Response to CMA's Civil Engineering interim market report

Thank you for the opportunity to respond to the CMA's interim report of its Civil Engineering Market Study. We fully support the CMA's goal of improving the performance of the civil engineering market for rail and road, and we read the interim report with interest. Please see below our responses to the questions asked in the interim report, in addition to an overview of Amey's business.

Company overview

Amey is a leading UK provider of full lifecycle engineering, operations and decarbonisation solutions for transport infrastructure and complex facilities. We have delivered expert infrastructure services for more than 100 years, employ approximately 11,000 people across all areas of our business, and reach every corner of the UK with our engineering expertise.

We combine the construction, maintenance, and operation of assets with leading edge design and digital services that provide innovative and deliverable solutions to some of the most pressing infrastructure challenges facing the UK.

Question 1: Do you consider that we should be more concerned with barriers to firms expanding rather than barriers to firms entering the civil engineering market in the first place? Are there other forms of barrier not mentioned in our analysis so far which are significant?

We recognise the CMA's concerns about the barriers to expansion potentially faced by firms operating in the rail and road civil engineering market. However, we question whether these barriers are primarily driven by commercial behaviours of suppliers, as opposed to factors inherent to the market, such as the fact that there are minimum levels of capital and technical resource required not just to demonstrate credibility, as discussed in paragraph 2.17 of the CMA's report, but to be able to quickly mobilise on projects as well.

Question 2: To what extent do you agree supply chain fragmentation contributes to poor outcomes? Besides pipeline uncertainty, what other factors drive civil engineering firms' preference to use contractors rather than building their in-house capacity?

We do not see supply chain fragmentation as contributing to poor outcomes in a material way (and we agree it is not one of the root causes of the negative cycle in which CMA sees the market as being caught). As discussed in our response to the CMA's request for information, in our view subcontracting, when effectively managed, can generate benefits such as access to specialist resource and greater participation by SMEs. To the extent that subcontracting may be used to excess within the market, we would suggest that any solution to this must address the lack of clear and credible long term pipeline visibility and funding uncertainty. Even with in-house capacity there are many other social factors that come into play, for example, location of works vs employee's home location and the shift away from transient workforces.

Question 3: Are there specific procurement, policy or regulatory barriers that reduce innovation and/or scaling opportunities in the civil engineering market? What would make the most difference to firms' incentives to innovate, and public authorities' incentive and ability to encourage innovation?

There are three procurement related factors which in our experience reduce innovation. First, there is often a preference for input over output specifications. Input specifications limit the scope for innovation; absent approval from the contracting authority, any departure from the specification is technically a 'defect', even if it results in improved functioning, lower costs, quicker delivery with less disruption or other benefits. Output specifications enable innovations to be developed during the life of a project, when opportunities for innovation are arguably greater due to factors such as:

- The availability of live performance data

- Observed failures, inefficiencies, and constraints

- The existence of a project team with on-the-ground experience

We acknowledge that there will always be projects over which contracting authorities will want to exercise greater control over the design. However, we believe that greater openness to output specifications would increase opportunities for innovation.

Another important factor which we see as limiting incentives for innovation is the way that rights to intellectual property (IP) arising out of innovations are commonly dealt with in contracts. In our experience, public authorities procuring works in the civil engineering sector often require contractors to assign full ownership of 'project specific' IP to them, without the contractor retaining any right to commercially use such IP. This can be a disincentive to investing in innovation. Wider and more consistent use of IP licenses from the contractors, rather than outright assignments of ownership, would be helpful in this regard.

We have found that competitive dialogue type procurement where bidders' ideas are collected through the process and then effectively shared at tender as part of a consolidated final contract can act as disincentive.

Question 4: For what type of projects is there greatest scope for the accuracy of upfront scoping and planning to be improved, to aid delivery on time and on budget? What would help to make upfront scoping and planning more accurate?

We believe that all types of design and build projects within the rail and road civil engineering sector provide scope for the improvement of upfront scoping and on-time / on-budget delivery, but particularly those which involve interfaces between multiple disciplines and types of infrastructure. Upfront scoping and planning could be improved by an increased willingness on the part of contracting authorities to stand behind project information, including site data and design information. Authorities could do this, for example, by warranting the accuracy and completeness of this information, thereby avoiding the need for contractors to price in the risk of errors and omissions in this information or to build in programme time and cost for verifying it. Procuring Authorities could be encouraged to hold the necessary risk and contingency funds across their portfolios to manage these risks more effectively.

Upfront scoping and planning could also be improved by increased and more effective use of early contractor engagement, whether through a contractual early contractor involvement process or as part of preliminary market engagement pre-contract.

Question 5: To what extent do you agree early contractor involvement could be used more effectively, and how can this be facilitated?

We agree that early contractor involvement (ECI) could be used more effectively. We suggest that one of way of improving the effectiveness of ECI would be to introduce greater flexibility to the procurement process. We think this would enable the outputs of ECI to have greater influence over approaches to delivery. ECI may result in the contracting authority changing its approach to how it wants potential suppliers to deliver work, e.g. the level of risk allocation, the payment mechanism etc. Procurement processes need to be able to adapt to reflect this.

Question 6: To what extent do you agree that the design and use of procurement frameworks could be improved?

We agree that procurement frameworks could be improved. This could be achieved by:

- ensuring that frameworks are actually used to deliver minimum levels of work, noting the concerns mentioned in paragraph 2.86(b) of the interim report as to the tendency for advertised volumes of work on frameworks not to materialise;

- contracting authorities, particularly local authorities, taking a more integrated approach to creating and operating frameworks. In our experience there is a high degree of fragmentation and duplication of framework contracts across multiple contracting authorities, particularly for highways projects. This can increase bidding and procurement costs;

- adopting a more standardised approach to the design and contractual terms of framework contracts, including the way in which works are commissioned under frameworks.

Question 7: How could open competition be made less resource intensive as a method of procurement?

The process of pre-qualifying for open competitions can be particularly resource intensive. We welcome the increasing use of 'dynamic markets' established under the Procurement Act 2023, whereby suppliers can satisfy eligibility requirements for competitions through defined conditions of membership, e.g. registration under the Railway Industry Supplier Qualification Scheme (RISQS), thereby streamlining pre-qualification. Similar schemes for highways would be welcome.

Question 8: Where is there greatest scope to improve the evaluation of non-price aspects of bids, such as quality? How can this be better supported and enabled?

We suggest that increased transparency around how non-price factors are scored given that scoring can sometime seem subjective. For example more detailed feedback could improve the bidders' understanding of the method of evaluation of non-price aspects of tenders.

Question 9: What factors are most likely to cause significant risks to be misallocated between the procuring body and supply chain, and within the supply chain? How could this be addressed?

We believe that a key contributing factor to this problem is a lack of transparency around risks and the approach to risk allocation by contracting authorities, particularly during the early stages of the procurement process. This may be motivated by a lack of trust and/or concerns about potentially deterring suppliers from bidding and/or causing suppliers to submit commercially aggressive or non-compliant bids, e.g. through assumptions which result in suppliers effectively seeking to shift the risk back to the authority. We appreciate these concerns. However, we believe that in order to ensure that significant risks are properly allocated, it is essential for discussions around risk to happen early on in the procurement process, in an atmosphere of mutual trust and collaboration. This is an area where contracting authorities should take the lead, as the party with the most visibility as to what the risks are.

Question 10: What are the areas of regulation which are preventing opportunities for innovation and effective competition?

We do not at this time have any observations to share in response to this question. However, we welcome the CMA's interest in exploring the issue and look forward to reviewing any findings and conclusions on this point in the CMA's final report.

Question 11: What are the areas of regulation which are preventing smaller suppliers from competing effectively (or from scaling up to be able to compete effectively)?

As above.

Question 12: To what extent to do you agree there is excessive risk aversion in public authority decision making? Where risk aversion is too high, what would help move it to more appropriate levels?

We agree that there is sometimes an excessive degree of risk aversion in public authority decision making, although we appreciate there can be a number of reasons for this, many of which are outside the control of the authorities themselves. Further to our observations in response to question 9 above, we believe that, where there is a high degree of risk aversion, it would be helpful for contracting authorities to be more transparent about this and the underlying causes including more openness on what funding is available and what other constraints they face. This would facilitate more open discussions as to ways of managing and allocating risks, e.g. through greater use of project governance tools, early warning and risk management meetings, and better shared incentivisation models to manage and mitigate risks more effectively etc.

Question 13: How would you rank the relative importance of our proposed measures?

We rank the importance of the potential measures summarised in Table 1.1 of the report as follows, based on our experience operating in the rail and road sectors:

Root cause driver addressed	Remedy area	Remedy options	Amey ranking
Pipeline uncertainty	Credible long-term funding	Extending multi-year capital funding settlements to all road and rail procuring authorities and activity Long-term contracts beyond the political cycle	7
	Pipeline visibility and certainty	Publish a consolidated UK-wide project pipeline, with a wide set of credible information, updated on a regular basis	8
Procurement authority capacity constraints	Skills, experience and leadership	Sustained capacity building Cross-authority pooling of capacity	9
	Coordination	Cross-authority joint procurement Comprehensive, standardises sharing of cost and performance	10
Procurement policy and approaches	Supporting innovation and minimising long-term cost	Procurement practices that explicitly incentivise and reward innovation, investment, scaling and long-term cost reduction	5
	Adoption of best practice	Consistent adoption of best-practice procurement guidance	1
	Procurement frameworks	Selective and maximally effective use of procurement frameworks	2
	Standardisation of processes	Standardisation of procurement administrative processes	4
	Reliable and accurate scoping	Greater use of early contractor engagement	6
	Risk allocation	Greater standardisation of risk allocation	3
Regulatory barriers	Regulation: efficient compliance	Identify and eliminate excess process around, and over-compliance with, existing regulatory requirements Streamline regulatory approval	13
	Consolidated accreditations and qualifications	Reduce the range of supplier accreditations	11

	Fast-tracked regulatory approvals	Fast-tracked regulatory approvals for new products/technologies	12

Question 14: Are there alternative important measures that we do not mention?

None that we have identified at this time.

Question 15: What would be the feasibility and impact of extending multi-year capital funding to public authorities currently operating on year-ahead budgets only?

We believe this would have a significant impact in contributing to enhancing pipeline certainty by, among other things, enabling authorities subject to one year budget cycles to take a long-term asset management approach rather than a short term (temporary) fix. At the same time, we appreciate that there may be feasibility challenges to this from a contracting authority perspective.

Question 16: What information not currently available in published infrastructure pipelines would be most helpful for firms? How would this information change business decisions on resource allocation and/or investment?

We believe it would allow suppliers to more effectively target resource allocation and investment if information as to funding expectations and contingencies were published in connection with information about upcoming projects in pipelines, in addition to any other information that could indicate which projects are more likely to proceed through, for example, a red/amber/green rating system

Question 17: How could the commercial and engineering capabilities within procuring authorities be better utilised? What could be done to better support procuring authorities to develop, recruit and retain these specialist skills, expertise and leadership capacity?

We do not have any suggestions in response to this question, other than the potential solutions and measures discussed in question 18 and in the interim report.

Question 18: To what extent do you agree that it would be beneficial for public authorities, such as groups of nearby local authorities, to: (i) jointly develop and share engineering expertise and commercial capabilities; (ii) to coordinate or jointly conduct procurement; and (iii) enact comprehensive, standardised sharing of cost and performance data? How could this best be achieved?

We agree that the above measures would be beneficial. One way of promoting coordination would be, as discussed in our response to question 6 above, for different local authorities to become joint parties under framework agreements, or with one authority being the lead party / framework operator, with other authorities able to call off work under the framework. We believe more use could be made of this option, particularly in the context of highways projects. One thing that could support this could be a relatively quick exercise to collate a common set of cost benchmark data against the standard Methods of Measurement.

Question 20: To what extent, and in what ways, is there scope for procurement processes to be made i) less complex and ii) more standardised across public authorities?

We do not at this time have any observations to share in response to this question, although we welcome the CMA's interest in exploring it.

Question 21: How and where can the regulatory approvals process for new products/ techniques/ technologies in civil engineering be made more streamlined?

As above.

Question 22: Which types of supplier accreditation currently experience significant levels of duplication?

Given that we and the majority of our current clients use industry standard systems such as. ConstructionLine or RISQS, in our experience we have not found that there are significant levels of duplication.