

Response to the UK Cabinet Office Green Paper

“Transforming public procurement”

Emailed to: procurement.reform@cabinetoffice.gov.uk on 10th March 2021.

1 Details of the proponents of this response

We are a group of construction sector experts with a track record of successful project delivery who have become seriously concerned at the serial failures in the delivery of the Government's major projects. Indeed, in the Government's "Annual report of Major Projects 2019-20" only three out of 125 projects were rated as "highly likely to achieve objectives". There are some startling entries into the red category including HS2 and Crossrail. These red category projects are those where "successful delivery of the project appears to be unachievable". This level of failure does not reflect the skills and expertise we see every day among the two million people working in the UK construction sector and prompts this call for drastic change in the current ineffective governance of Government led projects.

2 Summary of our response

The Green Paper Executive Summary outlines the government's proposals to speed up and simplify the procurement processes and sets out how these measures are intended to take place.

Whilst CIG Services applauds these proposals and objectives as being positive and badly needed, it is our firm view that the government is overlooking one of the most important components that should take place simultaneously, which is the overhaul and reform of corporate governance to effectively monitor and police government procurement in real-time. At the moment investors, lenders, contractors, consultants and suppliers have no confidence in the existing processes.

3 Background to our contention that corporate governance needs simultaneous reform

3.1 The construction industry generally and the implementation of public infrastructures in particular have had an historical lack of effective corporate governance, despite the oversight to varying degrees of several governmental authorities and various Parliamentary investigations from time to time into headline projects and events.

3.2 Major cost and programme over-runs and contractor insolvencies will continue to happen unless tight and effective corporate governance controls are put in place at the same time as the proposed procurement improvements.

3.3 Currently there are several authorities undertaking different roles to supervise and monitor the procurement and delivery processes of government projects, such as HM Treasury, the Infrastructure and Projects Authority, Crown Commercial Service and the National Infrastructure Commission, as well as individual government departments and agencies.

3.4 However, none of these existing government agencies are structured, empowered and resourced to efficiently monitor and police in real-time the broader construction industry and the efficient implementation of public infrastructures.

For example, scrutiny from the National Audit Office and the House of Commons' Public Accounts Committee comes too late to affect matters.

3.5 The result for decades has been:

With public infrastructures

- The substantial majority of projects run heavily over budget and programme.
- The continuing procedures of government authorities rushing to start projects before completing comprehensive planning and design, financial modelling, pricing and programme investigations.

- The existing regulatory authorities failing to undertake competent due diligence on the financial capability and the performance of contractors and the supply chain before awarding government projects.
- A serious lack of accurate and timely reporting on the status of these infrastructures, which is indicative of poor management control and processes.
- Procuring departments changing project requirements after contracts have been let without due regard to cost and time implications and undermining contract disciplines and cost-risk transfers.
- Inappropriate delegation of risk within contract structures that lead to cost, time and delivery risk being borne by parties ill-equipped to manage it.
- A lack of accountability and responsibility by public authorities and officials.

With the construction industry

- Regulatory authorities have been extremely slow with investigations and have demonstrated an inability to enforce regulations and bring people to account in a timely manner.
- Auditors have failed to provide effective independent protection to investors, shareholders and lenders; and they have real conflicts of interest with their consulting activities.
- There is a lack of appropriate and swift legal penalties for director and executive misrepresentation, fraud and what amounts to corporate theft, e.g., siphoning of pension funds.
- There is ineffective protection and recourse available to the supply chain in respect of payments and retentions. This is a major problem and payment security along the supply chain must be improved if we are to have any expectation of improving performance and raising quality standards. As key points, we recommend that the following are addressed:
 - Regulations should be amended to require that a maximum of 30-day payments apply in all supply chain contracts on public sector works, not just at client and tier 1 contractor level;
 - Past performance should also take into account past payment performance;
 - Project bank accounts should be mandated by legislation for all projects over £1m.

- 3.6 All of the above issues are allowed to regularly occur because there is no single independent government agency that has adequate over-riding powers to monitor and enforce corporate governance and report to government and in the public realm, on a real-time basis.
- 3.7 It should be noted that despite the Latham (1994), Egan (1998) and Farmer (2016) Reports there has been little meaningful reform to the construction industry since those reports were issued. As a result, the UK has fallen well behind other countries such as Canada, Singapore and Australia in introducing reforms that will better protect tax-payer's money and provide industry stakeholders with confidence in the efficiency and integrity of the processes.**
- 3.8 There is an urgent need to reorganise, adequately resource and empower one of the existing agencies with the necessary legislative powers so that it can operate in a properly independent way to monitor the procurement and delivery of government projects and construction industry practices; and act immediately on contractor malpractice, not leaving it until long after the event. They need to work constantly in real-time. It needs a whole change in mind-set. The prime candidate for additional resourcing and interventive powers among current agencies is in our view the Infrastructure and Projects Authority (IPA)
- 3.9 It is essential that rigorous corporate governance must start right at the outset when new government procurement is being considered. So, it is our view that the new public procurement measures that are being proposed will not effectively protect tax-payer's money unless corporate governance is radically overhauled at the same time.**
- 3.10 *We emphasise however that there should not be another agency created with yet another layer of bureaucracy, but that one of the existing ones should be properly empowered and resourced to undertake effective corporate governance in real-time. As already noted, the IPA is probably the most effective and appropriate agency for this.*

4 Current situation in the construction industry and with government procurement

4.1 The media gives plenty of coverage to headline construction failures such as:

- The Carillion debacle
 - It is important to note that it was the weakness of the regulatory authorities and the shocking inadequacies of audit which in the end made both complicit in the downfall of Carillion, notwithstanding the alleged mismanagement and malfeasance of the senior Carillion executives.
- Crossrail; HS2 and the Grenfell Tower disaster

However, these headline projects are only the tip of the iceberg, as shown by the following summary of the status of public projects in 2020, obtained from:

- The Infrastructure and Projects Authority (IPA), which is the government's centre of expertise for infrastructure and major projects and which is meant to provide independent scrutiny and assurance to projects in the GMPP.
- GMPP is the Government Major Projects Portfolio, which comprises the largest, most innovative and highest risk projects and programmes delivered by government.

<https://www.gov.uk/government/organisations/infrastructure-and-projects-authority>

<https://www.gov.uk/government/publications/infrastructure-and-projects-authority-annual-report-2020>

Summary of Government Major Projects Portfolio

- 4.2 In 2020 the GMPP included 125 projects in total with a whole life cost of £448 billion. Of these, a total of 34 projects with a whole life cost of £214 billion were Infrastructure and Construction Projects. These projects are essential not only to the growth of the British economy but also the related prosperity of the nation.
- 4.3 The GMPP as measured in 2020 had the smallest programme of projects by number since 2013 and confidence in the successful delivery of projects has dropped to its lowest in recent records.
- 4.4 In 2020 only three out of 125 projects in the GMPP, with a combined life cycle cost of £2.8 billion, were rated as highly likely to achieve objectives. A further 18 projects representing £17.2 billion in costs were rated as probable.
- 4.5 In Infrastructure and Construction, one project out of 34 was rated as highly likely to achieve its objectives and a further five projects were 'probable' but in need of constant attention to ensure risks do not materialise into major issues threatening delivery.
- 4.6 HS2 which is the largest project in the GMPP, costed then at £55.7 billion, was ranked in 2020 as unachievable. Note that this cost was the 2016 cost estimate (excluding ground conditions for some reason) and therefore long out of date, with the current estimate being publicly stated as a probable £106 billion.
- 4.7 In total, by value, just 0.6% of all projects and programmes in the GMPP were rated as highly likely to meet objectives. This rises to 4.5% by value of all projects in the GMPP if those rated as probable are included.
- 4.8 Only one Infrastructure and Construction project is rated as highly likely to succeed. These figures and those in 4.7 are potentially calamitous.

5 Conclusions

- 5.1 It is acknowledged by the UK government at the highest level that the future prosperity of the UK depends on the success of our major projects now more than ever, given the pandemic and Brexit.
- 5.2 In addition to this Green Paper proposal, the Department for Transport and Network Rail have just announced the launch of Project Speed, a new taskforce to encourage industry collaboration and innovation in order to lower costs and speed up infrastructure delivery. This is another good initiative.
- 5.3 **However, we at CIG Services submit that history has proven that these procurement and delivery initiatives will not properly achieve their objectives unless the relevant corporate governance processes are radically reformed as a matter of urgency, with one of the existing agencies being given the independence, resources and 'teeth' to undertake a proactive and robust 'watchdog' role that will provide the necessary confidence in the efficiency and integrity of the industry and in government procurement.**

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