



Project Procurement Strategy Report for:

St Austell to A30 Link Road

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1 Purpose of Document

This report will evaluate the various options available for the procurement of the design and construction works and services required for the St Austell to A30 Link Road project. The report aims to provide recommendations to meet Cornwall Council's objectives for the scheme including achieving best value in relation to programme, quality and cost, whilst meeting the requirements for statutory compliance and funding.

The report shall:

- Review, analyse and make recommendations on the available options to provide a basis for decision making.
- Allow the Project Board to approve the relevant Project Gateway.
- Supplement the Project Initiation Document (PID) to provide an information base for all stakeholders and audit trail to explain project decisions.

The commissioned Project Controls consultant (Mace) is responsible for the production and issue of the Procurement Strategy Report to Cornwall Council. Once approved by the Project Board the report shall be retained by Cornwall Council as a record of the decisions taken.

2 Executive Summary

This report provides a recommended procurement strategy to Cornwall council for design and construction of the St Austell to A30 Link Road project.

The scheme is to provide a new build single carriageway road connecting St Austell with the A30 through a more direct, quicker route.

The aspirational programme for the project includes submission for planning approval in December 2018, with a planning decision expected in April 2019 and commencement of construction in January 2020, completing in June 2022.

Of a total project budget of £84.461 million, £6million is to be funded by Cornwall Council, with the remaining £78.461 million funded by the Department for Transport (DfT).

Due to DfT funding requirements, the procurement strategy must comply with all OJEU requirements and public procurement rules and must also result in identification of a preferred bidder and a firm and final offer.

The scope of works covered under this procurement strategy include the following:

- Completion of Design;
- Statutory undertaker diversions;
- Temporary works;
- Permanent works including: earth works, drainage, surfacing, barriers, lighting, signage, landscaping and fencing to new carriageway and structures (eg. retaining walls, culverts etc);
- Additional complimentary measures (To be confirmed)

Two options have been considered for procurement of the detailed design, novation of the existing design team and contractor selected design team. It is recommended that the option for the contractor to select their own design team is selected.

The Additional Complimentary Measures for the scheme include the design and construction of traffic calming and realignment within the local villages. The procurement of these works have to recommended to be combined within the main works contract in order to meet funding constraints, however this strategy is recommended to be reviewed after full funding approval has been granted as an alternative procurement of these works may be possible at a later stage.

A key aim of the procurement process is to allocate risk to the party who is best able to manage the risk. The appropriate allocation of risk, has been considered as part of the recommended procurement strategy.

Risks which have been identified as best placed to be transferred to the contractor have been considered in the recommendations included in this report. Consideration has also been made for the impact of risk pricing to the tendered construction sum.

The procurement drivers are to achieve the appointment of a suitably accredited and demonstrably experienced contractor who can deliver and overcome both the programme challenges for earliest delivery of the proposed scheme, and also is representative of value for money, within the budget provided.

The market conditions and stakeholder requirements have been considered in the approach to the procurement strategy. These include market conditions which indicate there may be difficulty in achieving highly competitive tenders, and the requirements for both Cornwall Council and the Department for Transport (DfT).

The following procurement options have been considered within this report:

- Two stage tendering
- Prime Cost / Cost Reimbursable
- Management Contracting
- Construction Management
- Design & Build (D&B)
- Negotiation
- Target Price
- Partnering
- Framework

Further detailed analysis of procurement options has then been undertaken within the specific objectives and constraints of this project. These options include OJEU, Existing Frameworks and Internal Direct Award.

Following this analysis, the recommended approach is for Open OJEU as it will allow for a greater efficiency in the tender programme and increased competition with the potential to deliver better value. Importantly, this option will also ensure compliance with EU regulations.

Analysis of the contract options has also been undertaken to support the procurement strategy. The focus of this analysis has been on NEC forms of contract given their use within the infrastructure sector and preference by Cornwall Council for their use. Detailed analysis of NEC ECC Options A to E has resulted in options A, B, D and E being deemed not to be suitable for this project. An NEC3 or 4 ECC Option C Target Cost contract is the recommended form of contract for this procurement strategy based on the advantages of the collaborative approach offered by the NEC Contract, combined with infrastructure contractors' familiarity with this form of contract, which is expected to be most suitable for this project's complexities and programme constraints.

3 Introduction & Project Background

This report has been prepared by Mace, as Project Controls consultant, to provide Cornwall Council Capital Projects with a recommended procurement strategy for the delivery of the design and construction of the St Austell to A30 Link Road.

The project brief is to provide improved connectivity between St Austell and the main route in and out of Cornwall (the A30). The scheme will be a new build single carriageway road connecting St Austell with the A30 through a more direct, quicker route.

The new road will also improve connectivity for the surrounding towns and villages, and this will provide stimulation for businesses to invest locally and encourage new residential developments in the area, which will improve local employment prospects. Local towns including Roche, Bugle and Stenalees, will see a reduction in traffic flowing through them and the new road will ease current bottlenecks in these towns.

The aspirational programme for the project includes submission for planning approval in December 2018, with a planning decision expected in April 2019 and commencement of construction in January 2020, completing in June 2022.

The total project budget is £84.461 million of which £6 million is to be funded by Cornwall Council during the pre-construction phase. Once planning approval has been granted and a firm price is received from a Contractor, the remaining £78.461 million will be released by the Department for Transport (DfT), in yearly contributions each March for the forecast spend for the financial year ahead.

Key stakeholders identified on the project include:

- Cornwall Council;
- Department for Transport;
- Cornwall and Isles of Scilly Local Enterprise Partnership (CIoS LEP);
- St Austell Business Improvement District;
- Roche Parish Council;
- Luxulyan Parish Council;
- Treverbyn Parish Council;
- St. Blaise Parish Council;
- Carlyon Parish Council;
- The Cornwall College Group;
- St Austell Town Council; and
- St Austell Bay Economic Forum (SABEF)

As the majority of funding for the project is to be provided by the DfT, this procurement strategy must comply with public procurement rules (2015) and OJEU procedures. It should also be in line with the outline business case submitted for DfT/Cabinet approval, and the subsequent letter received from DfT dated 28 November 2017, confirming funding approval in principle.

A critical requirement highlighted in the letter received from DfT is for an updated business case submission prior to final and full funding approval. This business case is to include confirmation that the procurement process has been undertaken to achieve a preferred bidder with a firm and final offer.

4 Scope of Works and Services

DfT requires a preferred bidder with a firm and final offer to be in place prior to full approval of funding, however the remaining budget funded by Cornwall Council is insufficient to cover the cost of full detailed design prior to contractor procurement.

4.1 Early Contractor Involvement

Early contractor involvement has also been considered but discounted on the basis that sufficient funds are not available. As the name suggests, Early Contractor Involvement, or ECI, involves having the contractor for the works appointed and involved in the development of scheme at the earliest opportunity.

This enables the team to draw on the contractor's experience at the design and preparation stages, bringing their expertise in value management to issues such as buildability and construction techniques. As a result, their knowledge and abilities to influence project decisions will have maximum impact in terms of project timing, quality and cost.

The contractor may also play a key role in any consultations and any requirements of the planning process such as planning applications and, if necessary, a Public Inquiry.

Advantages

- Generally, the contractor is able to bring their expertise to bear on the development of the scheme from an early stage to provide value for money and cost/programme certainty, particularly in relation to land take and complex engineering elements of the scheme.
- Strong collaborative relationships can be built.

Disadvantages

In this particular case, much of the early work that could be carried out with the contractors input has already been carried out. The design is developed to preliminary standard, planning permission has been sought, the land acquisition process has commenced and it is believed that a Public Inquiry will not be required. With limited upfront funds, it is therefore considered that the project must be procured under a Design and Build (D&B) contract as no further funds are available.

Therefore the scope of works to be procured for the project is the completion of design and the construction of a new 6.2 kilometre long, single carriageway, including associated side roads, and junction improvements as described within the Outline Business Case.

This scope will include the following:

- Completion of Design;
- Statutory undertaker diversions;
- Temporary works;

- Permanent works including: earth works, drainage, surfacing, barriers, lighting, signage, landscaping and fencing to new carriageway and structures (eg. retaining walls, culverts etc);
- Additional complimentary measures (To be confirmed)

4.2 Design

Cormac Solutions Limited (CSL) have been commissioned by Cornwall Council to undertake design on the project up to and including design freeze for public exhibitions and planning submission.

The progression of the design will be undertaken by the main contractor under the D&B contract. The contractor will be required to take the design (as developed for planning submission) and complete the full design for construction, including following a strict design approval process (to be clearly identified within the tender documentation).

4.3 Options for Detailed Design

Under a D&B contract, the client transfers responsibility and associated risks relating to design to the contractor. For projects with highly bespoke, and/or undefined elements, the client may wish to retain responsibility for design to enable them to control the changes during the detailed design process. This will ultimately allow the client to have greater control over the cost impact of design changes, and achieve greater cost certainty at the end of detailed design.

Given the funding requirements noted in section 3; which have led to the decision to include the remaining design in the main contract, the options for progression of the design to detailed design include:

- Option 1 - Novation of the current designer, CSL to the Contractor, or
- Option 2 - The contractor provides their own design services.

4.3.1 Option 1 – Novation

The key benefit of retaining the current design team is continuity and preservation of knowledge on the project. This approach may also create issues on the project relating conflicts of interest and ambiguity will need to be carefully managed if this route is selected.

4.3.2 Option 2 – Contractor Design Team

Allowing the contractor to provide their own design, allows them to select a preferred design partner with whom they already have a positive working relationship. This also allows clear delineation between contractual relationships and removes any conflict of interest or ambiguity which may be created with Novation.

4.3.3 Recommendation

In order to reduce risk to Cornwall Council inherent in the novation process, it is recommended to proceed with option 2 and allow for the contractor to provide the design through their internal design team or their selection of design partner (if required). This will provide a clear transfer of risk, and will reduce potential risk pricing by the contractor for taking over a design team which they may not have a viable working relationship with.

It is recommended that robust review is undertaken of the tender documentation provided by CSL to ensure as much design knowledge is transferred to the contractor during the tender process. It is also recommended that Cornwall Council consider retaining CSL as technical advisors during the construction phase to further reduce the risk of knowledge loss.

4.4 Additional Complimentary Measures

The current route between St Austell and the A30 passes through a number of local villages. The schemes objectives and indicative planning requirements include minimising the use of these villages as a thoroughfare. The scheme therefore requires design and construction of traffic calming measures and realignments through the local villages to deter through traffic. These works are to be fully defined in the scope and will require a level of sensitive engagement with the local communities in each village. These works will be programmed to commence after completion of the main link road.

These works are to be included in the main contract so that they are included in the full funding approval application to DfT. However, given the nature of these works and the ability for them to be easily separated out of the main contract, there may be the opportunity at a later date to remove them and procure separately. This could provide increased value for money for Cornwall Council as there is likely to be more competition for these works given the smaller nature of them and the ability for smaller contractors to undertake the works.

It is recommended that these works are procured as part of the main contract in the first instance to enable an accurate comparison for value for money and allow for DfT approval. It is important that these works are separately identified (including a separate completion date) within the main contract so that their scope and costs can easily be removed from the main contract if required at a later date.

If these works are procured by an alternative route at a later date, it may be procured by any of the following methods:

- Open tender;
- Through Cornwall Council's existing framework; or
- Through Internal Direct Award to CSL

4.5 Construction

The Contractor will be required to undertake construction of the project in accordance with the approved design, and in line with contract terms, to be set

out in the tender documentation. The contract documentation to be included in the tender process will be required to provide detailed set of requirements which the contractor is to adhere to, and will include, (but not be limited to) design standards, health and safety, management of subcontracts, third party requirements and details of contract administration/change control procedures. Following risk review and application of lessons learnt from comparable projects, the contractor will be required to manage and take responsibility for construction risks (such as supply chain management, material quality, general weather impacts, wastage etc), which are to be clearly highlighted within the tender documentation.

5 Risk Analysis

A key aim of the procurement process is to allocate risk to the party who is best able to manage the risk. The appropriate allocation of risk, has been considered as part of the recommended procurement strategy.

A detailed risk register has been produced in order to identify and assess the risks to the project's success. The project team have assessed the probability and impact of each risk, and agreed risk mitigation strategies. Risk allocation and ownership has also been identified with the register. The outcomes of this risk assessment process have been used to inform the procurement strategy, including analysis of the suitability of both the tender process and contract selection.

The following key risks relating to the planning process cannot be directly controlled or prevented by the project team, they are therefore required to be retained by Cornwall Council and monitored by the project team to reduce their impacts should they occur.

- A Judicial review - This would delay planning permission.
- An objection to any Side Road Order - This may result in a Public Inquiry.

A number of risks have been identified on the project that may be suitable for transfer to the contractor. These are predominately categorised as design or construction risks. Although these may be transferred to the contractor through the procurement process, it is important to note that the risks will be priced by the contractor and are likely to ultimately increase the tendered sum. The value for money of this risk transfer will need to be assessed as part of the tender review, to identify the effect to the final project sum.

It is fundamental to overall project success that changes to design are reduced as the project progresses, and therefore the cost impact of the change is minimised. In consideration of this, and in order to reduce the risk pricing in the tendered sum, there are a number of risks that could affect price and programme which are being addressed and actively managed prior to appointment of the Contractor. This will provide better value and greater cost and programme certainty for the project. These mitigation strategies include the following:

- Further ground investigation works to improve and refine the design;
- Further ecological studies;
- Early engagement with Statutory Authorities / Utilities providers to ascertain diversions requirements;
- Preparation of a drainage plan;
- Programme review and management to align weather-sensitive activities with local area/seasonal weather expectations and maximise contractor's ability to undertake construction activities as efficiently as possible and reduce weather impacts on overall programme. This is particularly critical for earthworks activities.

6 Procurement Context

The procurement drivers are to achieve the appointment of a suitably accredited and demonstrably experienced contractor who can deliver and overcome both the programme challenges for earliest delivery of the proposed scheme, and also is representative of value for money, within the budget provided.

6.1 Market Conditions

Demand for construction within both the local region and the wider UK market is at a reasonably high level. This has led to both Contractors and their supply chain being selective in the projects they are willing to tender for, based on their availability of resources and the level of risk being transferred to the contractor. This slightly more-risk adverse approach is considered to be a key factor which will affect the success of the procurement process in generating realistic tender returns and providing both competition and value for money.

Further to this recent anecdotal evidence suggests that there is limited interest in the region for highways projects of this scale. This is based on feedback received to date for the Carland to Chiverton Cross scheme which has received very little interest from the market.

6.2 Stakeholder Requirements and Statutory Regulations

The process and procedures undertaken for this procurement are required to comply with the following requirements of key stakeholders, and EU, and government procurement regulations:

- EU: OJEU (Official Journal of the European Union)
- National: Consideration of new Public Contracts Regulations 2015.
- Cornwall Council: Governance and procurement guidelines.
- Department for Transport: As noted previously, provisional funding approval agreement has been provided by DfT, which requires confirmation that the procurement process has been completed to a stage where a preferred bidder and a firm and final offer is in place.

Cornwall Council have a number of procurement options available for consideration in developing this procurement strategy, including Internal Direct Award, Cornwall Council Construction Framework, Southern Construction Framework, and OJEU. This provides significant flexibility in selection of an appropriate procurement strategy for the project.

It should be noted that the process of seeking a contractor is due to commence in the final quarter of 2018. Should the option of OJEU be selected, an OJEU notice to be submitted as part of this process.

7 Procurement Options

This section explains the main procurement options under consideration and gives the advantages and disadvantages of each.

Some of the main procurement options which would typically be considered have already been discounted as a Design and Build approach must be adopted as there is insufficient funding available to undertake a traditional procurement where the design is fully developed prior to any involvement of a contractor.

Other procurement options which have been discounted as they do not provide the ability to achieve a full and final offer prior to funding needing to be released include:

- Two stage tendering
- Prime Cost / Cost Reimbursable
- Management Contracting
- Construction Management

7.1 Design & Build

As a Design & Build (D&B) contract has been identified as the only suitable approach, further detail of this form of contract is provided here in order to give context to the analysis of the procurement options outlined below. It is important to note that although commonly referred to as a procurement route, D&B is more accurately a type of contract.

Under a D&B contract the scope of works documentation (eg Employer's Requirements, or Works Information) is prepared by the client or, more usually, his consultants. This sets out his requirements in as much or as little detail as he wishes to impose on the contractor. Normal practice is for the client's consultants to develop the design and specification of the project to a certain stage where the client is willing to leave the remaining details to be developed by the contractor. The designers may then be novated to the contractor in order to maintain continuity.

A Contractor Design Supplement or Contractor's Design Portion may be used with a Traditional form of contract when only certain elements of a project are to be contractor designed.

7.1.1 Advantages:

- As the contractor is responsible for the design there is a reduction in the perceived adversarial culture over traditional contracts.
- No risk to the client due to variations arising from design development or refinement of details as these will be the contractor's responsibility.
- Cost certainty for the client as the only design changes he will pay for are changes which he makes himself.
- Contractor should be able to use his knowledge and experience to provide the most efficient solutions to construction details and processes. These

savings in time and cost should be passed on to the client in the tendering process.

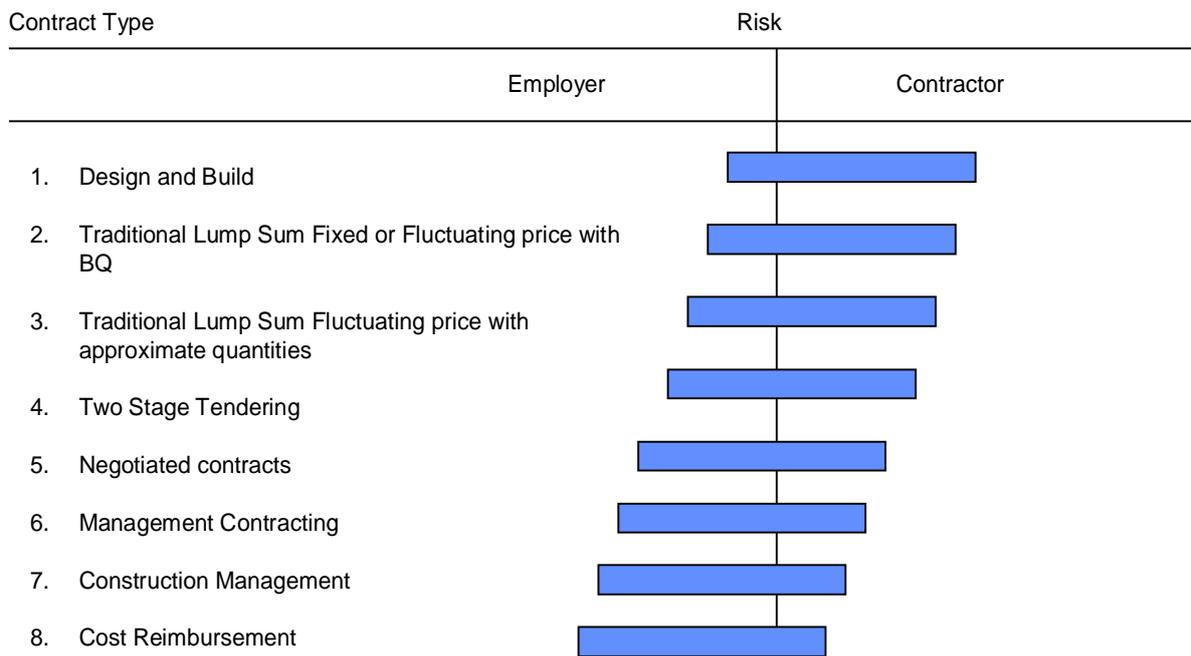
- Contractor can overlap design details with the construction period to give overall programme reductions.

7.1.2 Disadvantages:

- Loss of control over design beyond that contained in the Employer's Requirements or Works Information.
- Possible loss of quality as contractors may take advantage of reduced level of detail in the documentation provided by the client at tender to reduce costs.
- Inadequate in-house expertise of some contractors to carry out necessary co-ordination of design responsibilities.
- Can be difficult to compare tenders due to differing design solutions offered by tenderers.
- Cost control more difficult due to less detailed pricing. Variation to the scope tends to cost more due to the lack of a detailed pricing structure.

7.2 Distribution of Risk

The following graphic illustrates simply how the distribution of risk changes depending on the procurement option.



As illustrated above, the greatest transfer of risk from the Client / Employer to the Contractor occurs under Design & Build. This is beneficial in obtaining cost and programme certainty, however this transfer of risk generally results in a higher overall price as the contractors will make allowances for the risks they are absorbing, therefore the client may pay for risks that do not materialise.

7.3 Option 1 - Negotiation

Negotiation is very dependent on the selection of the right contractor and this evaluation is on the basis that the chosen contractor is suitable due to previous experience, his relationship with the Client and his desire to undertake the contract.

The process of negotiation will depend on when the contractor is appointed relative to the design process. It is normal for the contractor to be appointed at the same time as the rest of the designers, thus making him a fully involved member of the team from day one.

The negotiation will take a similar form to the second stage of a Two Stage process but with the added need to agree those elements such as preliminaries and overheads & profit which would otherwise be part of the first stage tender.

7.3.1 Advantages

- Enables early contractor involvement to provide 'buildability', value engineering and market knowledge;
- Overall programme period should be reduced due to overlap between design and pricing;
- Contractor involvement improves teamwork culture and joint problem solving;
- Start on site can be made prior to agreement of contract sum and completion of design;
- Contractor can work with the design team in order to fully understand and remove risks;
- Greater understanding of the project and 'buy in' by the contractor leads to reduced risk of claims. This may not offset the higher cost of negotiated tendering and less rigorous competition in sub-contract packages, however, it does give greater cost certainty when the contract is agreed;
- Enables the contractor to have more understanding of the client's business requirements and therefore be a more useful member of the team;
- Provides an incentive to the contractor to produce a good quality asset for a reasonable price in an efficient time scale due to the possibility of being able to negotiate future work

7.3.2 Disadvantages:

- Loss of competition;
- Risk of not being able to agree lump sum contract with single contractor, but may be reduced with the incentive of future work;
- If the Client is not likely to commission future work, the contractor has little incentive to provide good value for money;
- Public bodies may have difficulty in proving value for money to auditors;
- Does not meet EU procurement regulations

Given the final point raised above, this option has been discounted as the procurement approach must comply with EU procurement regulations.

7.4 Option 2 - Target Price

This is a slight variation on the Two Stage or Negotiation processes. With a Target Price approach, the contractor is reimbursed for the cost of the works including general preliminaries together with an agreed fee which will include management costs, overheads and profit.

The target price for the works is set by agreement and the contractor is contractually committed to meeting this which can only be amended if the scope of the works changes.

During the works the contractor is paid on a cost reimbursement basis and, on completion, the total payment is compared to the target price. The contract will normally include a mechanism for sharing any under or over expenditure between the client, contractor and supply chain.

In order to work properly, this route should be used on well-defined projects where the target price is properly set in order to motivate the contractor with a realistic opportunity to reduce costs. If the project is loosely defined, changes in the target price will render the initial target ineffective.

7.4.1 Advantages:

- The advantages of Negotiation apply;
- The incentive of the Target Price will encourage the contractor to provide value for money

7.4.2 Disadvantages:

- Disadvantages of Negotiation apply;
- Risk to the Client if the overall cost exceeds the target price and he is required to pay a share of this

7.5 Option 3 - Partnering

The collaboration between the client and contractor(s) whereby an alliance is created to deliver either a single or multiple projects. Aims to promote trust, fairness, common goals and an understanding of each party's expectations and core values.

Such an agreement is commonly used for multiple projects but can also lend itself to a complex single project which spans several years.

Partnering agreements may not be legally binding, in which case they rely solely on the trust and respect between the parties. The agreement will only be effective as long as this trust and respect remains.

The process of procuring projects is effectively by Negotiation and all the features of that route will apply.

KPI's may be identified in the agreement in order to monitor the relevant elements and targets which are of key concern to the parties.

7.5.1 Advantages:

- The advantages of Negotiation will apply and will be enhanced as the partnering process continues and trust and respect increase;
- Reduced design and construction times are likely due to reduced learning curves. This should lead to reduced costs;
- Continued product and methodology appraisal can be undertaken to obtain best value and efficiency;
- Increased predictability reduces risks for all parties

7.5.2 Disadvantages:

- The disadvantages of Negotiation apply to a certain extent but will be reduced as the partnering process continues and trust and respect increase;
- The full advantages of the Partnering route may take a significant amount of time to be of benefit;
- Does not meet EU procurement regulations

Given the final point raised above, this option has been discounted as the procurement approach must comply with EU procurement regulations.

7.6 Option 4 - Framework

Similar in most respects to Partnering but is usually more formal and based on set criteria such as a certain number of projects or volume of work over a set period of time.

Often used by public bodies and major companies that have a regular programme of construction work and who want the benefits of forming long term relationships but also need to be able to demonstrate a competitive process. When arranging Framework Agreements for public bodies, care must be taken to ensure that current European Union laws are complied with.

The framework tender process will normally be in stages with quality of experience and expertise being used initially to generate a short list of bidders who would then be interviewed and asked to tender typical costs for certain types or sizes of project. Depending on the volume of work available, a small number of successful bidders will enter into Framework Agreements with the client which will set out the costs or fees to be paid and other terms such as the volume of work to be awarded.

For Contractors, the Framework Agreement will usually only cover overheads and profit percentages with possibly agreed rates for site supervision, insurances, etc. Framework Agreements are also often used for consultants with percentage fees agreed for differing project sizes and can include supply chain companies with agreed prices for items or work which are regularly required.

7.6.1 Advantages:

- All the advantages and efficiencies of Partnering that are generated by a long term relationship;
- Formal process which can be audited and used by public bodies;

- Enables stocks of products that are regularly required to be readily available and purchased in bulk at advantageous rates

7.6.2 Disadvantages:

- The perceived disadvantage of Partnering and other routes involving a certain amount of negotiation will apply and the difficulties in proving competitiveness and reaching agreement on contract sums will still exist;
- Danger of complacency on the part of contractors if the Framework Agreements are long term

8 Detailed Procurement Options

The following procurement routes to market are considered for this project:

- OJEU- open tender (with contractor who is currently undefined)
- Existing frameworks
- Internal Direct Award (IDA)

8.1 Option 1 - OJEU Tender

This provides an opportunity to fully explore the market and allow all to be considered.

8.1.1 OJEU Process and engagement

The exact timescales that must be adopted and the procedures for the award of contract will depend upon whether the tender is an:

- A. Open procedure. There is no pre-qualification process or short-listing process. Anyone that responds to the OJEU notice is issued with the full contract documentation.
- B. Restricted procedure. There is a pre-qualification process, and only short-listed candidates are invited to tender.
- C. Competitive dialogue procedure. There is a pre-qualification process. Short-listed candidates are invited to take part in a dialogue. When the dialogue process is complete, final tenders are invited.
- D. Competitive negotiation procedure. There is a pre-qualification process. Short-listed candidates are invited to take part in a negotiation process. This process does not have to follow any particular rules, and has no formal ending. This means that negotiations can continue even after the preferred bidder has been appointed.

8.2 Option 2 - Existing frameworks

To overcome the additional time and cost associated with tendering a construction project under an OJEU process, utilising an existing OJEU tendered framework was considered. It is understood that the recently procured Cornwall Council Framework for major projects is not suitable for an infrastructure project of this scale and this option has therefore been discounted.

The use of the SCF has also been discounted as it has previously been precluded by Cornwall Council due to concerns about its compliance with Public Sector procurement regulations.

Should the Additional Complimentary Measures be removed from the main design and build contract in the future, an existing framework may be considered for procurement of these works.

8.4 Option 3 - Internal Direct Award

Given the size and value of this project, Internal Direct Award (IDA) to Cornwall Council's contractor CORMAC is not considered to be an option for procurement of the main contract works, as they do not have the capability, capacity or insurances for works of this scale. For this reason, IDA has been discounted as a possible procurement approach.

It should be noted that there remains a potential for IDA to be utilised for procurement of the Additional Complementary Measures, which may offer a value for money solution due to CORMAC's experience in the region and track record in delivering smaller highways projects, and this would also allow for efficiencies in design development given their existing knowledge of the scheme.

8.5 Options Analysis

Option 2 (Existing Framework) and Option 3 (IDA) have been discounted for the procurement strategy for the main contract. As noted above they are deemed to be unsuitable given the frameworks available, and size and nature of the works.

Under Option 1 - OJEU, Competitive Dialogue and Competitive Negotiation have also been discounted as these procedures are more suited for bespoke works and generally require a longer tender programme.

OJEU Open and Restricted are the more widely used options for public procurement. Given that the programme is the key driver for this project and there is a requirement to engage a contractor early, the two-stage approach of a Restricted Procedure takes longer to complete and appoint a contractor and as discussed previously does not suit the funding condition constraints.

Under a Restricted OJEU process there is a risk that during the tenderer selection and shortlisting process suitable contractors may be discounted. Combined with fewer tenderers this may greatly reduce competition, and result in reduced value for money.

Under an Open OJEU process there is a greater potential for increased competition. Given the current market conditions noted previously, this may deter contractors as an open process if they consider could provide lower chance of being awarded the contract and would therefore be less favourable. It is not envisaged that this will create a significant impact for this project as the scale and nature of the project inherently restricts the tendering parties, as there are limited contractors in the region who are able to manage a project of this size and nature. An Open process may also attract tendering parties from outside of the region.

A disadvantage of the Open OJEU process is the potential for a longer tender review period if there is a significantly higher volume of tender returns.

8.7 Recommended Procurement Option

It is recommended that an Open OJEU process is adopted for this project, as it will allow for a greater efficiency in the tender programme and increased competition with the potential to deliver better value.

Although there is a risk that this process may generate more tenders than a restricted tender, this is not envisaged to be a significant risk given the local market conditions.

It is important that the tender process is well planned and robust tender documentation is prepared to ensure that the project requirements are clearly identified along with the tender assessment criteria (including a robust and detailed scoring matrix). This will minimise the submission of tenders which are entirely unsuitable and will also ensure that the process is clear and not open to challenge, thus meeting EU regulations.

Based on the recommendation above, the tender process going forward will be as follows:

- OJEU Notification will be issued as soon as practicable
- Form of Enquiry (Employer's Requirements) and Tender documents drafted, approved and issued on 5th December 2018.

The requirement will be a tender to be submitted in line with the approved programme, with a fixed contract price and all supporting documentation, to prove capability, quality management and awareness of the risks and stakeholders that will require management by the contractor during the contract. Tenders will be returned and assessed as follows.

The award of contract is required to be either on the basis of "lowest price" or various criteria for determining the "most economically advantageous tender (MEAT)". Based on government policy it is recommended to use MEAT, as this is consistent with the obligation to achieve value for money.

The Contractors' Bid Documents will be assessed using a weighted scoring matrix. This scoring matrix is to be developed and agreed with Cornwall Council prior to issue of tender; but it is recommended that it includes detailed price and quality criteria tailored to the project and market conditions and informed by lessons learnt on similar schemes.

It is recommended that the quality element will address some of the following key drivers:

- Previous experience of projects of this size and complexity;
- Health and safety policy;
- Quality assurance policy;
- Company details (including legal and financial status);
- Information about technical and professional ability of key staff;
- Environmental management policy;
- Equal opportunities policy;

- A BIM assessment to determine BIM capability, gaps in skills and training needs;
- Approach to working in the area, apprenticeships and the like;

The price element will address the tendered price, and will be required to be submitted in a clearly defined format to allow a fair and accurate comparison between tenders.

The contract will be awarded to the Most Economically Advantageous Tender (MEAT) offer based on the outcome of the above. Full details of the assessment will be reported in a Tender Assessment Report.

9 Contract choice.

OJEU requirements for open tender with preference given to appointment of a Design & Build contractor. The NEC Engineering and Construction Contract (ECC) is the most widely used in the infrastructure sector and supports a collaborative approach through the contract.

Other standard forms of contract, such as JCT and FIDIC have not been analysed as part of this procurement strategy as they are deemed to be unsuitable for this project as they are not typically used for infrastructure projects in the region and would be likely to create issues on the project with contract administration and strain contractual relationships due to lack of familiarity with the contract.

Detail of the options under consideration for the procurement strategy and analysis of their suitability are provided below.

There are several options under the NEC suite to consider, as follows:

- Option A – Lump Sum with Activity Schedule;
- Option B - Lump Sum with Bill of Quantities;
- Option C – Target Price with Activity Schedule;
- Option D – Target Price with Bill of Quantities;
- Option E – Cost Reimbursable

9.1 Option Analysis

9.1.1 Option A/B

Under these options a lump sum price is agreed. They require a clearly defined scope and to enable the contractor price the works and risk accurately. If this information is not fully defined then that price attracts a pessimistic premium and will not add any value. It is considered that due to the limited design detail available at the time of tendering these options will be unsuitable for this scheme.

9.1.2 Option C/D

Under a target cost contract, the target price submitted is used to calculate the final contract sum. The amount that will be paid to the contractor will be based on actual costs incurred, however the Employer is protected against any cost overrun as they will only pay a pre-agreed percentage of the overspend (referred to as "pain"). The contractor is also incentivised through a pre-agreed percentage share of any cost savings (referred to as "gain"). This creates a sharing of risk and reward between the two parties. Another benefit of this approach is an early start to construction activities in the absence of a fully completed design.

The difference between these two Target Price contracts is the basis of the submitted pricing document. An Option C contract is priced on an activity

schedule, which is a commonly broken into packages or areas of works, and is tailored to the project scope and programme. This can be useful where there is some level of design detail to be finalised, but the risk of that detail is transferred to the contractor.

Alternatively, an Option D contract is priced on a bill of quantities. This would require the level of design to be developed further than the programme and initial Cornwall Council funding allows.

It should be noted, that although the target price itself does not provide a firm and final price, when taking into account maximum pain share, the client is effectively provided with a capped price. This is considered to be sufficient in meeting DfT's funding conditions.

9.1.3 Option E

Option E is a fully cost reimbursable contract. Under this form of contract all actual costs plus agreed fees are paid to the contractor. It generally provides no incentive to the contractor to reduce costs. It can be beneficial for contracts between parties who already have a strong working relationship, and in projects where scope and programme is unable to be sufficiently defined to enable another form of contract to be used.

This form of contract will not provide Cornwall Council with a firm and final price at the time of contract award, and is therefore deemed to be unsuitable for this project as it will not achieve the DfT funding requirements.

9.2 Recommended form of Contract

The recommended form of contract is an NEC EEC Option C, Target Price Contract with an activity schedule.

This is recommended on the basis that the use of a target price contract for this project will enable a reduced risk premium to be paid by the Employer through the use of the pain/ gain share mechanism. This is particularly advantageous for this project as the design will not be complete prior to tender. The detailed design will not be complete to a level where a bill of quantities can be accurately prepared, this option is recommended over an Option D contract. Utilising an Option C rather than Option D will also avoid the increased time required for Bill of quantities preparation.

10 Conclusions and Recommendations

The recommended procurement route is to proceed with an OJEU Open tender for a Design and Build contractor, to be appointed under an NEC ECC Option C Target Cost Contract.

It is recommended that the preferred bidder is identified and selected on a Most Economically Advantageous Tender (MEAT) basis.

Given the funding requirement to progress the procurement process to a stage where a preferred bidder and a firm and final offer has been obtained, combined with tight project timescales for delivery, and the lack of funding available until the preferred bidder is identified, it is considered that a Design and Build approach would be the most suitable option for the procurement approach.

OJEU is the recommended route for this project given the project's size and complexity. This route is considered to provide the greatest opportunity to secure a price within budget and meet the programme constraints.

The recommendation for the use of an NEC ECC Option C contract is based on the advantages of the collaborative approach offered by the NEC Contract, combined with infrastructure contractors' familiarity with this form of contract, which is expected to be most suitable for this project's complexities and programme constraints.

The early award of contract to the design and build contractor will enable the project to proceed in line with funding and programme constraints. By utilising a target cost contract, there is an increased share in both design and construction risks, and therefore the Employer will benefit from cost savings realised during the detailed design or construction, while also limiting their exposure to cost overrun through the application of the pain/ gain share mechanism.

The early appointment will also allow the contractor to be aware of, prepare for and control some of the key programme activities such as earthworks, to ensure that these are undertaken during the appropriate seasons, therefore reducing the impact of weather risk to the project.

Proposed dates and key responsibilities for the project team in achieving the deliverables for the procurement strategy are provided below.

10.2 Proposed Programme Dates

	Milestone	Due Date
1	Cormac Design preliminary Design Freeze.	12/09/18
2	tender documentation, included contract terms ready for OJEU	19/11/18
3	Planning Submission	10/12/18
4	Publish OJEU	05/12/18
5	Tender Returns	03/04/19
6	Tender report and appointment recommendation issued	21/05/19
7	Appointment of D&B Contractor	08/08/19
8	Detailed design complete	07/04/20

10.3 Key Responsibilities

	Person	Organisation	Responsibility
1	Capital Projects Board	Cornwall Council	Approval
2	Matthew Simms	Cornwall Council	Management of approvals process
3	Steve Gudge	Cornwall Council	Management of approvals process
4	TBA – Legal team	Cornwall Council	Review of contract terms
5	Richard Vosper	Mace	Manage Compilation of tender documents
6	Mark Phillips	Mace	Draft contract terms
7	TBA	Cormac Solutions Ltd	Provision of Design Information