

Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4Qz

20 July 2025

CMA Market Study: Civil engineering in road and rail

Dear Sir/Madam,

I am delighted to respond to the above named market study.

ACE Group is made up of the Association for Consultancy and Engineering (ACE) which champions infrastructure and the built environment to government and other stakeholders and represents the views of around 400 members.

The Environmental Industries Commission (EIC) offers new environmental markets to Government and other stakeholders. We work to ensure our policies are thoughtful and progressive, regulations clear and enforced, innovation rewarded, and finance and export opportunities are available.

EIC represents the views of around 70 members - companies, large and small, working in the environmental technologies and services sector. Multi-nationals, technology startups, consultancies and universities can all be found within our broad membership base.

This market study is truly welcome and has the potential to deliver a once in a lifetime change in the way our industry operates. If successful, it will transform current business models, facilitating greater collaboration and innovation across the supply chain.

We hope that you find our comments of interest and look forward to further working with you on the development of the plan.

Yours faithfully

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1. Do you agree with our articulation of the characteristics of a well-functioning market as set out in paragraph 1.11? If not, what could be changed and why?

Yes. However, we also suggest that the following principles are embedded into the characteristics.

- Continued pipeline visibility, with longer term perspective on UK capacity and capability development, clarity and policy stability.
- Transparency. Notably on scope and project expectations, final design and outcomes.
- Competence and productivity at client AND supply chain level.
- Early supplier involvement.
- Cross supply chain collaboration.
- Commitment to established industry best practice.
- Focus on risk allocation, ensuring risk is allocated to the party best able to manage it.

Uncertainty over scope/timing is a real barrier to planning and investment. In addition, the volatility and short-notice delivery of pipeline projects makes it difficult for suppliers to plan workforce or investment, especially SMEs.

We also would like to draw your attention to challenges surrounding the operation and use of frameworks. Notably the fact that some public sector clients do not commit to using frameworks once they have been awarded. This not only creates an imbalance in the contracting relationship but also leads to a potential inefficient use of resources by suppliers if ultimately being appointed to a framework turns out to have been for nothing.

We also note that client-side capability is often under-resourced — particularly at local authority level — which has knock-on effects on project scoping, risk management, and procurement quality.

2. Do you agree with our proposed scope (both the product and geographic scope) and themes for this market study, as set out in Section 3. If not, what areas would you suggest we include, exclude or prioritise, and why?

Yes, this is a welcome study, and we look forward to continued engagement.

We suggest that consideration is given to broaden the scope, the current exclusions may mean significant project cost and complexity factors are missed. A unified approach across all infrastructure projects and disciplines would be more effective.

3. What, if any, are the key differences in the markets for the supply of roads and railways across the 4 nations of the UK that should be reflected in our analysis?

All four nations have different Governance models and key features. As part of this study into the market, the influence of having arm's length government owned companies (such as National Highways or Network Rail) could be considered as compared to direct control of infrastructure schemes through government departments, regional bodies or their agencies (such as Transport Scotland or Transport for Wales).

Scotland now diverges from England and Wales in terms of its procurement rules and regulatory framework. Whereas procurement in England and Wales is now governed by the Procurement Act 2023, procurement in Scotland continues to be covered by the Public Contracts (Scotland) Regulations 2016, Utilities Contracts (Scotland) Regulations 2016 and Concessions Contracts (Scotland) Regulations 2016. This plethora of different sets of rules can add confusion for bidders, which is one of the reasons why there was a consolidation of rules in England and Wales in the form of the Procurement Act 2023.

Wales also imposes certain additional legislative requirements pursuant to the Social Partnership and Public Procurement (Wales) Act 2023 and Well-being of Future Generations Act 2015. These laws aim to create a simpler, more flexible, and transparent procurement system that supports social value and economic well-being, as well as promoting specific social interests in Wales.

4. **Please suggest any rail and road infrastructure projects across the UK that could be useful case studies to inform our market study. We are particularly interested in understanding where:**
- a) **the project realised good outcomes in terms of cost, quality and innovation (including some explanation of the factors driving this in each area); or**
 - b) **the project realised poor outcomes in terms of cost, quality and innovation (including some explanation of the factors driving this in each area); and/or**
 - c) **the project yielded important lessons that could inform improvements in the operation of the market.**

We note that there are useful case studies from the implementation and roll out of Project Speed from the first year of the pandemic.

This DfT backed project aimed to speed up the delivery of infrastructure projects, unblocking those that were stuck.

Its aim was to apply lessons learned from successful projects, for example, National Highways' A14 improvement scheme which was delivered on budget and eight months ahead of schedule.

In contrast, we would also like to draw your attention to the challenges surrounding the A52 Wyvern Junction improvement scheme in Derby. Described as a project of *what can go wrong, will go wrong*, there were problems with the scheme from the get-go. In short, the works budget was substantially under-estimated and staff were under resourced in their oversight of the project.¹

A member case study experience of a local authority can be found in annex 1 below.

¹ Derbyshire Live 2019 <https://www.derbytelegraph.co.uk/news/derby-news/a52-project-been-poorly-conceived-2519733>

5. **How does public procurement and contracting in the markets for the supply of roads and railways contribute to, or undermine, the characteristics of a well-functioning market? In your answer, please comment on:**
- a) engagement between the procuring body and potential suppliers during the early stages of project design;**
 - b) the use of different types of procedures (eg open competition, frameworks);**
 - c) the design of tenders, including the number and type of requirements and the use of quantitative (eg price) and qualitative evaluation criteria;**
 - d) the approach to risk allocation across different parties;**
 - e) the use of contract mechanisms (eg insurance provisions) and pricing mechanisms (eg fixed price, cost plus).**

Client approach

Government processes including the approach to funding decisions and procurement have led to managerial and tactical relationships on infrastructure delivery. Greater trust and funding delegation, combined with effective use of the Procurement Act and Green Book to support whole-life value approaches can change this – enabling delivery of the Government's Growth Missions.

Furthermore, deliverability and affordability principles should reflect infrastructure and procurement best practices including minimum viable product and whole-life value approaches to design.

Industry recognises the role it plays in seeking continuous improvement and delivering better. We welcome steps taken by our clients to reflect this with understandable limited resource and will continue to support them to deliver infrastructure that fits for a twenty first century society.

Risk

Members have long highlighted the risk -v- reward imbalance that continues to negatively impact the consultancy sector and the approaches/behaviours that underpin that.

A vibrant UK consultancy sector is crucial for achieving the country's goals in areas such as infrastructure, housing delivery and climate change. However, many ACE Members describe a significant and growing imbalance between risk and reward in public sector procurement, which is evidenced by:

- Lowest cost approaches including continued pressure on professional fees;
- Increasingly onerous contractual terms;
- Instances of unlimited liability;
- The impact of Joint & Several Liability; and
- Demands for higher limits of Professional Indemnity insurance.

ACE Group has long called on Government to create a fair and proportionate approach to risk, including legislating for a cap on liability.

Early Supplier Involvement

We believe that embedding the principles of Early Supplier Involvement into public sector procurement is critical to ensure the best project outcomes.

However, we recognise that public sector colleagues can feel daunted by the pre-engagement process and are concerned about potential perceptions of breaking commercial competitiveness rules.

To this end, we recommend the development of MoUs or Partnership Agreements between trade associations and client. Such an agreement would seek to work with clients to achieve better outcomes from market engagement in a structured and neutral way.

We also believe that upfront conversations need to be held as part of the early supply chain engagement process on realistic project costs and securing the right procurement models and delivery teams. This would go some way in limiting the vastness of projects and spiralling costs.

We mention later in this submission challenges surrounding the use of online procurement portals which, while useful for audit, reduce opportunities for supplier dialogue — the process can feel overly rigid and transactional. Part of the problem is that they limit the possibility for the exchange of better ideas and understanding of the needs of both sides and what suppliers can realistically offer.

To this end we suggest building in pre-engagement protocols, perhaps as part of the MoUs referenced above as a way to safely enable early supplier input without crossing fairness lines.

In addition, members would like to stress that even prior to pre-market engagement, it is important for contracting authorities to engage in a thorough internal needs assessment and to ensure that any proposed project is supported by end user preferences and needs.

The purpose of this is twofold: (i) it helps to minimise the risk of the procurement needing to be abandoned at a later stage if the authority decides that the project in its current form does not support the needs of the authority or those who it serves, (ii) it also helps ensure that end users feel that the projects undertaken are the right ones.

End user alignment also helps ensure the long-term viability of projects and promotes economic growth. Abandoned projects, in contrast do not support growth as they waste considerable resources in both the public and private sectors.

Procurement mechanisms

We note that no procurement mechanism is fundamentally inappropriate, but that the solution chosen needs to be used correctly and appropriately.

Sometimes, those procuring at the highest level (especially in the local government space) have limited expertise and / or resource and we feel that many can struggle to balance risk fairly between supply chain and client. This is especially relevant when it comes to obtaining insurance, and we would urge procurement teams to work with the supply chain ahead of time to ensure the best outcomes.

We note also that there are a plethora of best practice tools which have been developed between industry and clients to improve project outcomes. However, we are unsure as to how far they become embedded by clients and their supply chains. To this end we recommend that progress is benchmarked year on year to ensure these best practice solutions become the norm.

Innovation

We feel that there can be false economies in too much recourse to "competition for the market" (i.e. repeat procurements) as a driver of cost control rather than a focus on effective team building performance, monitoring and delivery. In our view, longer contracts would enable better learning and drive innovation by doing, growing capacity and efficiency over time.

We note that overly granular pricing templates and excessive risk push-down often inhibits innovation — especially on low-value tenders.

Sometimes, the application of procedure on abnormally low tenders threatens innovation around pricing. This is because any deviation from pricing at more competitive levels than other competitors, risks having the tenderer excluded. We urge clients to be mindful of this issue and offer our support in exploring this further.

Finally we argue that the UK market would benefit from a stronger sense of market capability i.e. defining Government's role in growing UK capability and procurement for innovation. For too long this approach has been ignored in favour of taking a lowest cost procurement approach - which is short term and drives boom and bust - rather than developing greater efficiencies and productivity in project delivery.

6. To what extent do you think the structure of the industry contributes to, or undermines, the outcomes of a well-functioning market? In your response, please comment on:

- a) differences in the size and degree of specialism of different companies;**
- b) the tiered nature of the supply chain and use of subcontracting; and**
- c) financial arrangements, such as payment periods and the use of retentions.**

Business models

Consultants are the conduit between client and supply chain, and as an industry we are imperative for ensuring efficient, innovative and world class delivery.

Yet, there has long been concern that industry profit margin levels are not sustainable, leading to supply chain collapse.

There is a strong perception that the current construction industry business model encourages low margin and high risk work. This is not sustainable and we recognise the role clients and their advisory bodies play collectively in ensuring fairness further down the supply chain.

Risk

We also express concern that clients do not always have the resource to manage risk allocation and insurance provisions, particularly in local government — this adds delay and cost onto projects.

Further to the above, a potential solution could be the application of pre-procurement advisory panels as a light-touch fix — to help stress-test, scope, suggest delivery models, etc at the earliest opportunity.

ACE Group would be happy to explore this concept further with you.

7. What, if any, are the significant procurement, planning or other regulatory barriers that inhibit the performance of this market? What could be changed and why?

ACE Group notes that the implementation of legislation and best practice over the last decade has delivered improvements in all these areas. While there is always opportunity to go further, it is important to welcome the progress made to date.

As mentioned above, many challenges with the existing procurement process can be ironed out with existing mechanisms and best practice.

We also note progress towards better regulation and a more streamlined planning process but also recognise there remains some backlog in the approvals process. As some solution we suggest that at the same time as approvals are in progress, information about projects is centralised ahead of procurement.

Furthermore, members have indicated that there is now less interaction between procurement bodies and industry because of the roll out of online portals. This means that the process can feel too prescriptive with little opportunity for dialogue, but we recognise the benefits of these portals for audit trails.

Members have also requested the CMA reviews the use of limited liability within public procurement contracts, to drive further innovation in project delivery.

To address some of the challenges raised immediately and further above, ACE Group recommends that each client establishes some form of independent advisory body ahead of procurement to discuss the best solution to meet delivery. This should include the promotion of the integrated teams model to ensure optimum collaborative outcomes.

8. **What are the opportunities for further innovation in the markets for the supply of roads and railways across the UK? If yes, what are the barriers to achieving these and how might they be overcome?**

Further to the above, we suggest the following interventions:

- Work with public sector to understand and manage challenges associated with risk;
- Encourage the roll out of integrated project teams and partnership working;
- Continue to advocate for longer funding cycles and policy certainty to drive innovation with a suitable transition period alongside visibility to encourage investment;
- Transitional innovation (i.e. practical near-term ideas) should be prioritised over distant 2050 goals. This makes innovation feel more relevant and fundable in the current context;
- Learning from European and global practices in infrastructure development. Where the UK was once a leader, the infrastructure delivery market seems to be less so. The good of what was achieved in the UK has been developed into models for delivery that create better outcomes for all involved in other markets globally and some of these should not be overlooked as part of the study; and
- The reemergence of private finance could be a solution but requires government commitment.

Annex 1. Member case study – local authority

We work on the early stages of local highway improvement schemes (planning, design, business case) where we find council officers can be overly optimistic in their initial apportionment of budgets for both technical/design work in relation to each scheme they set out to deliver.

- o We recognise that the extent of budgetary pressure on councils can be a factor that sits behind this.
- o Sometimes these schemes can have limited outcome objectives, with the up-front focus typically being to ‘fix an issue’ – usually traffic congestion – through a targeted investment.
- o Sometimes they can be more politically driven.

Challenges within local highway/sustainable mobility strategic plans (such as Local Transport Plans, LTPs) often means there is not a prioritised list of scheme proposals/interventions that is clearly linked to an overarching plan.

This means that the process for developing local major schemes can feel quite convoluted and inefficient. It also seldom results in interventions that decisively address issues of capacity or congestion on highway networks when operating at their busiest times. It also impacts on prevention measures.

ACE Group can further expand on these challenges if required.