

SECTION 1 – COMMERCIAL CASE

Commercial Case

1.1 Introduction

The delivery of A4440 Worcester Southern Link Road Improvements, including Phase 4, is a priority for Worcestershire County Council (WCC), the Worcestershire LEP, Herefordshire and Worcestershire Chamber of Commerce, local Members of Parliament and the Worcestershire District Authorities. The programme is aligned with agreed priorities, in particular in terms of supporting economic growth in Worcestershire.

The scheme set out in Section 1, includes widening the A4440 Worcester Southern Link Road between Ketch and Powick roundabouts and the construction of a new bridge, to carry the second carriageway, over the River Severn. The design and construction methodology for the widening element needs to prevent differential settlement across the widened carriageway where the new carriageway works are being constructed on the flood plain and new embankment. Key constraints include the environmental matters associated with the Site of Special Scientific Interest (SSSI) and the battlefield. In addition, the construction methodology needs to manage the safety risks associated with working at height, near to water and the design must be optimised to allow the bridge to be built economically.

The Commercial Case for the project takes into account the resources available to WCC, the risks associated with the delivery and the procurement routes available to successfully deliver the project in the most efficient way possible. This section describes the commercial strategy for delivering the A4440 Worcester Southern Link Road Improvements Phase 4 scheme. The commercial case updates the information presented in the OBC including the steps already completed to prepare for the successful delivery of the scheme.

1.2 Output Based Specification

The Commercial Case is based on a number of key objectives and outcomes, against which alternative procurement options are assessed. These include:

- Achieving 'cost confidence' that the project can be delivered within the available funding constraints;
- Delivering the project to realise the Local Transport Plan and the benefits in the Worcestershire Strategic Economic Plan;
- Meeting the scheduled construction completion date of Spring 2021;
- Minimising further preparation costs with respect to project design;
- Including contractor input into the project development, planning, design and construction to encourage innovation and reduce capital costs;
- Including contractor input to the risk management strategy and appraisal process to reduce risk;
- Minimising future maintenance costs; and
- Safety.

The detailed specification is appended in Appendix L (Annex A).

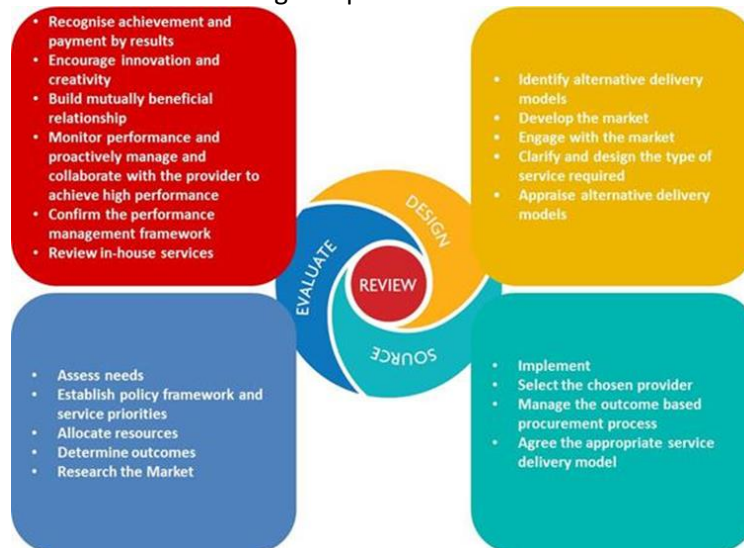
1.3 Procurement Strategy

WCC has extensive in-house strategic and technical procurement expertise and a wealth of knowledge and experience, with a proven track record of delivery with different types of contracts.

WCC is a strategic commissioning organisation and has a commercial vision to "drive commercial excellence through developing an open, challenging and pro-active culture and deploying effective commissioning strategies to source the right service from the right provider at the right cost."

Figure 5.1 shows WCC's approach to commissioning and procurement and has influenced the choice of the strategic procurement approach to the SLR project.

Figure 5.1: WCC Approach to commissioning and procurement



1.4 Strategic Procurement Options

A number of options were available to WCC to deliver the project. In deciding the preferred option there were a number of key considerations, these being:

- **Price Certainty** - ensuring WCC secures best value throughout the project and not just at tender award;
- **Whole Life Cost** - balancing investment cost with future maintenance costs to achieve best value over the life of the project;
- **Innovation** - improving value and reducing overall cost;
- **Incentives** - encouraging the supply chain to seek continuous improvement and cost down initiatives throughout delivery of the project;
- **Supply Chain Integration** - reducing potential for project delays with all suppliers working to one plan;
- **On Time Delivery** - ensuring that disruption to road users and local communities is kept to a minimum;
- **Lean Contract Management** - minimising project resource requirements through effective and efficient contract management with single points of contact;

- **Risk Sharing** - ensuring the ownership of risk is apportioned in line with securing best value;
- **Social Value** - optimising content against WCC's corporate priorities (see below list).

Open For Business

- Local Multiplier Effect (LM3)
- Local Job Creation
- Creation of skills and training opportunities
- Apprenticeships
- Work placement scheme for NEETs
- Opportunities for long term unemployed

Children & Families

- Opportunities for NEETs (not in education, employment & training)
- Promoting & encouraging community engagement and building community resilience

Environment

- Reduction of carbon footprint
- Use of local suppliers
- Waste minimisation / recycling

Health & Wellbeing

- Healthy workforce
- Healthy communities

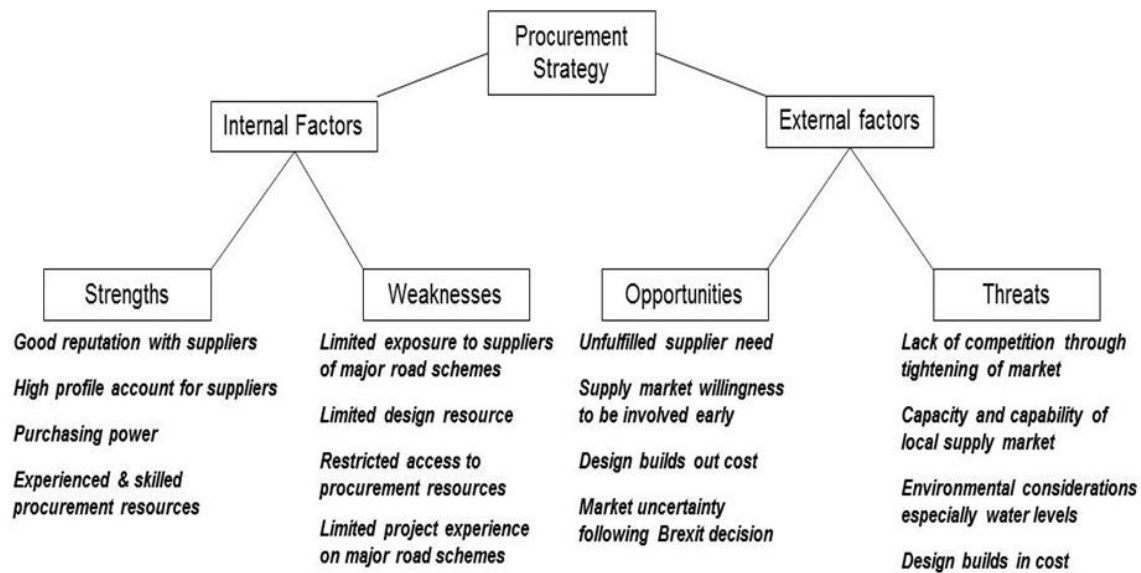
Given these considerations, the procurement options that were taken into account to deliver the services necessary to develop and realise the design and undertake construction of this type of project were:

- Traditional Approach - Client undertakes or commissions design and appoints construction contractor;
- Traditional Approach Plus Early Contractor Involvement (ECI) - Client undertakes or commissions design and appoints construction contractor with early contractor involvement. ECI allows the Contractor to be appointed before details of what is to be constructed have been fully developed and priced;
- Design and Build Single stage - Single Award to Single Supplier for detailed design and construction post planning and development;
- Design and Build Two stage - Two stage award to Single Supplier for project development (including ECI) and then detailed design and construction; and
- Private Finance Investment (PFI) - Given that funding has been applied for from the DfT, this option has not been pursued.

Use of WCC's existing term contracts for construction was not possible for this scheme due to the size and scale of works.

SWOT analysis was used to provide a critique of the internal and external environment in delivering the project via the four options. Internal factors were seen as Strengths and Weaknesses, external factors as Opportunities and Threats. The analysis has helped to inform how best to match the resources, capabilities and market conditions to the strategic options and selection of best strategic approach, in line with the following model.

Figure 5.2: Analysis of internal and external factors of procurement strategy



WCC have developed a "5Cs" tool to assist in determining which procurement strategy was right for the project and WCC. These "5Cs" being:

- Clout To give WCC the best negotiation position
- Credibility To make a real difference to social and environmental requirements
- Capacity To make best use of resources
- Capability To maximise the skills and experience available
- Competition The strategy that most suits WCC stance on collaboration

The results of the analysis are included at Annex A in Appendix L.

1.5 Further Consideration of Procurement Options

Having identified potential strategic procurement options, a more detailed consideration of the ability to deliver the commercial objectives was undertaken and is included at Annex B in Appendix L.

Market engagement activities found ECI and two-stage contracting to be popular with contractors and the research established that similar methods have been used to good effect by the Welsh Government for comparable infrastructure projects. It is known that High Speed 2 is using a similar approach for its civil engineering contracts.

Finally, legal advice was sought to test the suggested methodology and risks and this was used to inform the details of the procurement process and contracting process. The advice concurred with the proposed model and provided valuable suggestions to manage and mitigate risk.

1.6 Recommended Procurement Strategy

The Early Contractor Involvement two-stage procurement approach was recommended prior to the submission of the OBC. Furthermore, given ground conditions represent a significant risk; a Baseline Geotechnical Report was included. The stages of the procurement approach are:

- Stage 1a which related to the development of the outline design, preparation for and submission of the planning application, refinement of the Stage 2 target price, publication of draft Orders documentation and associated environmental documentation such as the Environmental Statement and preparation of Stage 1b.
- Stage 1b involves completion of statutory processes, including publication of the draft Orders, Orders Exhibitions, dealing with objections and representations, final agreement of the Stage 2 target price and detailed preparation for Stage 2 deliverables.
- Stage 2 involves the detailed design / construction period for all works including environmental, landscape and ecological requirements. Note Stage 2 will proceed subject to the satisfactory completion of the statutory procedures, the availability of finance, agreement of the Stage 2 contract and the Minister’s decision as to whether the Orders should be made.

WCC has implemented a Commercial and Commissioning Board (previously Procurement Board), and independent gateway reviews, to provide senior management challenge, control, measurement and governance on significant procurement projects. The strategy received full Procurement Board approval in July 2016.

The Early Contractor Involvement (ECI) two stage procurement approach complements WCC's strategic approach to commissioning. The output of the SWOT analysis clearly informs that ECI maximises on WCC strengths and procurement opportunities.

As a consequence of adopting ECI it will provide WCC the best opportunity to:

- Give the best negotiation position (Clout)
- Make a real difference to social values (Credibility)
- Make best use of resources (Capacity)
- Maximise the skills and experience available (Capability)
- Suit the stance on collaboration (Competition)

In addition to delivering the benefits shown on Figure 5.2

Figure 5.3 Benefits of adopting the ECI strategy



1.7 Sourcing Options

A review of sourcing options was undertaken, with consideration given to any frameworks or existing contracts offering the preferred contracting model along with the best value for money outcome. WCC concluded that an Open tender was the best solution for the main contract and published the tender on 19th October 2016. Six tenders were received in January 2017 and, following evaluation, Alun Griffiths Contractors Ltd was awarded the first-stage contract in May 2017 and subsequently Stage 1b. In

addition, a selection of WCC's existing contracts are being used to provide support and specialist functions to enable the scheme delivery.

Updated costs

For the submission of the A4440 Worcester SLR Phase 4 OBC, it was possible to take advantage of the initial review of tendered prices for the detailed project development (Stage 1) and design and construction (Stage 2) costs.

This enabled a comparison to be made with scheme costs estimates previously prepared and thus an updated estimate prepared. That is, the prices submitted by tenderers, which formed the basis of any contractual assessment of the Stage 2 pricing with the successful contractor, enabled a more robust assessment of the potential cost of key scheme elements (based on recent construction market experience). This provided greater confidence in the overall project costs presented in this Business Case.

Since then, the Contractor has progressed the scheme design for planning and planning consent was secured in May 2018. As such, the scheme and its constraints have become better defined and understood and confirmed that the original estimated scheme cost remains robust.

1.8 Payment Mechanisms, pricing framework and charging mechanisms

A method of payment allowing for monthly assessments of the costs accrued has been adopted as this allows for optimal cash flow for the supplier, the supply chain and WCC. Similarly, quality and standard of final construction has been managed through retention clauses, defects correction requirements and sample inspections.

Clauses requiring fair payment terms throughout the supply chain along with measures to audit this in contract form an integral part of the terms and conditions.

Incentives to optimise the price for stage two are included in the Stage 1 contracts, along with other mechanisms to share the benefits of ECI and innovation during the project development and design processes. These processes enable fair and open assessments of change as the project develops and in turn, the scope, programme and target price for stage 2 are more accurately prepared. For example, an agreed or instructed change to the scope is submitted by the contractor, assessed by WCC's cost consultant, agreed and implemented, adjusting the Stage 2 target price up or down.

1.9 Risk Allocation and Transfer

WCC undertook an assessment of how the types of risk are apportioned or shared, with risks allocated to the party best placed to manage them, subject to achieving value for money. The contract includes clauses to facilitate the transfer of appropriate risks from WCC to the contractor, such as risks associated with ground conditions. The project costs include contingency consistent with the Quantified Risk Assessment (Included as Appendix P) which has been updated in conjunction with the Contractor for the FBC.

The risk of costs being higher than predicted is mitigated through the early involvement of the contractor and agreement of the final Stage 2 contract Target Price including Evaluation Events resulting from changes since tender.

The allocation of risks resulting from the contractual and procurement arrangements is included in the QRA described above and key risks are summarised in Table 5.2. Ticks indicate where each risk type rests or whether these risks are shared between the parties to the contract.

Table 5.2: Risk allocation

Risk Category	WCC	Supplier	Shared
Design		✓	
Construction		✓	
Contract management and administration	✓		
Inflation	✓		
Main contractor financial standing	✓		
BREXIT impact on supply of goods/services			✓
Implementation			✓
Operations	✓		
Termination			✓
Financing	✓		
Legislative			✓

Prior to award there was a perception that a two-stage tender process may result in programme slippage and a gradual erosion of WCC's bargaining power as Stage 1 progressed. However, this risk was managed by:

- Developing a close working relationship with the Contractor and their design partners regularly reviewing and monitoring the scheme programme and ensuring clarity of work-scope requirements (Appendix L) for the second stage within the Stage 1 tender;
- Requiring agreement on the Stage 2 appointment conditions of contract as part of the Stage 1 tender;
- Providing clarity for the parties' respective rights and obligations upon conclusion of the Stage 1 process, if either Party does not wish to proceed to Stage 2;
- Maintaining competitive tension within the tender procedure by:
 - Evaluating change to the Stage 2 price using the competitive pricing information submitted pursuant to Stage 1;
 - Allowing the Contractor to share in any saving between the tendered price for stage 2 and the fixed stage 2 price; and
- Ensuring the successful bid included a strong design function to properly investigate, analyse and develop WCC's design requirements and the Contractor's corresponding proposals for the project and manages a robust value engineering process.

Once the contractor was appointed to deliver the project, the NEC3 Engineering and Construction Contract, main option C (Target Price) contract ensured that all parties share in the ownership of project

risks and that they are motivated to minimise costs. The party best able to manage the risk is assigned to manage and mitigate the risk but the associated costs are shared. During stage 1a and Stage 2, the benefit of savings (i.e. costs are lower than the target price) is shared equally by WCC and the contractor. If costs exceed the target, the Parties share up to a maximum of 10% and any costs above this are borne by the contractor. Thus, WCC's exposure is limited to 5% above target except for any agreed variations, as defined by the contract. For stage 1b, (the statutory processes), a cost reimbursable mechanism is used as this would be a costly risk to attempt to transfer.

1.10 Contract Length

A programme of contract duration has been developed, as detailed in Appendix O.

1.11 Human Resource Issues

No relevant personnel/people management/trade union implications, including Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) regulations have been identified for this project.

1.12 Contract Management

Essential to the successful running of the contract are high-quality project management skills, complemented by specialist cost control expertise and sufficient support resources. These are required from the outset of tender development and evaluation, through project development and up to post-completion.

The project has a dedicated team with specific accountabilities for the contract, led by the Project Manager. This is demonstrated in figure 5.4.

Figure 5.4: Project team



The support and commercial service is provided by WCC's term professional services provider, using experienced and qualified professionals. WCC operates a contract assurance programme across term contracts and major projects, with sample compliance audits being undertaken by in-house officers who are NEC contracts specialists. This project is included in that programme. Legal support is available both internally at WCC and from external providers for more specialised contractual advice.

Both the Stage one and Stage two contracts have specific arrangements for the operational management of the contract, including:

- Co-location of Council staff with Contractor to support timely and open communication
- Monthly contract progress meetings with specified reporting requirements
- Technical working groups to refine and finalise the technical development of the scheme
- Financial Review workshops
- Risk management workshops
- Programme reviews

Whilst these are generally monthly meetings, the programme and frequency is adjusted according to the current status of the project.

These arrangements are discrete from the project's general arrangements described in the Management Case and are specifically to manage the processes from a contractual perspective, however, the project governance structure (more fully described in the Management Case) provides an additional layer of support, challenge and direction.

1.12.1 Social Value

The contractor's proposals to provide social value and support WCC's objectives formed a key element of the tender evaluation, specifically focussed on Stage 2 when the contractor will have significant presence in the County. Alun Griffiths Contractors Limited committed to providing a wide range of undertakings and benefits and the highlights are detailed in the table below: Table 5.3: Contractor commitments

Commitment	Benefit
Recruit 12 local people	Reduce local unemployment by creating better paid, sustained jobs
Identify and employ at least four industry new entrants to enrol on the Griffiths Apprentice+ Programme	Reduce the number of 16-24 year olds claiming Job Seekers Allowance
Provide 52 person-weeks of work experience and invite eight local young people to join our Ready4Work Programme	Increase the number of young people contributing towards and benefiting from increased prosperity in Worcestershire
Spend 80% on goods and services from within Worcestershire	Minimises environmental impact while increasing the Local Multiplier Effect
Support four local NEETs into full-time work through our Ready4Work Programme	Reduce the number of 16-24 year olds claiming Job Seekers Allowance
Visit six local schools with Sally Safesteps and/or the ICE Bridge community regeneration programmes	Promoting the importance of Science, Technology, Engineering and Maths subjects in schools
SLR4-sponsored Bike Ride	Promote a healthy and active lifestyle for local people and increase the use of the Local Cycle Network
Undertake four community regeneration programmes	Improve community communal areas, improve access to quality recreational green space and increase volunteer hours in Worcestershire

These commitments are formulated into a social value plan for the contract and the contractor provides updates on this at progress meetings throughout Stage 2. At conclusion of the works, a full case study of the social value outcomes will be produced to demonstrate delivery.

1.13 Summary

The Commercial Case has been subject to review since the production of the SOBC and subsequent OBC. The key objective of the procurement strategy development has been to review possible procurement routes to establish a method of gaining the expertise of a contractor early in the design process whilst retaining some flexibility following the design stage. The ECI two stage contract approach is providing the desired contractor involvement as well as flexibility.

The appointment of the contractor Alun Griffiths to the project via the recommended procurement approach has resulted in the following successes:

- Early re-location of the electricity pylon, and thus removal of a key constraint;
- Gaining planning consent for the scheme;
- Early discharging of some key planning conditions, such as flood mitigation requirements.

The adoption of a two-stage contract will mean that the project will be able to quickly transition to Stage 2 (detailed design / construction) following the award of funding from the DfT associated with this FBC.

Also, it should be noted that Alun Griffiths have contributed to this business case, particularly regarding the environmental assessment, programme, organisation matters, risk management and by participating in the contractual mechanisms, further cost certainty.

Appendix X

Divider