

Constructing Excellence, Gold Standard Task Group and King's College London

Response to the CMA's interim report as part of its market study into the supply of railway and public road infrastructure by the civil engineering sector

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About the King's College London, Constructing Excellence and the Gold Standard Task Group

The King's College London Centre of Construction Law and Dispute Resolution ('King's') is recognised for its leading role in advanced construction procurement research, with positive impacts on the built environment.

Constructing Excellence ('CE') is a membership organisation that drives a better construction sector. Their thought leading members drawn from the entire supply chain – clients, industry and users – share a vision to deliver a better built environment through innovation and collaboration.

CE leads the Gold Standard Task Group ('the Task Group') which assesses compliance with 'Constructing the Gold Standard – An Independent Review of Public Sector Construction Frameworks' ('CGS')¹. CGS lays out 24 recommendations for the implementation of Construction Playbook policies through collaborative frameworks and their use across government.

The Task Group is supported by government and provides independent verification, training and knowledge-sharing that ensures the wider adoption of the CGS recommendations. Its members include representatives of Akerlof, Atkins Realis, BESA, Burges Salmon, Cabinet Office, CHIC, Crown Commercial Service, Environment Agency, King's College London, LHC, Ministry of Justice, Pinsent Masons, Places for People, Rider Levitt Bucknall, Southern Construction Framework, Savills, Scape, Trowers & Hamblins, University of Salford and Vinci.

Professor David Mosey CBE FICE is a professor at King's. He is author of CGS and is chair of the Task Group.

Submission

King's, CE and the Task Group welcome the CMA's focus on the efficiency and effectiveness of the UK's civil engineering sector.

King's, CE and the Task Group agree that the infrastructure sector could be better equipped to respond to the scale of that infrastructure investment. As long-time advocates of the importance of pipeline certainty and strategic infrastructure planning, we support the CMA's identification that the mutually reinforcing short-termism that has historically characterised the industry is misaligned to asset lifecycles.

We have responded below with an overarching recommendation and with answers to a selection of the consultation questions provided by the CMA.

¹ https://assets.publishing.service.gov.uk/media/61b9cb41e90e07043e8ff5cc/Constructing_The_Gold_Standard_Final.pdf

Overarching recommendation:

King's, CE and the Task Group highlight that, while it is positive that the CMA has undertaken this work, many of the interim proposed remedies included in the report are also covered in detail in the government's Construction Playbook and CGS. We recommend access to these reports and the use of their evidence base to support and enhance the CMA's final report.

The 24 CGS recommendations are endorsed and incorporated in the Construction Playbook among its 'Cross-cutting priorities'² and the CGS contributors included National Highways, Network Rail and representatives of the road and rail industries. CGS is supported by the CE-led, government-backed system of 'Independent Verification', through which leading framework providers such as Crown Commercial and others demonstrate to the Task Group how they implement Gold Standard recommendations³.

The 24 CGS recommendations, supported by detailed case studies, describe how collaborative frameworks and alliances deliver:

- A 'golden thread' integrating strategy, procurement, contracting and management
- Early Supply Chain Involvement
- New SME opportunities through contractual 'Supply Chain Collaboration'
- Modern methods of construction
- Digital information management
- Preventive joint risk management
- Supply chain investments and innovations
- Shared learning and rapid progress
- Cost savings combined with social and environmental value.

CGS provides a robust basis for bringing the Playbook to life through strategic collaboration that overcomes the 'Groundhog Day' of lost learning and steers around the 'Bermuda Triangle of idealistic debate, cynical criticism and unrealised good intentions'⁴.

As identified by the CMA as a remedy option, the Task Group and King's have long advocated for mandating the use of the Construction Playbook (and through it the 24 Gold Standard recommendations) for government departments. This can be achieved by converting the current 'comply or explain' Playbook requirement for adoption to 'comply'⁵. This alteration does not require legislation but it has significant power in driving the CMA's goals by making compliance with the Playbook (and through it the 24 Gold Standard recommendations) a clear requirement for any NISTA project business case.⁶

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

² Playbook pages 14, 48, 49.

³ <https://constructingexcellence.org.uk/constructing-the-gold-standard-verification-scheme/>

⁴ CGS pages 11 and 17.

⁵ Mosey (2021) [Constructing the Gold Standard](#)

⁶ ICE (2025) [What should NISTA's priorities be?](#)

The Construction Playbook extends the principle of early contractor involvement by formally engaging the tier 1 contractor alongside the tier 2 and 3 sub-contractors and suppliers in the pre-construction phase to input into the design (including the use of standards for products and interfaces), costing, risk management and structuring of a project or programme. This is termed early supplier involvement (ESI)⁷.

CGS demonstrates how a multi-project approach to ESI delivers improved value and reduced risks and creates new opportunities and incentives for tier 2/3 supply chain members⁸.

ESI has been recommended for public sector procurement since the 2011 Government Construction Strategy and is a feature of a range of recommended collaborative procurement models. ESI has had widespread success in delivering improved economic, social and environmental value.⁹

Resistance to ESI often occurs when advice centres on a single stage, lowest price approach. Public sector framework providers and clients need to ensure that consultants understand and adopt ESI as essential to the systems by which Construction Playbook policies deliver improved value. The Construction Playbook requires that all public works projects should contract for early supply chain involvement. Mandating the use of the Playbook would enable framework providers, clients, managers and suppliers to challenge any advisers and colleagues who are not aware of the problems inherent in a single stage approach¹⁰.

CGS participants report successful work with tier 1 suppliers but with less early contributions from tier 2 and 3 supply chain members, including SMEs. Several tier 1 contractors suggested that tier 2 and 3 supply chain members are 'not yet ready' or are 'not sufficiently mature' to participate in ESI¹¹. However, the CGS case studies and its early adopters show evidence of major tier 2 and 3 supply chain contributions, for example CGS roads case studies 3 and 9¹².

ESI can reach tier 2 and 3 supply chain members through supplier-led 'Supply Chain Collaboration', a system described in CGS¹³ which is designed to improve tier 2 and 3 contributions by reviewing, improving and potentially aggregating the supply chain relationships created by tier 1 suppliers for framework projects and programmes of work. Employment of early involvement down the supply chain on a more consistent basis would be a useful improvement.

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

The 20 major framework providers and the 100 clients, suppliers and advisers who contributed to CGS all expressed the view that 'Frameworks can and should provide systematic approaches to improving project and programme outcomes, to improving the efficiency of design, construction and asset operation, to improving safety and risk management, and to delivering net zero carbon targets and social value'¹⁴.

⁷ Mosey (2021) [Constructing the gold standard](#)

⁸ Gold Standard recommendations 7 and 13 and Annex 3 case studies 1 -10.

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² CGS pages 120, 121, 123.

¹³ Gold Standard recommendations 7 and 13 and Case Studies 1 to 10.

¹⁴ CGS pages 11,12.

However, while describing their experience of some Gold Standard frameworks, CGS contributors also identified problems in the design, procurement and management of other frameworks that led to widespread frustration and that reflect the CMA's own findings. These include:

- 'The large number of competing frameworks and the lack of objective standards to help clients and industry assess their merits
- Lack of clarity as to the pipelines of work that are planned or committed to be procured under specific frameworks
- The use of some frameworks as a shortcut to market, with limited machinery for framework level collaboration and value improvement
- The cost and waste of creating and responding to onerous and inconsistent selection questionnaires and bespoke framework contracts
- Complex performance measurement systems that are not used for rewarding excellence, awarding work or sharing improved practices
- Limited understanding and adoption of digital technologies, MMC, ESI and whole life procurement
- Limited commitments to strategic delivery of improved social value, net zero carbon targets and other environmental value
- Poor communication by framework managers, including lack of feedback and lack of shared learning from framework initiatives and project performance'¹⁵.

CGS contributors also identified wasted cost and time as a result of:

- 'Speculative frameworks that are not connected to specific pipelines of work
- Inconsistent and repetitive selection questionnaires
- Overly complex bid questions that are not directly related to framework programmes
- Onerous and inconsistent framework contracts
- Complex performance measurement reports that are not used for value improvement
- Excessive use of mini-competitions for individual projects
- Hesitation to use the award of more work as an incentive for excellent performance'.¹⁶

We support the ways that these issues are addressed in the CMA report. We also support the related recommendations in CGS which show how public sector clients and industry can avoid the listed problems at each stage of strategy, procurement, contracting and management so as to ensure. By linking the CMA findings to the CGS recommendations, road and rail frameworks can fulfil their potential 'as a powerful engine-room for implementing Construction Playbook policies that include strategic planning, integrated teams, continuous improvement and the delivery of better, safer, faster and greener project outcomes'.¹⁷

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

Open competition using well -structured frameworks drives innovation in supply chains and creates opportunities for scaling in line with the CMA's interim recommendations.

¹⁵ CGS page 14.

¹⁶ CGS page 16.

¹⁷ CGS page 2.

Open competition using well-structured frameworks also provides the foundations for legitimate collaboration across government, public authorities and industry within a more stable and predictable funding environment, which the CMA rightly perceives to be the means to strengthen procurement capability across public bodies.

CGS contributors reported that, 'in addition to client procurement costs, the average bid cost for each major framework is over £247,000 for contractors and over £130,000 for consultants, with a maximum of up to £1 million in each case'.¹⁸ An integrated framework procurement system using consistent documents and processes will reduce these costs and will ensure that bid expenditure generates value. For these purposes CGS recommends:

- 'Reduce procurement costs, improve value and reduce risks by wider adoption of a standard form Gold Standard framework alliance contract'¹⁹
- Avoid wasted procurement costs and improve supplier commitments by ensuring that frameworks offer sustainable pipelines of work²⁰
- Reduce procurement costs and improve value through the award of longer-term call-off contracts and the incentive of additional work²¹
- Reduce procurement costs by consistent and proportionate assessment of economic and financial standing using 'PAS91' or the 'Common Assessment Standard'.²²

Q. 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? and

Q. 12: To what extent 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?

Excessive caution by public sector clients leads to inappropriate and costly misallocation of risks. This leads to industry suspicion and to the addition of unnecessary and costly risk premiums which inflate costs. This problem is exacerbated by late payment at any level of the supply chain.

80% of CGS participants say that frameworks need more active risk management²³. To address industry concerns regarding costly and unsustainable risk transfer, CGS recommends that framework providers, clients and managers should:

- Implement risk allocation informed by market engagement
- Create and update a shared contractual risk register with suppliers to jointly manage risks at framework level and help eliminate, reduce and mitigate potential risks on framework projects
- Respond efficiently to framework risk events through a framework early warning system and joint decision-making group²⁴.

¹⁸ CGS page 15.

¹⁹ CGS page 29.

²⁰ CGS page 41.

²¹ CGS page 46.

²² CGS page 81.

²³ CGS page 73.

²⁴ CGS page 75

The Gold Standard recommendations address specific Construction Playbook requirements through:

- A contractual system for the efficient sharing of risk information and agreement of risk management actions, enabling 'early risk work focused on achieving project strategic objectives and alignment'
- The use of ESI for 'exploring opportunities to develop solutions that help mitigate risk through joint working before construction commences'
- A contractual structure that connects the framework provider, clients, manager and suppliers through systems for 'sharing of appropriate risk registers and transparent communication on risk allocation with prospective suppliers and the supply chain'
- A multi-party framework level 'joint register with contracted suppliers which is aligned to project and wider outcomes' and which is managed and updated with agreed risk management actions and timescales.²⁵

As regards the risks and costs created by late payment CGS recommends that, in order to drive improved value and fair treatment of industry framework providers, clients and managers should create transparent payment and pricing mechanisms for framework projects and programmes of work and for call-off that:

- maximise cost certainty
- identify agreed fees, profit and overheads separately from other costs
- incentivise desired outcomes
- require clients and suppliers always to pay their supply chain promptly.²⁶

Qu. 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?

These techniques described by the CMA can drive better project outcomes by significantly improving value and reducing risks. To address how each in turn can be achieved:

(i) jointly develop and share engineering expertise and commercial capabilities

This can be achieved where the sharing of expertise and commercial capabilities is justified by a sufficient pipeline of work and is controlled by clear mutual commitments to confidentiality and protection of intellectual property.

(ii) to coordinate or jointly conduct procurement

The work of verified Gold Standard clients and procurement consortia such as Crown Commercial Service, LHC, CHIC, Ministry of Justice, PfP and Scape demonstrates how government departments and other road/ rail clients can benefit from coordinated and jointly conducted procurement.

²⁵ CGS page 73.

²⁶ CGS page 79.

CGS includes 10 case studies and 50 best practice notes, many of which are provided by multi-client procurement consortia who are active in the road or rail sectors.

Qu. 19: What is preventing widespread adoption of procurement best practice? How could these barriers to adoption be overcome?

The best practice policies set out in the Construction Playbook and CGS are not yet being adopted by all government departments and public bodies because they are seen as optional by reason of the ‘comply or explain’ standard for adoption. This leads to clients and advisers:

- missing opportunities to deliver the better project outcomes that can be achieved by using Playbook/CGS systems that supported by clients and industry
- incurring unnecessary costs and delays by reinventing the wheel rather than following clear Playbook/CGS guidance on how to apply proven policy levers.

CE, the Task Group and King’s have long advocated for mandating the use of the Construction Playbook (and through it the 24 Gold Standard recommendations) for government departments, which can be achieved by converting the current ‘comply or explain’ requirement to ‘comply’²⁷. This does not require legislation and it makes compliance with Playbook (and through it the 24 Gold Standard recommendations) a clear requirement for any NISTA project business case.²⁸

Conclusion

CE, the Task Group and King’s welcome the CMA’s interim report as part of its market study. Delivering on upcoming infrastructure investment will require significant scaling and coordination across the civil engineering and wider infrastructure sectors.

The interim report address many of the challenges in relation to fragmentation and long-term pipeline certainty that have long constrained the sector’s ability to deliver.

As noted, the mandating of the Construction Playbook, and through it the 24 Gold Standard recommendations, would be a helpful major step for the CMA to recommend in addressing many of these issues.

²⁷ Mosey (2021) [Constructing the Gold Standard](#)

²⁸ ICE (2025) [What should NISTA’s priorities be?](#)