supervisor etc. • This model includes Early Contractor Involvement advice, which has been provided by Skanska through the EIA and TWAO stages.

5. Design Responsibility and Ownership

5.1. Design Risk

- Design is key to the success of any infrastructure project. The development of the CSET Phase 2 Project is no different in this regard.

A key aspect to this success is ensuring that clarity exists around design risk – design risk in this context referring to liability should the design need to change following the appointment of a Contractor.

Put another way, it is the answer to the question: if the design changes for whatever reason after the Contractor is appointed, is the Contractor going to be afforded compensation (time and money) or is it a cost that the GCP is to bare?

GCP need to be clear as to the extent of design risk they are willing to adopt. In turn this will need to be set out in the conditions of contract.

For a Design and Build delivery model as proposed for this scheme, where the Contractor is expected to adopt the preliminary design and develop it as their own through the detailed design stage, it would commonly be expected that the design risk would be transferred to the Contractor. However, a note of caution should be considered that if the design presented at the time of tender is so well advanced that the Contractor has little opportunity to further develop or change the design, then the Contractor market may be unwilling to adopt the clients design which may result in less interest from the market to bid.

In this context it is worth noting that should GCP be willing to retain the majority of design risk, it needs to ensure sufficient risk monies are available, since civil construction works tend to involve “change”.

6. Contracting for the Project Delivery Model

6.1. The contract suite to be used

The NEC suite of contracts tends to be the predominant form of contract used to deliver infrastructure across the UK (Highways England, Homes England, HS2, Heathrow etc. all advocate its use). F+G see no reason to deviate away from this approach, as such it is recommended that the NEC4 suite of contracts is used to deliver the project. Its use will allow flexibility and agility and will stimulate good management across the project.

6.2. The contractual forms to be used

A list of the available NEC4 contracts together with brief guidance on when each is typically used can be found in the guidance to the NEC suite (please note that this guidance it is not reproduced but can be provided if required).

It is generally accepted that the Engineering and Construction Contract (ECC) should be used for the appointment of a contractor for engineering and construction work, including any level of design responsibility.

The need to establish an appropriate risk profile that is acceptable to all parties is critical to the success of the project. Neither success in procuring or delivering will be forthcoming if the balance of risk is incorrect. Having determined the contractual form to be used, it is now necessary to identify the appropriate main payment option – the correct selection is critical as it is this main provision that largely dictates the extent of risk that sits with the contractor and the extent of the risk that sits with the client.

As can be seen in Figure 6-1 ‘Option A’ sees the majority of risk being sat with the contractor, ‘Option E’ the majority of the risk with the client. Put succinctly the former being appropriate for use when there is clarity and certainty as to the exact requirements and the latter being when the extent of the work is not fully defined.

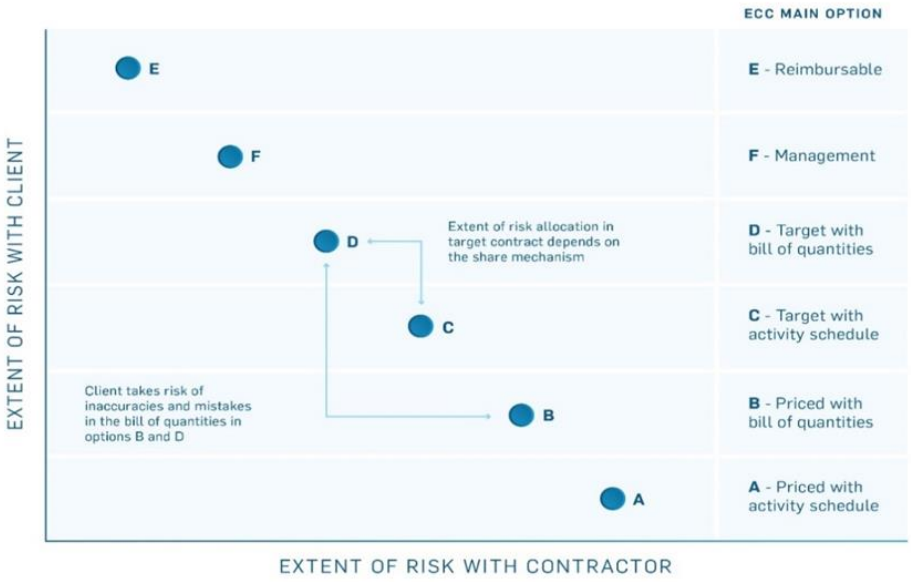


Figure 6-1 - Analyses of Risk

For a project of this scale and complexity it would be recommended to use an Option C (Target cost with Activity Schedule) contract, where the risk is shared through the pain-gain mechanism.

6.3. Contract Drafting – Key Clauses

Having considered the contract suite and form to be utilised, it is felt prudent at this point to set out current thinking around the key contract clauses that are to feature in the model. It should be noted that the intention is to stress test the appropriateness (or not) of these provisions as part of the project's market engagement exercise.

Table 6-1 - NEC4 ECC (Main Option C) secondary (X) Clauses

Secondary Option Clause	Purpose	Recommendation (Subject to Market Engagement)
X1 Inflation	In using this Price adjustment clause, the risk of inflation lies with the Client. At each monthly assessment date, the price adjustment is calculated using the latest published index adjusted for the index weightings compared to the index at the base date. The indices to be used are determined by the Client and stated in Contract Data Part 1.	**Recommendation:** It is recommended that X1 is taken forward given the current volatility in the marketplace for materials. If all inflation risk is transferred to the Contractor, then it is likely that come potential suitable Contractors may be deterred from submitting tender. It should be noted that as material prices are currently high, then there is potential for material prices to decrease over time, which would result in total prices to reduce. **This recommendation should be revisited at time of going to tender, depending on market conditions.**
X2 Changes inlaw	This clause removes from the Contractor the risk of changes in the law that occur after the Contract Date. Should such an event occur then this would be a compensation event.	**Recommendation:** It is recommended that this Secondary Option is taken forward

X3 Multiple currencies	This clause deals with situations where a provider is to be paid in more than one currency, as such it is not relevant.	**Recommendation**: This Secondary Option is not relevant.
X4 Ultimate Parent company guarantee	Where Option X4 is incorporated, an ultimate holding company guarantee should be provided by the Contractor to the Client	**Recommendation:** It is recommended that this Secondary Option is taken forward and used if necessary, depending on the successful Contractor organisation. Performance Bond (X13) can be used instead of PCG.
X5 Sectional completion	This option should be included if sections of the works are required to be completed before the whole of the works.	**Recommendation**: This option should be considered if there are aspirations to deliver certain areas of the scheme ahead of others.
X6 Bonus for early completion	This Secondary Option encourages the Contractor to achieve early completion on either a section of the works (in conjunction with X5) or the whole of the works	**Recommendation:** It is recommended that this Secondary Option is not taken forward as early completion not beneficial to the Client.
X7 Delay damages	This Secondary Option allows the Client to specify pre-assessed delay damages which are paid by the Contractor if either a section of the works (X5) or the whole of the works are not completed by their relevant Completion Dates.	**Recommendation:** It is recommended that this Secondary Option is taken forward with damages to be calculated and agreed with GCP.
X8 Undertaking to client/others	Option X8 concerns the granting of "collateral warranties" although the clause uses the more generic term called "undertakings". They provide a contractual link between organisations who do not otherwise have a contract with each other	**Recommendation:** It is recommended that this is included with undertakings required for any third party. Note that this will be picked up in the legal drafting and may not be represented through X8 but via another Z-clause amendment.
X9 Transfer of rights	The clause involves the transfer of rights of ownership of material and information prepared by a Contractor or any sub-contractors or sub-consultants to the Client.	**Recommendation:** It is recommended that this Secondary Option is taken forward.
X10 Information modelling	This Secondary Option is aimed at ensuring all works completed to deliver the scope are completed in a BIM compliant manner.	**Recommendation:** It is recommended that this is not taken forward as this detail should be picked up in the Scope – it will also be dependent on Client maturity in such areas.
X11 Termination by the client	This Secondary Option allows the Client to terminate the Contractors obligation to provide the works for any reason not stated in the general termination clauses (Section 9)	**Recommendation:** It is recommended that this Secondary Option is taken forward allowing flexibility for GCP.

X12 Multiparty collaboration	Secondary Option X12 is utilised if the Client has decided to, or is required to, utilise a collaborative approach between several parties, none of whom are in contract with each other but who are all in contract with the Client.	**Recommendation:** It is recommended that this Secondary Option is not taken forward for this scheme as the Contractor will be delivering the detailed design and construction.
X13 Performance bond	This Secondary Option places a requirement on the Contractor to provide a bond – a call can be made on the bond should there ever be a need to call on another to finish the whole or part of the works.	**Recommendation:** It is recommended that this Secondary Option is taken forward and used if necessary, depending on the successful Contractor organisation.
X14 Advanced payment to the Contractor	This Secondary Option is used when a Contractor will incur significant “up front” costs before the start of income generating activity, e.g., pre-ordering specialist materials or plant.	**Recommendation:** It is recommended that this Secondary Option is taken forward as for any items of significant expenditure could adversely impact Contractor cashflow. However, this would need to comply with GCP financial governance/procedures.
X15 Contractors Design	When Option X15 is incorporated, the Contractor’s liability for its design is limited to the skill and care used by professionals designing works similar to the works – as opposed to “fit for purpose”	**Recommendation:** It is recommended that this Secondary Option is taken forward as it is a standard amendment in UK projects – “fitness for purpose” contracts are very few and far between – they tend to be uninsurable
X16 Retention	Secondary Option X16 enables the Client to retain a proportion of the Price for Work Done to Date as security and as an additional motivation for the Contractor to complete the works free from defects.	**Recommendation:** As with a PCG and provision of a Bond, it is recommended that this Secondary Option is taken forward and used if necessary, depending on the successful Contractor organisation.
X17 Low performance damages	Where X17 is incorporated and the performance of the works in use fails to reach a specified level due to a design or other fault of the Contractor and the Defect is not corrected so that it is listed in the Defects Certificate, the Client is able to recover the damages it suffers in consequence through this Option.	**Recommendation:** It is recommended that this Secondary Option is not taken forward as main risk lies with defects covered by other clauses within contract.
X18 Limitationof liability	This Secondary Option places limits on various limbs of liability	**Recommendation:** It is recommended that this Secondary Option is taken forward with commensurate caps on liability.
X20 Key performance indicators	This Secondary Option allows for the Client to specify several Key Performance Objectives which they wish to incentivise to encourage the Consultant to meet pre-determined criteria. It should not however be used with X12.	**Recommendation:** It is recommended that this Secondary Option is taken forward or similar KPIs to be developed and implemented through a z clause.

X21 Whole lifecost	If this Option is used, the Contractor may suggest proposals which reduce the whole life cost. These may potentially increase CAPEX/ project costs and/ or duration.	**Recommendation:** It is recommended that this Secondary Option is not taken forward as the need for Whole life cost will be a captured within the Scope.
X22 Early contractor involvement	This Secondary Option is an addition to the NEC4 ECC contract form. If chosen, this Option provides a mechanism for the Client to formally engage a Contractor under an ECI stage.	**Recommendation:** It is recommended that this Secondary Option is not taken forward as 2-stage ECI delivery model is not being employed.
Y(UK)1 Projectbank account	Where Y(UK)1 is incorporated, theProject Bank Account (PBA) is established and maintained by the Contractor.	**Recommendation**: It is recommended that this Secondary Option is taken forward, but it needs to be ensured that this is in line with GCP policy
Y(UK)2 ConstructionAct	If incorporated, this Option is used to supplement the core clause payment provisions in order to ensure that they comply with the Housing Grants, Construction and Regeneration Act 1996 (the Act).	**Recommendation:** It is recommended that this SecondaryOption is taken forward as this Actapplies.
Y(UK)3 ThirdParty Rights	The Contracts (Rights of Third Parties) Act 1999 allows a third party (in the ECC called a 'beneficiary') to a contract, i.e., not the Client or the Contractor, to enforce a term of that contract in certain circumstances.	**Recommendation:** It is recommended that this Secondary Option is taken forward to cover third party interfaces. Please note however that further guidance will be sought as regards this point from the legal team drafting the contract – there are numerous ways to achieving this goal.

7. Public Procurement

7.1. Current position in England

Since leaving the EU at 11pm on the 31st of December 2020 the UK is no longer subject to EU procurement law. The UK is however still subject to the World Trade Organization's Government Procurement Agreement (GPA). The GPA requires the majority of contracts to be open to the EU and other trading partners, with transparent award procedures and remedies being available.

In order to ensure compliance with the GPA, and to safeguard against disruption, the 2015 Public Contracts Regulations continue to apply – this will be the case until they are formally repealed and replaced with longer term, UK specific arrangements.

In December 2020 the Cabinet Office set out its proposals for shaping the future of public procurement legislation with the publication of its Green Paper: *Transforming Public Procurement*.

On the 6th of December 2021 the Cabinet Office published feedback it had received to its proposals. The Cabinet Office have confirmed that given the timescale around the legislative process, any new procurement regime is unlikely to come into force until 2023 at the earliest.

F+G will continue to keep GCP abreast of these developments in public procurement; at present however, the Project needs to simply continue to comply with the Public Contracts Regulations 2015.

7.2. Procurement route procedures

There are four recognised routes to market available for the procurement for the project:

Open procedure– Notice issued inviting all interested Contractors / Suppliers to submit a tender for consideration. Selection criteria can be included in the notice to identify the appropriate suppliers at the outset.

Restricted procedure – Notice issued inviting all interested Contractors to express interest in submitting a tender. Selection Questionnaire (SQ) issued to interested parties and evaluated prior to issue of formal Invitation to Tender to a restricted number of suppliers.

Competitive Dialogue procedure – Designed primarily for complex Private Finance Initiative (PFI), Public-Private Partnership Model (PPP) and major infrastructure projects. Contract requirements, procedures and proposed solutions can be discussed with shortlisted tenderers (minimum 3) who meet initial contract notice criteria.

Competitive Negotiated procedure – Terms of contract can be negotiated with chosen Contractors following competitive tender process.

A more detailed analysis of the various procurement procedures available under the PCR 2015 can be found in Appendix D.

As regards the standard debate Open v Restricted Procedure, it is well understood that there is a relatively buoyant civils market within the UK; however, that market is very competitive. As such organisations do pick carefully which opportunities they bid.

It is known that those organisations capable of delivering major infrastructure projects are reluctant to bid in an Open Procedure environment (some may not even secure clearance to do so from an internal governance perspective). Ultimately, they have no issue with bidding in an environment of 5 or 6 contractors; however, they are highly unlikely to expend the necessary bidding costs if they find themselves in a pool of 10/ 15 bidders, particularly if contractors not fully versed in major projects are bidding – such contractors may (intentionally or unintentionally) misprice such major projects.

7.3. Frameworks

The term ‘framework agreement’ is regularly used within the context of project/ programme development and delivery, across multiple markets. It is a term however that can also cause confusion, and as such it is felt prudent to provide clarity as to what framework agreements are, and what role they may play in delivering the CCS programme.

As set out in UK Government guidance “a framework agreement is a general phrase for agreements with providers that set out terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the agreement. In most cases a framework agreement will not itself commit either party to purchase or supply, but the procurement to establish a framework agreement is subject to the EU procurement rules”2

It is critical to remember from the programme’s perspective that a framework agreement can feature:

- as a legitimate delivery and contracting model (e.g., analysis could show that an arm’s length, non-committal framework arrangement should utilised, enabled via a bespoke drafted framework agreement) and
- feature as a route to market (e.g., analysis could show that an alliance model and contract should be used, but ultimately there would be no need to procure the same in open competition via OJEU/GPA; reliance being able to be put on an already established framework such as one owned by CCS, EHA, Pagabo etc.)

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560268/Guidance_on_Frameworks_-_Oct_16.pdf

Ultimately, establishing the correct delivery and contract model is different to determining the right route to market – one follows the other:

Step 1 – determine the correct delivery and contractual model (A and B in the preceding paragraphs)

Step 2 – decide on the appropriate route to market, i.e., reliance on pre-existing framework or stand-alone procurement.

Once the correct delivery and contracting model is arrived at (utilising the methodology set out in 2.1) a decision then has to be made as regards the route to market to deliver that contracting model, i.e., an answer is required to the simple question – how can we appoint someone to deliver the work on the basis of the delivery model/ contract model we've identified?

The use of already existing framework agreements may well be an appropriate and legitimate answer to this question, and an analysis of such a route will be carried out immediately following the identification of the appropriate delivery model and contracting model. An example of that 'type' of analysis (using agreements prevalent in the UK market) is set in Table 7-1 below:

Table 7-1 - Advantages and Disadvantages of Existing Framework Contracts for Appointment

Framework	Advantages	Disadvantages
Eastern Highways Alliance (EHA)	• Cambridgeshire County Council is a member of the EHA • Framework is tried and tested in Cambridgeshire. • The Framework is designed to meet the requirements of current and potential future Alliance members for project delivery, such as cost, quality and timescales.	• The Framework contract is due to expire on 31/03/24 though advised this will be re-tendered, extending beyond this date. • Framework is designed to deliver construction projects costing between £2m and £30m. Estimated construction cost of all the options are in excess of £95m. Schemes exceeding £30m might be acceptable subject to approval by the EHA Board. • CCC has a limit on value of work it can procure through this framework.
SCAPE Civil Engineering Construction Framework	• The Framework is available to local authorities and public sector bodies. • The SCAPE Group Ltd is an organisation originally established by numerous Local Authorities in 2006 delivering greater value for money within the procurement of major building works. Since then, they have diversified within other areas establishing frameworks for services, for example; QS services & project management. • Each designed Framework can accommodate construction projects costing between £50k & exceeding £100m plus. Furthermore, these are free to employers. • Savings via financial and time are achieved by not conducting an OJEU procurement exercise. • Ability to leverage same advantages of ECI; however, with only on supplier (Balfour Beatty).	• Framework based on a single source direct appointment (Balfour Beatty), i.e., no competitive tender. • By awarding a single supplier there is a potential the value for money main construction contract will be impacted. • Lack of competition when the design and build contract is let. • Restricts evaluation of approaches achieved via OJEU tender.
Cambridgeshire County Council's Highways Service Contract	• The delivery programme can be communicated to existing framework contractors (Skanska), and they can mobilise accordingly. • Economies of scale / efficiencies resulting from long-term understanding of local needs and policies.	• Limited incentives and opportunities for the contractor to create efficiencies in delivery, thereby leading to limited cost savings for GCP. • Less direct control in relation to appointment of sub-contractors and suppliers.

	• Direct award on agreement of target cost thus increased efficiency in procurement process.	
Hampshire Generation 4 Framework Contract	• This Partnership Framework helps local councils to retain their distinctiveness while providing a framework, ensuring opportunities for the communities to work collaboratively towards their priorities. • Ensures local resources are used efficiently and delivering value for money. • The Framework is designed to deliver construction projects between £8m to £150m.	• The Hampshire G4 Framework is a long-term partnership, as such this can sometimes be challenging to manage. • A framework can provide restrictions for new suppliers that wish to provide e.g., innovative ideas etc. • Levy charge for using framework.
Framework	**Advantages**	**Disadvantages**
Pagabo Framework Contract	• A fast, fully OJEU compliant contracting mechanism for public sector organisations. • Transparency and value for money through Pagabo actively performance managing framework partners. • A no project, no fee approach from Pagabo, who do not charge a fee on pre-construction service agreements – only once your project officially starts on site.	• No guarantee of business even if a supplier is selected as an approved supplier. • Frameworks are unresponsive to change. There may be new suppliers and/or new solutions within the market that were not included when the agreement was set up. • Levy charge for using framework.
Crown Commercial Service (CCS)	• Ensures supply chains are engaged from the earliest stages of the project. • Ensures transparency and collaborative values flows down the supply chain to produce a supply chain that clients have confidence in.	• No guarantee of business even if a supplier is selected as an approved supplier. • Frameworks are unresponsive to change. There may be new suppliers and/or new solutions within the market that were not included when the agreement was set up.

7.4. Route to Market Recommendation

Though the same should be tested with the market, F+G's current view is that the Project should be procured using the Restricted Procedure. Table 7-2 below sets out the high-level structure of a Restricted procurement, and also sets out the list of documents necessary to be drafted at advert publication.

Table 7-2 - The Restricted Procedure

Procedure	Any limitation/ constraint to using the procedure	Stages	Minimum number of candidates	Likely level of competition	Key documentation for drafting
Restricted	None. Procedure can be used for all purchasing activity including works of the nature of the Project.	Prequalification/ selection Tender and evaluation	All interested parties can submit expressions of interest (i.e.,	Prequalification likely to be high	Project Advert (PIN) PQQ ITT

			submit a PQQ/ SQ). At least 5 pre-selected candidates to submit a tender		Project Background NEC4 ECC NEC4 Scope NEC4 Activity Schedule

The current anticipated programme for the Project will allow the timeframe for a restricted procedure and will most likely offer best value for money owing to the introduction of a competitive tendering stage for the detailed design and construction stages.

Further discussion around the use of existing frameworks should be considered if constraints around programme change – i.e., if the work in the overall GCP programme needs to be staggered to enable delivery.

8. Pre-procurement Market Engagement

8.1. Market Analysis (High Level)

Purchasing within the construction/ infrastructure sector – be that for services, consultancy or works – is expanding. Despite the impact of the COVID-19 crisis and Brexit the infrastructure sector has seen significant spending commitment by the UK government in the 2021 budget of over £100bn up to 2024/2025.

Such increased activity introduces both challenges and opportunities. A particular challenge in the context of the project (and any major civils/ infrastructure project at present) is the need for clients to make their projects attractive to the market – the availability of work can drive selective tendering by both consultants and contractors, and this is something we are seeing evidence of developing across the UK.

There can be a myriad of reasons behind an organisation's decision to becoming selective as to their bidding activity (locality, locked up resource, commercial pressures, all play a role). A key theme beginning to emerge however is that the market is becoming uncomfortable with extensive transfers of risk, particularly when coupled with a lack of information, lack of design development and so on.

It is therefore felt key that there is market consultation as to proposed route for procurement – both in terms of the delivery model and contractual model to be deployed. A dialogue with the market pre-procurement can also help identify potential opportunities for improvement to proposals (or indeed innovative ideas).

8.2. Market Engagement

Care must be taken not to distort competition when engaging with the market and to safeguard matters we advise that the engagement is conducted using the following measures:

- Openly announcing the preliminary market engagement via the publication of a Prior Information Notice (PIN) on the UK government's portal
- Giving bidders enough time to be able to organise attending such an event
- The sharing of information about the findings of market engagement post holding the event, again giving providers enough information after the event to make meaningful use of the information.

We recommend that there 3 stages to the engagement process:

Stage 1 – an event to kick off the engagement where aspects such as the nature of the project, programme, proposed procurement etc. can be set out.

Stage 2 – more detailed engagement with bidders to be had on a one-to-one basis, focusing on procurement/ commercial and technical matters.

Stage 3 - an opportunity be afforded to bidders to come back in writing regarding matters, post Stages 1 and 2. The resulting findings from the above engagement process will in turn feed into an update of this procurement strategy.

9. Key Programme Dates

A proposed outline procurement programme has been included in Appendix E, however, set out below are key dates relevant for the purposes of this procurement strategy:

- Publish Prior Information Notice (PIN) – November 2023
- Pre-procurement Market Engagement – November to December 2023
- Publish SQ – March 2024
- Tender Period – May 2024 – October 2024
- Contractor Appointment – October 2024
- Contractor Detailed Design and Construction – October 2024 – March 2027

9.1. Design and Build vs Traditional

Through further analysis of Traditional v Design and Build procurement models, it is acknowledged that there are likely to be programme efficiencies achieved through the Design and Build delivery model. This is due to the potential for overlap between the completion of detailed design and the construction stage. The Contractor is likely to progress with pre-construction activities, mobilisation and early works while the design is being finalised.

10. UK Construction Intelligence

Set out below is a link to F+G's UK Construction Intelligence Report for Q3 2021:

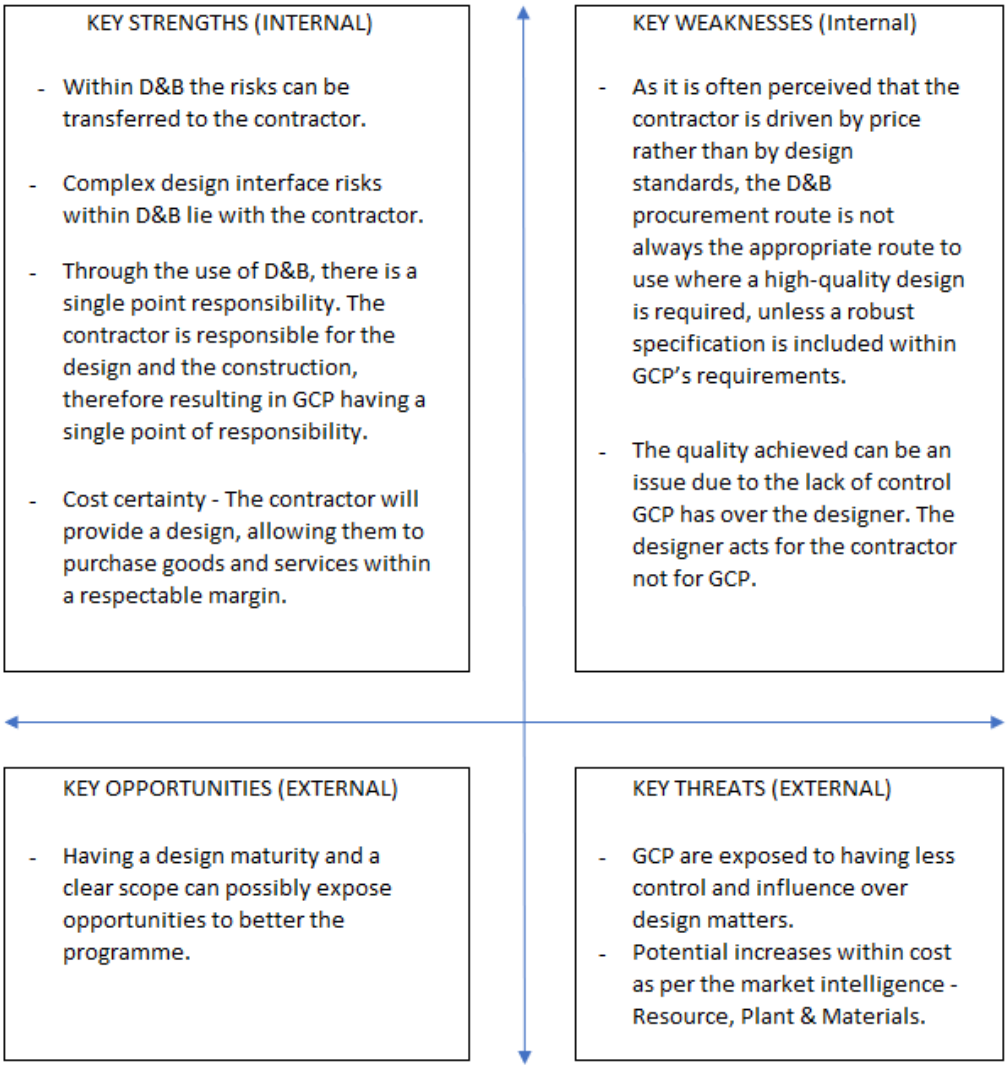
UK Construction Intelligence Report (pitchspace.net)

The UK economic recovery has continued throughout 2021. By the summer it was reported UK business confidence had hit a four-year high, thanks to growing optimism about the post-Covid recovery, with the successful vaccine rollout, removal of lockdown restrictions and changes to self-isolation rules all contributing to greater optimism among firms. At the same time concerns about supply chain issues and staff shortages were highlighted as reasons which could constraint the economy.

It should be noted that when conducting the analysis set out in this report, consideration has been given to this market intelligence. Moving forward it is important that Project continues to keep abreast of how the marketplace is developing.

11. The Project's current Strengths, Weaknesses, Opportunities and Threats (SWOT)

Set out below is a summary of the Project as it currently stands – from the perspective of strength, weaknesses, opportunities and threats:



12. Draft Recommendations

It is recommended that the project be progressed on the basis of the following:

D&B Contractor to be appointed following approval of the required statutory planning processes. The D&B Contractor to undertake detailed design and construction. The main benefits of this approach will be:

- Retain the planning process within the control of GCP and their appointed design consultants.
- Introduce a tender process prior to the detailed design and construction stage, which will provide competitive build-up of target cost.
- contractual model that utilises NEC4 ECC Option C
- the use of the “Restricted Procedure” under the Public Contracts Regulation 2015.
- Enable appropriate risk transfer to the Contractor.

That the delivery model and contractual arrangements set out above are tested as part of a market engagement exercise, with that market engagement exercise to be held/ undertaken in line with timescales set out in Section 9.

Appendices

Appendix A. Delivery Model Options Report

Appendix B. Delivery Model Evaluation

Appendix C. Optional Framework Suppliers

Eastern Highways Alliance (EHA) Framework Contract			
EHA 3 October 2020 for 4 years	BAM Nuttall		Jackson Civil Engineering
	Dyer and Butler		Marlborough Highways
	Sisk		
	Eurovia		
	Galliford Try		
	Geoffrey Osborne		
	Interserve		
SCAPE Civil Engineering Construction Framework Contract			
SCAPE Construction framework for England, Wales and Northern Ireland	Balfour Beatty Construction Limited		
Cambridgeshire's County Council's Highways Service Framework Contract			
10 Year Contract with the option to extend for additional further five years' worth £900m	Skanska Construction UK Ltd.		
	Milestone Infrastructure Ltd		
Hampshire Generation 4 Framework Contract			
Supplier to deliver Framework projects valued from £8m to £150m.	Hochtief (UK)	It also includes ECI call-offs valued at up to £250,000	
	Skanska		
	Tarmac Trading		
	Volker Fitzpatrick		

Pagabo Framework Contract			
Lot 3 Core Suppliers (Contracts from £30m)	ISG Construction	Lot 3 Reserve Suppliers (Contracts from £30m)	Kier Construction
	John Graham Construction		Skanska Construction UK
	Morgan Sindall Construction and Infrastructure		Wates Construction
	Sir Robert McAlpine		
	VINCI Construction UK		
	Willmott Dixon Construction		

Crown Commercial Service (CCS)			
Lot 5: Construction Works & Assoc Servs (£80m +) - National Lot across all UK regions	Balfour Beatty Construction Limited	Lot 5: Construction Works & Assoc Servs (£80m +) - National Lot across all UK regions (Continued)	Kier Construction Limited
	Bam Building & Infrastructure		Laing O'Rourke Delivery Limited
	Bouygues (U.K.) Limited		Mace Limited
	Bowmer & Kirkland Limited		Skanska Construction UK Limited
	Galliford Try Construction Limited		TFG JV (Tarmac / Farrans / Griffiths)
	Graham		Tilbury Douglas Construction Limited
	ISG Construction Limited		Wates Construction Limited

Appendix D. PCR 2015 Procedures

Procedure	Specific requirements for using the procedure	Stages	Level of Competition likely to be generated	Likely level of workload for AUTHORITY	Potential for procurement challenge	Opportunity for innovation	Opportunity for negotiation/dialogue during the tender process	Likely minimum timeframe from OJEU Publication to contract award (excluding reductions for E-submissions)
Open	None	1. Selection and evaluation	High	HIGH All compliant tenders must be examined by AUTHORITY, and this can delay the award. Resource intensive for both AUTHORITY and the tenderers	LOW Decision made with a straightforward focus on the award. Limited transparency risks as an open, transparent, competitive procedure	Low	None	4 to 6 months
Restricted	None	1. Prequalification 2. Selection and evaluation	Medium - Limited to shortlisted tenderers	MEDIUM Limited number of tenders to evaluate and therefore less resource intensive for AUTHORITY Two-stage procedures might be longer in order to respect the required time limits	MEDIUM Greater potential for challenge due to the increased exercise of discretion by AUTHORITY	Low	None	6 to 8 months
Competitive Dialogue	Fulfil one or more of the following criteria: (1) An open or restricted procedure has attracted only irregular or unacceptable tenders. (2) The needs of the AUTHORITY	1. Prequalification 2. Negotiation and evaluation	Medium - Limited to shortlisted tenderers	HIGH The burden of proof for the circumstances allowing for the use of the procedure rests with AUTHORITY. AUTHORITY is highly involved in the negotiation/dialogue with tenderers. Limited number of tenders to evaluate	MEDIUM Greater potential for non-compliance with PCR2105 rules due to the increased exercise of discretion by AUTHORITY	Medium	High	10 - 18 months

Competitive procedure with negotiation	cannot be met without the adaptation of available solutions. (3) The subject matter includes design or innovative solutions. (4) The technical specifications cannot be established with sufficient precision by the AUTHORITY with reference to defined standards or technical requirements. (5) The contract cannot be awarded without prior negotiations due to specific risks or circumstances related to the nature, complexity, or legal and financial matters.	1.Prequalification 2. Dialogue 3. Selection and evaluation	Medium - Limited to shortlisted tenderers	and therefore less resource intensive for AUTHORITY. Two-stage or three stage procedures might be longer in order to respect the required time limits.	HIGH Greater potential for non-compliance with PCR2105 rules due to the increased exercise of discretion by AUTHORITY. Transparency requirements are particularly challenging during the dialogue.	High	High	5 to 6 months

Appendix E. Outline Procurement Programme