Competition and Markets Authority

CIVIL ENGINEERING IN RAIL AND ROAD MARKET STUDY

BAM Nuttall Limited's
Response

to

Invitation to Comment

17 July 2025

Making Possible

CMA Question 1

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

   We currently consider that a well-functioning civil engineering market would be expected to have the following characteristics, thereby serving the interests of consumers of those services, including public bodies:

   (a) Appropriate project budgeting and design specification, including input from potential suppliers, to test the viability of different options in advance of launching a procurement

   (b) Effective procurement design, which balances quantitative and qualitative criteria, and incentivises suppliers to participate in tenders, submit accurate cost estimates and articulate any quality / cost trade-offs

   (c) Proportionate planning and regulatory processes that minimise cost, complexity and unwarranted delays for both the procuring body and participating suppliers

   (d) Predictable and shorter timescales for the delivery of infrastructure projects, underpinned by a productive supply chain

   (e) Ultimately best value projects that deliver an efficient unit cost of infrastructure, meet high quality standards and underpin growth

BAM Response to Question 1

Yes – the characteristics described in paragraph 1.11 are generally representative of a well-functioning market. Building on the characteristics, we would add;

a) The complexity of the project should influence the design maturity at which the project comes to market. For example, simple repeatable activities can be managed by the client to full detailed design (using market input from suppliers) with a procurement launch that focuses on supplier method, quality and innovation to deliver. However, large, complex infrastructure projects require commitment from design and delivery partners from a very early stage to progress **outcomes** that meet the sponsor and funder's requirements in the most efficient manner possible. Suppliers in these more complex schemes can provide valuable guidance to more robust early lifecycle project budgeting – providing more expert support on method related costs than are available through cost consultants. The focus of a well-functioning market should always be on **delivering value to the customer** and achieving project success which will invariably lead to sustainable growth for companies, relationships and UK plc. This relies on enablers such as collaboration and technology-readiness maturity which do not feature in your characteristics

b) Appropriate evaluation criteria is vital to achieving the desired outcomes. Procurement that focuses on lowest cost will result in parallel lowest quality, safety, sustainability and social value outcomes. **Accurate cost estimates** need to be appraised in line with the design maturity of the project. Challenges arise for example, where "committed" construction prices are required by public sector clients ahead of the Transport Final Business Case, however, the design maturity is often low at this phase (concept) – meaning robust prices from specialist suppliers who require detailed design are not possible.

c) Proportionate planning and regulatory process is welcomed. Risks related to outstanding planning consents and related conditions need to be held by the most appropriate stakeholder. For example, suppliers cannot provide a risk provision for an unknown outcome – this risk transfer from client to supplier will require a large risk provision to be made.

d) Predictable and shorter timescales are linked with clarity and commitment of forward pipelines, enabling efficient and productive methods and resource programmes. Key to achieving efficient construction phase productivity is delivering a full detailed design, robust construction budget (based on detailed design) with a planned mobilisation phase.

This mitigates the risk of "unknowns" being discovered when beginning construction. To achieve procurement and governance requirements, this phase of infrastructure programmes is most commonly "squeezed".

e) We agree good value infrastructure projects meet high quality standards and are a catalyst for growth. Measuring and understanding how cost benchmarks [or unit rates] are calculated and updated is important. The benchmark/unit rate is formed from multiple data sets calculated into an average number. This means a project's benchmark/unit rate must be viewed across the lower and upper ranges around the benchmark number and measured on factors of complexity. It is not possible to simply want to be "under" the benchmark to measure value.

CMA Question 2

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?*

BAM Response to Question 2

Yes – we agree with the proposed product and geographic scope.

In addition, we recommend the scope should consider the future as well as the past. The infrastructure landscape is changing, with increasing emphasis on energy. Energy equally relies on access routes, includes significant earthworks and is impacted by the planning regime. Engineering skills are in short supply and all these sectors will be competing for similar resource. Methodologies used in rail are being explored within the energy sector to mitigate the risks of working underneath overhead lines. Lessons learned and synergies across these sectors could be useful.

The findings are likely to be applicable to the wider civil engineering and construction market – similar to the broad reach of the Construction Playbook[1]

[1] Construction Playbook

CMA Question 3

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?*

BAM Response to Question 3

The key challenge is the increase in administration, inconsistent and bespoke requirements. While we support tailoring aspects of procurement to meet local needs, there needs to be a cost/benefit analysis of customised, singular procurement events to pragmatic, national frameworks. The greater the volume of individual procurement exercises and the greater the number of rules, systems, requirements and expectations across the four UK nations (and within devolved regions within these nations), the greater the administration cost, resource and effort to the whole infrastructure supply chain – increasing overhead cost and reducing productivity without a clear value benefit.

Working across the four nations, the key differences we encounter are:

- **Funding** – clarity and confidence in funding for infrastructure schemes, including the regulations around funding, the procurement objectives, how "best value" is determined
- **Client Major Programme Experience** – nations (and regions) that have had greater funding and project delivery experience demonstrate greater maturity and ability to apply lessons in future procurement. Nations and regions with less experience of major infrastructure project delivery can lead to an over-reliance on consultants where direct resource is not available. In our experience, this leads to consultants' objectives and incentivisation misaligned from the final project outcome, e.g., driving inappropriate risk transfer and lowest cost bids, which lead to final project costs being far greater than the procurement budget, with greater commercial administration burden throughout delivery and commissioning
- **Culture and Ways of Working** – the different nations (and regions) have built both client and supply chain teams with localised cultures and ways of working. Bringing innovative solutions and/or exploring change is more challenging where change is perceived as a risk. Understanding the organisational structure, culture and behaviours within the infrastructure client bodies delivering across the four nations – and how this impacts the market, supply chain and ability to meet outcomes and growth would be beneficial
- **Geographical Complexity** – each nation (and region) has a different geographical environment. Delivering road and rail projects requires different considerations, logistical management and resourcing when doing so in the Highlands of Scotland compared to a highly urbanised and confined major city working space. Benchmarks and unit rates will not align equally. Materials may be compared, however, method related activities must be measured against their geographical complexity factors

We welcome the future role of Great British Railways (GBR) in the railway infrastructure market. We are eager to realise benefits from the creation of a centralised client body that brings vital track and train stakeholders together and can promote greater focus on infrastructure outcomes for railway users and wider society.

CMA Question 4

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.*

BAM Response to Question 4

Any long term project will have a mix of positive and negative as it evolves to reflect changing market conditions and partners. For instance, the Transpennine Route Upgrade started as several alliance partners given distinct geographical areas and has, over time, developed into a multi-billion infrastructure programme that is maturing into an Enterprise arrangement. It has secured multiple awards and its success is driven by leadership commitment to a high performing culture.

In each of the example case studies below, the consistent factors that enable success and good project outcomes are:

- Mature procurement design – engaging with the market to collectively understand the best route to achieve project outcomes
- Collaborative approach, culture and behaviours – creating a dedicated funding, client, contracting and design team
- Clarity in project purpose and outcomes (for all) – all organisations and stakeholders working together to achieve the same common goals (win:win mentality)
- Engagement with design and construction expertise (from those who will deliver the scheme) from an early concept phase – ensuring constraints and challenges are understood, mitigated and managed before main construction works commence
- Two (or multi) stage contracting approach to ensure robust pricing as design matures
- Appropriate risk allocation to those who can best manage and own the risks

These factors reflect good practice set out in the UK Government's Construction Playbook[2].

Levenmouth Rail Link (Network Rail, Scotland's Railway)

The Levenmouth Rail Link, is an award winning Enterprise early adopter project, delivered at pace - 4.5 years from being prioritised as a potential project to opening to the public. It was delivered on time, subsuming circa £10m inflationary costs and secured circa £16m in non-rail funding to deliver active travel. Before granting full approval for the project, Transport Scotland authorised advanced works including vegetation clearance and redundant asset removal to deliver at pace and early contractor involvement facilitated programme certainty during the development of the Final Business Case. One year after its opening, Fife Council has reviewed the positive social and economic impact[3].

Prior to the line opening, a baseline survey indicated that just over two thirds (69%) of Levenmouth residents (with as many as 90% from Methil) would use the Levenmouth Rail Link to travel between Leven and Cameron Bridge railway stations specifically during its first 12 months of its operation.

[2] Construction Playbook

[3] Levenmouth Rail Link: One Year On | Fife Council

As many as 84% of those respondents indicated they would do so for leisure (cinema/bars/restaurants/theatre) or sport (participation and/or spectating), followed by 56% for shopping, 25% for connections with onward transport, and 13% for travel to employment. Over the last 12 months, an astonishing 300,000 journeys have been made[4].

Aberdeen to Inverness Route Enhancements (Network Rail)

The aim of the Aberdeen-Inverness Improvement Project is to create a more attractive public transport option between the UK's two most northerly cities and to improve commuter services into both cities from the surrounding population hubs. An added gain is the improvement of onward travel options to the central belt and further afield. The line is approximately 108 miles long and prior to 2015, it was primarily single track with some passing loops. With long journey times (around 2 hours 25 mins) and irregular service (every 2 hours) the rail option was not seen as an attractive alternative to road travel.

The scale and relative remoteness of the route presented logistical, weather, resource, and technical challenges. Minimising the design and construction risks required a rolling programme of site and ground investigation (SI/GI). Nearly 1000 SI/GI groundbreaking activities across the route informed design priorities and highlighted practical constraints facing the construction team. Managing the SI/GI enabled the project team to engage with landowners, farmer and tenants living along the route.

Over a 108-mile railway, stakeholders were diverse and geographically split. Externally, the project needed to work closely with four local authorities: (Aberdeen City, Aberdeenshire, Moray and Highland), two regional transport partnerships, Nestrans and Hitrans, dozens of community councils and elected officials and hundreds of landowners and affected parties.

A communications team was embedded into the project team from 2015. A detailed stakeholder management plan alongside a route communications plan, proactively kept public complaints to a minimum. Cooperation and collaboration were key at a project level. Railway stakeholders included Transport Scotland, Network Rail, ScotRail and freight operators. At contractor level BAM, with support from Babcock, was responsible for the management of infrastructure delivery, while Siemens provided signalling and telecoms expertise.

A collaborative partnership between the client Network Rail and the delivery contractors formed the multidisciplinary project management team. This enabled teams to proactively address challenges, ensuring transparency and a culture for problem solving. Practical collaboration tools such as the integrated programme helped identify and mitigate risks, reducing passenger impact e.g. moving the redesign of structures, to accommodate double track, forward ahead of the blockade in 2019.

Accommodating double track requirements made the Aberdeen to Inverurie section the most challenging section of the route, from an engineering perspective. Not only was the existing running line in the centre of the railway solum, but significant sections of the route also required modernisation, involving extensive piling, earthworks and drainage to bring it up to modern standards. Access planning identified two years of weekend disruption and ongoing rules of the route work between midnight and 5am. Increasing financial, safety and resource risks of the project resulted in an unaffordable budget for Transport Scotland. The solution was a unique style of

[4] 300,000 journeys made one year on since historic return of Levenmouth rail link | ScotRail

blockade designed to straddle the school holidays over two summers: a 14-week blockade in summer 2018 and a 15 week blockade in summer 2019.

'Passenger first' data was used to help inform the delivery strategy and shape passenger communications. In surveys undertaken, c.60% of passengers wished to see work delivered over a shorter, more intensive period of disruption rather than enduring a prolonged impact. The blockades were supported by Scotrail/Network Rail advertising saturating radio, newspapers and online sources in the north of Scotland. A full timetable of bus replacement services and an informed ScotRail workforce ensured that passengers had confidence in the measures taken to address the service disruption.

Over the course of the project, in excess of ½ million neighbour letters were issued advising of works and of the project benefits. 200,000 promotional and customer information leaflets were issued along the line of route, and the project team hosted 45 public drop-in sessions, 4 town hall meetings, 12 stakeholder site visits and 28 MSP/MP meetings.

CP6 Southern Multi-Discipline Framework (Network Rail)

The CP6 Southern Multi-Discipline (SMD) Framework was the primary route to market for Network Rail's Capital Delivery workbank in Control Period 6 (CP6). Network Rail awarded BAM the Kent and Sussex (previously the South East Route) Framework in 2018. The frameworks covered design and implementation for all categories of railway assets (renewals and enhancements) including building and civils, electrification and power, signalling, telecommunications and track within the Capital Delivery Southern workbank (excluding Works Delivery).

Network Rail and BAM created a collaborative, integrated team. The team's joint framework commitment was to 'think differently to deliver better'. Thinking differently was about challenging ourselves and partners to look at things from a different perspective, always with the customer front of mind. Discovering better ways to create value. Thinking differently has no purpose without delivering better. The Kent and Sussex Routes are the busiest and most congested in the country with over 2,000 miles of track, five of the busiest stations in the country, around 5,000 passengers trains every day and c.30% of all passenger journeys in Britain.

Rising to the CP6 efficiency challenge, the BAM SMD Team applied portfolio management processes and tools to assess the whole CP6 renewals work bank in Sussex and Kent. By packaging schemes by line of route, we were able to determine efficiency opportunities through combined access, shared facilities, optimised resource profiles and more. Presenting this data to the Network Rail project controls team and Asset Managers provided a business case to move projects between financial years to enable the identified efficiencies to be realised. We forecast a 4-6% programme level efficiency from packaging of schemes with further opportunities in procurement through better pipeline visibility for our supply chain, improved value through packaging of works and reduced access costs.

Working collaboratively across our client, framework and supply chain teams using a single source of data through a digital 'Smartsheet' (single source of truth) system was at the heart of portfolio management. Reducing wasted effort and person-marking processes, with live data available to Network Rail and BAM at the click of a button.

Benefits realised through our portfolio management and digital Smartsheet approach included:

- Reduction in indirect costs through resource optimisation and facility sharing (from better line of route utilisation)

- Improved planning and monitoring with data being entered once, yet used in multiple ways
- Improved communication and cascade from everyone using a single source of truth
- Incident frequency improvement to lowest Rail LTIAFR of Zero - supported by better close call and data analysis

Measured efficiencies:

- £1.3 million efficiency savings across framework delivery
- Portfolio management saving over 25,000 working hours over one year
- 30% increase in KPI and close call reporting
- Access planning saving over 2,000 working hours across eight months

A421 Great Barford Bypass (National Highways)

A421 Great Barford Bypass allowed for major utility diversions within the delivery programme, use of a new pavement option (FSBM), and exploited use of Corten steel for overbridges (not previously permitted).

A428 Caxton Gibbet to Madingley Improvements benefited from being packaged with A421 – the pricing and programme had been baselined when developing the A421, meaning the designs could be standardised, increasing productivity through repeatability.

Cross Tay Link Road (Perth and Kinross Council)

The Destiny Bridge and The New Kingsway (the Cross Tay Link Road project), delivered by BAM on behalf Perth & Kinross Council, won the Project Excellence and Innovation Award at the 2025 NEC Martin Barnes Awards.

The Cross Tay Link Road project involved the construction of a 6km route from the A9 to the A94 north of Scone, alongside a 2km realignment of the A9 north of Inveralmond Roundabout. This ambitious infrastructure project encompassed roadworks, earthworks, structures, active travel infrastructure, landscaping, and forestry planting. A critical component was the Destiny Bridge (ST02), a balanced cantilever bridge with 60 segments. Designed to ease traffic congestion and improve air quality in Perth's city centre, the bridge provides an alternative route connecting the A9 to the A93 and A94.

This was a significant infrastructure project for Perth and Kinross Council to procure and manage. The client embraced proactive use of early contractor involvement (ECI), enabling the client and BAM (contracting) teams to collaboratively unlock sustainable opportunity.

Delivering on time and to budget, the value of the targeted project sustainability outcomes are immense, achieving:

- a carbon saving of more than 51,000 tonnes of CO_2e compared to the tender baseline design, equivalent to a 45% reduction
- c.£50 million in social and economic value generated, attributed to local spend, support for SMEs, education and training programmes, and a wide range of community projects
- extensive environmental enhancements, planting over 100,000 trees and shrubs, creating 13 hectares of new woodland, and supporting a regional rewilding initiative[5]

[5] https://www.scottishconstructionnow.com/articles/cross-tay-link-road-project-recognised-with-international-award

CMA Question 5

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 (e.g. open competition, frameworks);*
   c) *the design of tenders, including the number and type of requirements and the use of quantitative (e.g. price) and qualitative evaluation criteria;*
   d) *the approach to risk allocation across different parties; and*
   e) *the use of contract mechanisms (e.g. insurance provisions) and pricing mechanisms (e.g. fixed price, cost plus).*

BAM Response to Question 5

(a) Early Stages of Project Design

Clients often procure consultants before contractors. This seems a logical approach but a consultant will make many conscious and sub-conscious assumptions on construction methods and associated costs during any early stage optioneering. Many projects coming through to market have solutions "baked in" at concept stage or consents stage that are sub-optimal. This includes unrealistic programme durations, budgets, planning constraints, noise constraints, vibration constraints, dust constraints and structural forms that are bespoke, or have complex connections, or have interfaces with onerous unachievable tolerances, or are reliant on specialist limited materials or products.

All these undermine a well-functioning market as they result in emerging and unnecessary costs.

Method led design is under-utilised enough at the earliest project stage. For example, a project remit begins with "*we need to get more people from A to B. What is the easiest transport system to build at this location in this supply chain market at that time of the year?*" This informed choice in collaboration with an experienced project team, who can manage the designer would deliver greater value from the whole market.

We strongly support much earlier and more meaningful contractor engagement — not just to price or build what has already been decided, but to help shape what gets designed in the first place. Too often, projects reach market with design choices that do not reflect the realities of delivery: assumptions about access, sequencing, tolerances, and materials that might suit a drawing but do not suit the site or the supply chain. Better utilisation of the appropriate delivery experts would aid meeting infrastructure sustainability hierarchy of – Build Nothing, Build Less, Build Clever, Build Efficient.

We find many programmes and budgets are committed to before any delivery expertise is consulted. This leads to undue pressure, potential rework, and compromises on safety, quality, and commercial viability. Engaging contractors and key suppliers at the concept stage would allow a number of risks to be surfaced earlier, leading to more realistic solutions for Clients and better project outcomes overall.

Over-reliance on consultants during early project design misses the opportunity to embrace digital tools and shape the design for modern methods of construction to increase productivity.

These considerations cannot be "bolted on" to "contractors' scope" within procurement. Offsite and modular design and/or digital rehearsals must be embedded in the logic of the overall solution for the project from the outset.

Ultimately, we need procurement models that recognise the value of method-led design. A well-functioning market is one where Clients draw on the full spectrum of delivery expertise at the right time. Delivery contractors and design consultant organisations bring different yet valuable skills to defining solutions – and contribute to a more productive market place when in collaboration together. Method led design and ultimately method led construction would not only contribute to, but define, a well-functioning market.

(b) Use of Different Procedures (open competition, frameworks etc)

The diverse nature of rail and road renewal, maintenance and enhancement infrastructure requirements – from the very minor maintenance activities to multi-billion enhancement schemes - lends itself to having a range of procurement procedures.

These procurement procedures, when applied properly, can support and contribute to the range of suppliers in the road/rail infrastructure market.

We advocate the use of frameworks – in particular where there is a programme of infrastructure requirements to be delivered. When administered maturely, frameworks provide a committed pipeline of opportunity for suppliers, enabling efficient resource planning and procurement of long lead items to ensure good value for money. Delivery teams have the opportunity to strive for continual improvements and incremental gains through repeatability. Framework team 'overheads' can be efficiently managed where the programme is long term and consistent.

Frameworks undermine the market and return poor value for money when there are multiple competitions. For example, a significant prequalification then tender process to achieve a position on a "nil value" framework – where further "mini-competitions" are then undertaken between multiple framework contractors. While the client intent is to demonstrate "cheapest cost", the actual outcome to suppliers is increased resource and overhead cost undertaking multiple procurement activities and administering the framework. With direct award and negotiation, all these resources, time and energy could be directed at improving design, programme, innovation and sustainability outcomes.

As with 5(a), we strongly advocate early engagement and commitment to construction experts (both Tier 1 and Tier 2/3 specialists) from feasibility and concept stage. This can be through frameworks alliances and two/multi stage design and build contracts. Enabling appropriate expertise through design development and robust construction phase pricing, programme and consent management ahead of mobilising to delivery (construction) phase.

(c) Tender Design, Requirements and Evaluation Criteria

Profit margins within the civil engineering sector are historically low in comparison to other sectors. This factor, combined with the level of investment required to attract, train, support and sustain a competent workforce, plant and technology, means suppliers must be selective in their bid investment decisions.

Procurement requirements have increased significantly during the past decade. With a long process of questionnaires, case studies, tendering, individual and group behavioural assessments and more.

Qualitative and quantitative evaluation criteria contribute to a well-functioning market when aligned to the ultimate project outcomes required. For example, if a key benefit in the business case is identified as social value return or decarbonised assets, these are the criteria that should be weighted most strongly in the evaluation. Clearly demonstrating the client and funder intent and objectives.

Tenders that focus purely on commercial and 'cheapest price' submissions undermine a well-functioning market. Leading to poor out-turn cost in comparison to tender budgets, poor outcome achievements and an unstable industry where businesses are no longer sustainable and enter into administration.

(d) Approach to Risk Allocation

Although the road and rail market is in many ways ahead of other sectors in terms of fair risk allocation across different parties there are still improvements that can be made (in no order of priority) to make it attractive for civils contractors to bid for and deliver road and rail projects:

- Recommendations out of the Latham Report[6], Project 13[7] and the Construction Playbook[8] are not fully implemented, government bodies (including those that procure roads and railways) fail to meet the commitment to being a best practice client. Old practices of pushing risk for price and programme, to achieve budget certainty through early commitments to lump sums in single stage projects are not attractive to civils contractors. See 4(e) below for further on this point.
- NEC is widely used in roads and railways markets. However, it is invariably amended and/or includes more z clauses than the original standard form. To note:
  - Such amendments are usually to the detriment of the contractor, pushing more risk down.
  - Often see amendments which fail to allocate risk to the party in the best position to manage the risk i.e. risk for delays by third party stakeholders/ statutory undertakers/ planning authorities.
  - Results in each contract being the subject of heavy negotiation; in clients, administrators and contractors having to learn an effectively new contract each time; and delays supply chain engagement and price fixity, whilst flow down terms are prepared.
  - Often fails to pick up and adopt terms (either that exist as optional or new Z clauses) to reflect the changing geo-political landscape (i.e. inflation or delay to goods/ supply chains crossing through/ dependant on countries at war or rebel plagued international waters).
  - We often end up negotiating the same points over and over again on every contract negotiation i.e. back to X15 drafting where amendments have been made eroding the principle that liability arising out of design should be limited to reasonable skill and care, or that where a contract has been procured on a two stage process that

[6] Constructing the Team - the Latham Report
[7] https://www.project13.info/
[8] Construction Playbook

proceeding to the second stage requires the agreement of both parties with the ability to walk away if agreement is not achieved.

- Contractors are still expected to take risks far exceeding any profit they may hope to make from a project and in many cases to the extent that could jeopardize their whole business:
  - 100% caps on liability
  - Long list of excluded items i.e. delay damages, damage to third party property, indemnities to third parties, insured losses – resulting in unacceptable liability exposure.

(e) Contract and Pricing Mechanisms

In addition to the points in 4(d),

Insurance: With regards to insurance, it should be noted that:

- insurance policy coverage will have large deductibles/excesses which effectively mean that contractors are self-insuring all but the most severe events
- on large projects Clients are often opting for Owner Controlled Insurance Policies (OCIP), however, the policies they procure do not often offer the same level of protection as a Contractor procured CAR policy would (offering LEG2, rather than LEG3 and/or extended rather than guaranteed maintenance).
- Other deductibles/ exclusions of note which impact on the availability of suitable insurance for road and rail projects include limited/ restricted coverage for tunnelling.
- Unrealistic/ unfair expectation that designers should provide a lower level of professional indemnity insurance (with their liability inevitably capped at a commensurate level) than contractors.
- It may be of relevance to take into account that UK based insurers will not insure fitness for purpose type obligations, whereas European contemporaries do not appear to have this problem. Conversely European contemporaries do not tend to carry professional indemnity insurance, whereas this is standard in the UK market.

Pricing mechanisms: Pricing mechanisms in themselves are not determinative of the success of a project, nor is one necessarily better than another. What determines which pricing mechanism is appropriate and dictates the success of a project in terms of price and programme is:

- the timing of when the price is asked for
- the level of design maturity
- whether a project is two stage, with sufficient time to check and verify information during (a paid for, on a reimbursable basis,) ECI period
- appropriate risk profile that does not pass unquantifiable risks to the Contractor
- planning and permission, consents, stakeholder approvals in place prior to construction starting

The more the above are developed, verified and crystallised the more risk a contractor will be willing to take as it will be able to quantify the risk and price the project with greater certainty.

CMA Question 6

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.*

BAM Response to Question 6

(a) Size and Specialism of Companies

The current structure of the industry contributes to a well-functioning market. As described in 5(b), the diverse nature of civil engineering infrastructure in road/rail means opportunity for highly specialised and broader skilled contractors, large infrastructure providers with design, engineering and project management skill sets and all size of organisations from large enterprises to micro-SMEs. The market acts as an ecosystem – with the large enterprises supporting entry and access for developing organisations and businesses.

(b) Tiered Nature of Supply Chain

Supply chain 'tiering' and category management is a normal function within a healthy market eco-system. As described in 5(b) and 6(a), this is representative of a healthy marketplace where there is opportunity for a diverse range of organisations to meet the requirements of infrastructure activities.

The different 'tiers' enable suppliers to engage with clients for road/rail scope suited to their ability to design, deliver, manage risk and stakeholders. Widening opportunity for SMEs who can work directly for public sector clients for smaller value, less complex projects and within a larger Tier 1 organisation's supply chain for larger, complex infrastructure programmes.

The tiered nature contributes to a well-functioning marketplace strongly, when the procurement approach is collaborative and mature. Enabling (Tier 1) delivery organisations to bring strategic suppliers and sub-contractors into full horizontal and vertical collaboration. Bringing diverse and expert consideration into option selection and design, where an ongoing commitment to the SMEs involved can be made to incentivise transparent sharing of innovation. The tiered nature of the supply chain also benefits the community, economic prosperity and can support delivery of the Social Value Act (growth).

(c) Financial Arrangements

The existing government guidance in place around payment periods, if followed, is sufficient to ensure cash flow and not leave Contractors/ supply chain out of pocket.

With regards to retention this should only be used as a last resort where no other security is available, and should not be included as a norm. Retention amounts usually equate to the full profit of a job. The scale of large/mega infrastructure projects and/or the long term relationship with a small number of road and rail clients, results in the majority of cash/profit gets held by a handful of clients where retention is used. This goes against every other effort of the government to improve cash flow in the industry. It is also entirely unnecessary where there are alternative forms of security available (PCGs, performance bonds etc). Frustratingly we often have requests for security packages that are "belt, belt and braces" – this costs contractors more, clients more and impeded cash flow.

CMA Question 7

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?*

BAM Response to Question 7

Procurement barriers

The main barriers which inhibit performance in this market are:

- Misaligned objectives in procurement vs outcomes, i.e., being driven to achieve the 'cheapest price' at tender does not align to, and result in, a predictable final cost and good quality outcomes
- Over-reliance on consultants, advisors and cost consultants within client strategy and procurement teams. Again, leading to mis-aligned objectives where the consultant is not incentivised to delivery the 'best value and outcomes'. Often, a consultant's incentive can be in conflict with the overall success of the project if they are retained to manage a challenging contractual position that they advised the client into
- Naivety in risk allocation, with a belief that risk transfer to suppliers will 'fix' budgets. Transferring risk to inappropriate owners does not mitigate the risk and the project remains in jeopardy of realising the risk and delivering over-programme, over-budget or both
- Client procurement teams and advisors failing to listen to market engagement; continuing to come to the market with procurements that seek to fix the construction price too early and without robust design, ground and consent information
- Significant amendments to standard contracts. Resulting in challenges entering into contract and securing appropriate insurance. Often leading to protracted negotiation periods to return the contract terms and risk profile to an acceptable position
- Lack of pipeline visibility and confidence in procurement timelines. The reluctance of many clients to share pipelines and commit to timelines is undermining the reliability of the market and increasing the overhead costs within suppliers to meet client requirements

Planning and Other Regulatory Barriers

Sensible recommendations have been made in the Banner Recommendations[9] and Raynsford Review[10] to help improve planning and regulatory barriers. However, competing interests of price, programme, environmental impact will remain challenging.

Significant risks/barriers for the market associated with planning include:

- Risk transfer for obtaining planning consent and permissions – **with a fixed price** being required from the client ahead of the consents being received. This leaves supply chain open to risks they cannot influence, mitigate or manage with the client's stakeholders
- Long delays to programmes impacting resource and logistic plans – increasing costs and reducing productivity
- Increase to scope and cost due to stakeholder requirements in the consents
- Unexpected changes in infrastructure requirements/specification through Secondary Legislation

[9] Prime Minister clears path to get Britain building - GOV.UK

[10] https://www.tcpa.org.uk/wp-content/uploads/2022/03/Planning-2020-Raynsford-Review-of-Planning-in-England-Final-Report.pdf

CMA Question 8

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?*

BAM Response to Question 8

Implement Findings and Good Practice

Recommendations from the Latham Report[11], Project 13[12], the Construction Playbook[13] and Professor David Mosey's Independent Review into Public Sector Frameworks[14] are not fully implemented. These reviews and plans into creating a sustainable, efficient and productive supply chain and a construction and infrastructure industry all recognise similar barriers, challenges and siloes that reduce growth and improvement.

Barriers to achieving these changes are built into peoples' perception of change and fear of doing things differently. A culture of rewarding innovation, collaboration and success needs to be championed and procurement design needs to be assessed against the UK Government's own recommendations (as described above) to ensure it meets with recognised good practice.

Budget and Outcome Transparency

Consistently adopting the examples of good practice (4a,c) for early engagement, transparent sharing of required **outcomes** (as opposed to preferential engineering options) and budget limitations at the earliest phase will enable proactive and practical solutions to be developed.

Barriers to achieving this change is similar to the example above. A lack of trust between client and supply chain – made more complex with the intervention of additional cost and communication layers through consultant advisors, results in siloed teams and poor outcomes. Overcoming these barriers requires early engagement and collaborative contracts with the appropriate experts who share incentivisation with the client to achieve the same common goals and project outcomes.

Opposing Objectives in Client Asset and Capital Delivery Teams

Client asset teams are charged with protecting asset life and maintaining a safe, reliable railway or road. Client capital delivery teams are charged with delivering renewal and enhancement schemes – with challenging budget and efficiency targets to meet. The opportunity to bring innovative solutions, novel materials and methods to market and trial these will only become a reality when the whole client team shares the same objectives.

New products and innovative methods may appeal to client capital delivery teams as a solution to meet their budget/efficiency target, however the asset team does not share the same objective. Barriers include the risk in the client's asset team understanding maintenance requirements of a new product and its long term performance. Supporting and incentivising asset and capital delivery client teams **together** to step away from traditional solutions and preferential products and engineered designs will enable these opportunities to piloted across the infrastructure market.

[11] Constructing the Team - the Latham Report
[12] https://www.project13.info/
[13] Construction Playbook
[14] Constructing_The_Gold_Standard_Final

Private Finance

We welcome the UK Government's creation of the National Infrastructure and Service Transformation Authority (NISTA) in April 2025. The publication, implementation and regular updates to the UK 10-year Infrastructure Strategy will provide the civil engineering market with greater visibility, clarity and confidence for future investment.

Recognising the investment value needed to achieve the UK Government infrastructure ambitions, we recommend exploring opportunity that a variety of private finance models could bring. Current barriers to realising this opportunity include public perception of private finance, evaluation of value for money and maturity in risk allocation to appropriate parties.

We would welcome the opportunity to engage collaboratively with the key stakeholders needed for future infrastructure project private financing to share experience, feedback and future thinking of how improvements can be made collectively.