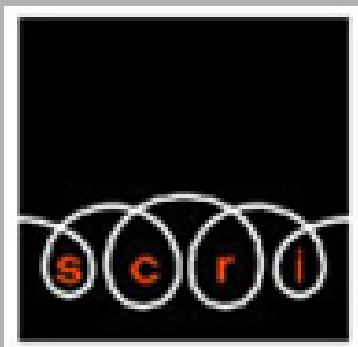


## Construction Sector Transparency (CoST) Initiative

UK Pilot Baseline Study

June 2010





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## Executive Summary

The overall aim of the Construction Sector Transparency (CoST) initiative is to enhance the transparency and accountability of procuring entities (PEs) and construction companies for the cost and quality of public sector construction projects. It will do this by disclosing to the public 'Material Project Information' (MPI) at all stages of the construction project lifecycle, from the initial identification of the project to the final completion.

A set of core baseline indicators (relating to bidding statistics, public availability of MPI, project duration and cost changes) has been developed to record current transparency practice and measure the impact of the CoST initiative in the longer term, in a manner that may also allow cross country comparisons to be made. In order to provide a point of reference against which changes to the indicators can be recorded over time a baseline study is required in each CoST pilot country. This is the baseline study report for the UK CoST initiative.

Five main objectives were set for UK Baseline Study and each has been achieved:

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**Objective 1 – Identify Material Project Information required to be released into the public domain**

The legal requirements for the release of MPI through the UK Contract Regulations / EU Procurement Directives are most focussed on early items of MPI at the competition / tendering stages of procurement. There is little attention paid to transparency during the execution of contracts and post-contract completion. These phases have been identified as the core area of disclosure for the CoST initiative but the UK/EU regulatory system requires only limited transparency and disclosure of information into the public domain during these phases. The focus of the UK/EU regulatory system for public construction procurement can therefore be described as being on '**how**' construction is procured (i.e. the process of competitive tendering) and not '**what**' is procured, '**why**' it is procured or '**the final price**' it is procured for (See Report Section 3.4 The Legal Requirements for the Release of MPI).

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**Objective 2 – Assess which items of Material Project Information are currently released into the public domain on sample projects**

The general pattern shows that the different PEs investigated do release the MPI associated with the requirements of the EU procurement directives (e.g. project purpose, location and tender procedure) into the public domain. The PEs do not release the core CoST MPI disclosures into the public domain (i.e. changes to the contract, actual contract price, total payments made, actual contract scope and programme) (See Report Section 4 Baseline Study Indicators).

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**Objective 3 – Assess the barriers to the release of Material Project Information**

The barriers can be categorised by theme:

- *Technical:* Questioning of whether there is a direct link between the release of MPI into the public domain and transparency and accountability.
- *Administrative:* Time and resources required to release the MPI.
- *Cost/Benefit:* With doubts over the interest of the general public in the vast majority of the information the release of more MPI might be for little benefit whilst costing significant time and money. Plus the potential risk that the market could use MPI against PEs and in a potentially uncompetitive manner.
- *Cultural:* Concerns that increased release of MPI and association with transparency initiatives could damage the reputation of organisations because they might be perceived as having done something wrong or hiding things previously.
- *Legal:* Commercial confidentiality and sensitivity concerns on behalf of private sector partners. (See Report Section 3.5 The Barriers to the Release of MPI).

**Objective 4 – Provide a point of reference for core indicators that are expected to change over time**

Tables 4.1, 4.2, 4.3 and 4.4 and the Baseline Study Worksheets provide a baseline for comparison against the indicators in the future and also a reference point for benchmarking against other countries (See Report Section 4: Baseline Study Indicators).

**Objective 5 – Provide information on other on-going initiatives and how these relate to CoST**

Initiatives related to civil society (e.g. Transparency International), procurement policy (e.g. Public Sector Construction Clients' Forum), enforcement (e.g. Office of Fair Trading) and industry led initiatives (e.g. Construction Commitments) were identified. The multi-stakeholder UK CoST group has a good appreciation of these initiatives through its members and their networks (See Report Section 3.3 Other On-going or Planned Transparency/Anti-Corruption/Good Governance Initiatives).



## 1. Introduction

### 1.1 Introduction to the CoST Baseline Study

The Construction Sector Transparency (CoST) initiative is an international multi-stakeholder programme designed to increase transparency and accountability in the construction sector. Launched in May 2008, CoST is supported by the UK government and World Bank and is being piloted over a two and half year period in seven countries: Tanzania, Ethiopia, Zambia, Malawi, Philippines, Vietnam and the UK. Unlike the other pilots, the UK pilot is focused on clarifying how the CoST model might operate in a developed economic and regulatory environment<sup>1</sup>.

The overall aim of CoST initiative is to enhance the transparency and accountability of procuring entities (PEs) and construction companies for the cost and quality of public sector construction projects. It will do this by disclosing to the public 'Material Project Information' (MPI) at all stages of the construction project lifecycle, from the initial identification of the project to the final completion.

A set of core baseline indicators (relating to bidding statistics, public availability of MPI, project duration and cost changes) has been developed to record current transparency practice and measure the impact of the CoST initiative in the longer term, in a manner that may also allow cross country comparisons to be made. In order to provide a point of reference against which changes to the indicators can be recorded over time a baseline study is required in each CoST pilot country.

At an International level the purpose of undertaking the pilot baseline studies is to:

- Compare and assess current levels of transparency across pilot countries;
- Compare key indicators of project performance across pilot countries;
- Position CoST among other national and international initiatives;

At a pilot country level the purpose of undertaking a baseline study is to:

- Benchmark current levels of transparency against which to assess future progress;
- Benchmark indicators of project performance against which to assess progress in future;
- Assess other initiatives and how CoST can be embedded in the local context.

This is the baseline study report for the UK CoST initiative.

### 1.2 Objectives of the CoST Baseline Study

The five specific objectives of the baseline study are:

1. To identify which items of 'Material Project Information' (MPI) are currently required to be released into the public domain by the agencies responsible for procuring construction projects (Procuring Entities or PEs);

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<sup>1</sup> CoST (2009) UK Pilot Consultation - Background document

2. To assess, from a sample set of PEs, which items of MPI are currently being released into the public domain;
3. To assess (from the same sample set of PEs) the barriers (legal, administrative) to the release of this information;
4. From a sample set of projects completed no earlier than December 2006 and selected at random from the sample set of PEs, to provide a point of reference for those core indicators that are expected over time to be subject to change as a result of CoST (others will be identified and measured as part of routine project reporting);
5. To provide information on other on-going initiatives affecting the procurement and management of construction contracts and how these might complement and support activities under CoST.

### 1.3 Report Structure

The report is divided into the following main sections:

- *Section 1: Introduction* – includes an overview of the baseline study, study objectives and report structure.
- *Section 2: Methodology* – includes an outline of the scope of work and tasks involved including procedures to select a sample set of PEs and projects for data collection.
- *Section 3: Baseline Study Background Information* – includes the preliminary tasks relating to the collection of data on the number and type of procuring entities, a summary of UK procurement laws and regulations and other on-going transparency and good governance initiatives.
- *Section 4: Baseline Study Indicators* – includes the results of the baseline research - addressing the key CoST baseline indicators and disclosure of MPI into the public domain and provides a commentary on the findings.
- *Section 5: Conclusion* – includes a summary of the main research objectives and a discussion of perceived methodological shortcomings with recommendations for mitigation of their effects.

## 2. Methodology

The methodology followed in the study is presented below.

### 2.1 Preliminary Stage Tasks

The preliminary tasks involved the collection and synthesis of data from secondary sources and presentation of the following:

1. An overview of the number and type of procuring entities in the country, at a national and local level;
2. A summary of the procurement laws and regulations, in particular the procurement of publicly financed works, including recent changes and progress of reforms;
3. Identification of other on-going or planned transparency/anti-corruption/good governance initiatives that affect the construction sector, focusing on processes and outcomes and the way in which they relate to CoST;
4. Identification of the legal requirements for the release of any of the MPI;
5. Identification of the barriers to the release of MPI.

***The results of these tasks are presented in Section 3 of this report.***

Also at the Preliminary Stage, in close consultation with the UK CoST Secretariat, a spreadsheet was created to record the information collected during the baseline study. The recommended structure for the spreadsheet provided by the International Secretariat was enhanced to include additional worksheets that account for procurement via Framework Agreements which is common practice amongst UK Procuring Entities (PEs).

### 2.2 Identification of the Procuring Entities and Sample Projects

The UK MSG led on the identification of a sample set of PEs to be used in the UK Baseline survey. As suggested by the CoST International Secretariat the sample set of PEs who agreed to pilot CoST in the UK were chosen as partners for the Baseline Survey: Broadland Housing Association, Durham County Council, The Environment Agency and Highways Agency.

The four PEs represent a cross-section of public sector organisations in the UK from an Executive Agency of a Central Government Department (The Highways Agency) to a Non-Departmental Public Body of a Government Department (The Environment Agency), and local government (Durham County Council) to a not-for-profit association operating with public money (Broadland Housing Association). The PEs also provided a diverse range of project types from housing (Broadland Housing Association) to education (Durham County Council) and major highways (The Highways Agency), to flood defence (The Environment Agency).

Agreement was reached with the PEs that they would cooperate in supplying data on three sample projects each. The projects were required to have been completed (although no earlier than December 2006) to ensure that the release of MPI could be assessed against complete project lifecycles.

In order to improve the understanding of each sample project a Project Summary Template was created in partnership with the UK CoST Secretariat. ***The completed summaries of each sample project can be found in Appendix B.***

## 2.3 Data Collection Stage One – Identifying the Release of MPI

This stage involved recording, on the spreadsheet provided by the International Secretariat, which of the standard list of MPI is:

1. Stored by the PE, indicating whether it is
  - Available in a hard copy file
  - Available in hard copy but would need to be searched out; and/or
  - Stored electronically as a management resource.
2. Forwarded from the PE and stored by others (e.g. project implementation agency, procurement oversight authority)
3. Released into the public domain (e.g. on website) (indicating a sliding scale of always/majority of cases/minority of cases/never)
4. Made available to the public on demand (indicating a sliding scale of always/majority of cases/ minority of cases/never)
5. Required by law to be made available to the public
6. Prevented by law from being made available to the public
7. Prevented by other factors (political, cultural, managerial, and administrative) from being made available to the public.

Although the main focus of this task was on standard organisational practice to the release of MPI the decision was made to also collect data on the release of MPI for each sample project. ***The results of the Stage One research are presented in the associated CoST Baseline Worksheets with high level summaries of the disclosure of MPI by PEs included in Tables 4.2 and 4.3 in Report Section 4 - Baseline Study Indicators.***

## 2.4 Data Collection Stage Two – Collection of Procurement Statistics

This stage was undertaken in parallel with Stage One and investigated from the records of each of the selected projects the following:

1. Number of companies expressing interest in the main contract for works
2. Number and proportion of short-listed companies subsequently bidding for the main contract for works
3. Number of companies expressing interest in bidding for the contract for project supervision
4. Number and proportion of short-listed companies subsequently bidding for the contract for contract supervision
5. Number of companies expressing interest in the contract for project design
6. Number and proportion of short-listed companies subsequently bidding for the contract for project design

7. Time from contract commencement date to completion date as a % of the original contract programme at commencement date
8. For site supervision contracts: the % change from (a) initial estimated price to contract price on commencement date and (b) from contract price on commencement date to final cost at completion date
9. For the main contract for works: the % change from (a) engineers, project manager or quantity surveyors estimate cost to contract price on commencement date and (b) contract price on commencement date to final cost at completion date
10. Instances of re-award of the main contract with recorded reasons
11. The number and value of formal instructions to remedy defective works (a) issued (b) implemented
12. Any other recorded indication (e.g. in project completion reports) of the contractor failing to meet the specification, listing the source of the information and a brief comment on the nature and severity of the failure

The above information was recorded on a series of linked worksheets and where Framework Agreements had been used on projects this data was also collected. ***The results of the Stage Two research are presented in the associated CoST Baseline Worksheets with high level summaries indicators included in Table 4.1 in Report Section 4 - Baseline Study Indicators.***

## 2.5 Verification

A process of verification was added to the methodology that involved the following<sup>2</sup>:

- Analysis of the data for each sample project to identify gaps and potential erroneous data;
- A discussion of the data with the project manager of each sample project either individually or collectively with the other project managers from their respective PE;
- Reaching agreement with each PEs representative to the UK MSG on the standard practice in their organisation for release of MPI on construction projects over the OJEU works threshold;
- Having this approved by a senior colleague in the PE with responsibility for procurement policy and/or legal procedures who could verify that from their perspective the recorded data reflects standard practice for the release of information in the respective PE.

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<sup>2</sup> NB: More comprehensive methods of verification (including requests for PEs to forward pieces of MPI selected by the MSG at random) were identified but could not be implemented because of time constraints.

### 3. Baseline Study Background Information

This section addresses one of the required outputs of the baseline study - the summary of background information related to the CoST initiative in the UK. The background information required was detailed in the preliminary tasks of the study:

1. An overview of the number and type of procuring entities in the country, at national and local level;
2. A summary of the procurement laws and regulations, in particular the procurement of publicly financed works, including recent changes and progress of reforms;
3. Identify other on-going or planned transparency/anti-corruption/good governance initiatives that affect the construction sector, focusing on processes and outcomes and the way in which they relate to CoST (Baseline Study Objective 5);
4. Identify the legal requirements for the release of any of the MPI (Baseline Study Objective 1);
5. Document the barriers to the release of MPI (Baseline Study Objective 3).

#### 3.1 An Overview of the Number and Type of Procuring Entities in the Country

No definitive answer to the number and type of Procuring Entities in the UK could be found<sup>3</sup>. However, it is possible to state that the number of Procuring Entities is likely to run into the 10,000s.

Several lists and classifications of different types of Procuring Entities in the UK have been found. For example, The EC 2004/18/EC Procurement Directive Annex III list, The 2008 EC Internal Market - UK Contracting Authorities list<sup>4</sup>, The 2006 UK Contract Regulations, and the UK Cabinet Office list of public sector bodies. However, each of the sources appears to have limitations and no complete list, number or categorisation method has been identified.

The most comprehensive and relevant information source that is available on this subject is the European Commission's list of UK Contracting Authorities. A Contracting Authority is the key term used to describe Procuring Entities in the European Procurement Directive 2004/18/EC. Article 1.9 of the Directive defines Contracting Authorities as the following:

*“Contracting authorities” means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.*

*A ‘body governed by public law’ means anybody:*

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<sup>3</sup> Requests for information on the number and type of Procuring Entities in the UK were made to the Office of Government Commerce and the European Commission Public Procurement Directorate but neither body had access to this information. Explanations for the unavailability of this information include the decentralised nature of public procurement in the UK which means that each public body or public sector organisation has control over its own procurement. This means that the vast number of public organisations across sectors including central government, local government, health, education, emergency services, utilities, infrastructure and housing can all be classified as procuring entities. In addition, some private utility companies, as well as charities and not-for-profit organisations operating with 50% plus public money, can also be classified as public procuring entities.

<sup>4</sup> Commission Decision [2008/963/EC](#) of 9<sup>th</sup> December 2008 amending the Annexes to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards their lists of contracting authorities.

*(a) Established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;*

*(b) Having legal personality; and*

*(c) Financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law”.*

A list of UK Contracting Authorities (i.e. bodies and categories of bodies governed by public law which fulfil the criteria referred to above) is set out in the Annexes of Directives 2004/17/EC and 2004/18/EC. On 9<sup>th</sup> December 2008 The European Commission updated this list of Contracting Authorities in the UK and made it publicly available. There are twelve pages of UK Contracting Authorities listed in the document that is available on the EU public procurement website<sup>5</sup> (see Appendix B of this report for the list). However, it must be noted as the European Commission itself clarifies that it is a non-exhaustive list of Contracting Authorities and that the list does not exclude other organisations (for example local authorities, housing associations or Universities) from being a Contracting Authority.

## **3.2 A Summary of Procurement Laws and Regulations**

Public Procurement in the UK is subject to UK, European Union (EU) (also referred to as EC - European Community) and World Trade Organisation (WTO) procurement laws and regulations.

The EC Treaty and EU Procurement Directives form the main legal framework for public procurement in the UK and have been implemented in national law through statutory contract regulations. The main purpose of the European procurement rules is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. The rules are enforced through Member States' courts, and the European Court of Justice (ECJ).

### **3.2.1 The EC Treaty**

All public procurement in the UK has to comply with the rules and principles of the Treaty establishing the European Community including:

- the free movement of goods (Article 28 of the EC Treaty);
- the right of establishment (Article 43);
- the freedom to provide services (Article 49);
- non-discrimination and equal treatment;
- transparency;
- proportionality; and
- mutual recognition.

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<sup>5</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/docs/authorities/uk\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/authorities/uk_en.pdf)



The European Court of Justice (ECJ) has developed a set of basic standards for the award of all public contracts which are derived directly from the principles of the EC Treaty: According to ECJ case-law the principles of equal treatment and non-discrimination on grounds of nationality imply **an obligation of transparency** which, “*consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures to be reviewed*”<sup>6</sup>.

These standards apply to all public procurement including tender processes that are not subject to the more comprehensive EU Procurement Directives like procurement exercises where the estimated value of a contract falls below the relevant Procurement Directive thresholds<sup>7</sup> (with the only specific exception being procurement related to national security). The ECJ has stated explicitly that “*although certain contracts are excluded from the scope of the directives in the field of public procurement, the contracting authorities which conclude them are nevertheless bound to comply with the fundamental rules of the Treaty*”<sup>8</sup>.

### 3.2.2 The EU Procurement Directives

The EU Procurement Directives<sup>9</sup>, and the Contract Regulations<sup>10</sup> that implement them in the UK, set out the legal framework for public procurement in the UK when public authorities and utilities seek to acquire supplies, services, or works (e.g. civil engineering or building works) which are above set monetary thresholds.

The current thresholds for 2010 are shown in Table 3.1. Any procurement by public bodies above the thresholds must follow the procedures set out in the Directives in order to award a contract. The procedures include contracts being advertised in the Official Journal of the EU (OJEU), standard formats for the publication of notices, and other detailed rules related to selection and contract award criteria.

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<sup>6</sup> ECJ Cases C-324/98, Telaustria, [2000] ECR I-10745, paragraph 62, C-231/03, Coname, judgment of 21.7.2005, paragraphs 16 to 19 and C-458/03, Parking Brixen, judgment of 13.10.2005, paragraph 49.

<sup>7</sup> ECJ Cases C-59/00, Bent Moustén Vestergaard [2001] ECR I-9505, paragraph 20 and C-264/03, Commission v France, judgment of 20.10.2005, paragraphs 32 and 33.

<sup>8</sup> ECJ Case Bent Moustén Vestergaard case, paragraph 20.

<sup>9</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31<sup>st</sup> March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts; and Directive 2004/17/EC of the European Parliament and of the Council of 31<sup>st</sup> March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

<sup>10</sup> The UK Public Contracts Regulations 2006 and the UK Utilities Contracts Regulations 2006



**Table 3.1 Thresholds for Adherence to Procurement Directives<sup>11</sup> (January 2010)**

	<b>SUPPLIES</b>	<b>SERVICES</b>	<b>WORKS</b>
Entities listed in Schedule 1 of the Public Contracts Regulations 2006 (Central Government bodies subject to WTO GPA)	£101,323 (€125,000)	£101,323 (€125,000)	£3,927,260 (€4,845,000)
Other public sector contracting authorities	£156,442 (€193,000)	£156,442 (€193,000)	£3,927,260 (€4,845,000)
Prior Information Notices (Regulation 11)	£607,935 (€750,000)	£607,935 (€750,000)	£3,927,260 (€4,845,000)
Small lots (regulation 8 (12))	£64,846 (€ 80,000)	£64,846 (€ 80,000)	£810,580 (€1,000,000)

### 3.2.2.1 Stages of the Procurement Process

The Directives impose specific requirements, criteria and restrictions for different stages of the procurement process, with the aim of ensuring compliance with the above EU Treaty principles at each stage, including:

- Specification stage - how requirements must be specified, avoiding brand names and other references which would have the effect of favouring or eliminating particular providers, products or services – and the requirement to accept equivalence. The Regulations now make it clear that authorities may use performance specifications rather than technical specifications.
- Selection stage - the rejection or selection of candidates based on:
  - evidence that they are not unsuitable on grounds, e.g. of bankruptcy, criminal conviction or failure to pay taxes. Certain offences now require, in normal circumstances, a mandatory exclusion;
  - their economic and financial standing – e.g. that they are judged to be financially sound on the basis of their annual accounts; and
  - their technical capacity and ability – e.g. that they will be adequately equipped to do the job and that their track record is satisfactory.
- Award stage - the award of a contract is either on the basis of “lowest price” or various criteria for determining which is the “most economically advantageous tender (MEAT)” to the procuring entity.

<sup>11</sup> [http://www.oqc.gov.uk/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules\\_eu\\_procurement\\_thresholds\\_.asp](http://www.oqc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds_.asp)

### 3.2.2.2 Award Procedures

Four award procedures are provided for in the EU Procurement Directives:

- the open procedure, under which all those interested may respond to the advertisement in the OJEU by tendering for the contract;
- the restricted procedure, under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract. This allows purchasers to avoid having to deal with an overwhelmingly large number of tenders;
- the competitive dialogue procedure, following an OJEU Contract Notice and a selection process, the authority then enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender; and
- the negotiated procedure, under which a purchaser may select one or more potential bidders with whom to negotiate the terms of the contract. An advertisement in the OJEU is usually required but, in certain circumstances, described in the Regulations, the contract does not have to be advertised in the OJEU. An example is when, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular bidder.

Procuring entities have a free choice between the open and restricted procedures. The competitive dialogue procedure is available where the contract cannot be awarded under open or restricted procedures. The negotiated procedure may only be used in the limited circumstances described in the Regulations. Utilities have a free choice between the open, restricted and negotiated procedures, but the Competitive Dialogue procedure is not available to them.

Under the restricted, competitive dialogue and competitive negotiated procedures (those where a call for competition is required by advertising in the OJEU) there must be a sufficient number of participants to be selected to proceed to the tender stage to ensure genuine competition. The Regulations require a minimum of five for the restricted procedure, and three for competitive dialogue and negotiated procedures.

### 3.2.2.3 Recent Procurement Changes

The 2004/17/EC and 2004/18/EC directives include a number of changes to procedures and requirements not included in the previous rules.

- The previously separate supply, services and works public sector directives are consolidated into a single set of Regulations;
- The Directives expressly provide for framework agreements and electronic auctions for the first time;
- A new competitive dialogue procedure is available for complex procurements where the authority does not consider that the open or restricted procedures will allow the award of a contract. This procedure will allow authorities to enter into a dialogue with potential bidders before seeking final tenders from them;

- Mandatory exclusion of companies or other bodies whose Directors or other decision makers have been convicted of the following offences – participation in a criminal organisation, corruption, bribery and fraud, as defined in the Directives; and
- A 10 calendar day standstill period at the award stage prior to contract signature to permit unsuccessful tenderers to seek further information about an award decision, and enable them to take action in the courts where they have sufficient grounds.

The EU procurement regime, described by the Directives and Regulations and set out in this summary, is not static. It is subject to change, driven by evolving European and domestic case law, European Commission communications, new and revised Directives and amendments to the existing UK Regulations. For example:

- In order to have uniformity in the publication of notices, the Commission Regulation (EC) N°1564/2005 of 7 September 2005 established standard forms for the publication of notices in the framework of public procurement procedures pursuant to both Directives;
- Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (to be implemented by Member States into national law before 20 December 2009)

### 3.2.3 Bilateral and International Agreements

As a member of the EC the UK has also been bound by the WTO Government Procurement Agreement (GPA) since it came into force on 1<sup>st</sup> January 1996. The GPA is based on the principles of openness, transparency and non-discrimination, its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers<sup>12</sup>.

### 3.2.4 UK Procurement Regulations

The 2004 EU Directives have been implemented into national law in the UK through Contract Regulations which came into force on 31<sup>st</sup> January 2006. Directive 2004/18/EC and Directive 2004/17/EC are implemented in the UK in the following statutory instruments:

- Directive 2004/18/EC = SI 2006 No. 5 The Public Contracts Regulations 2006<sup>13</sup> - for Public authorities (i.e. the State, regional and local authorities and other public bodies).
- Directive 2004/17/EC = SI 2006 No. 6 The Utilities Contracts Regulations 2006<sup>14</sup> - for Utilities (i.e. certain operators in the water, energy, transport sectors).

The EU Directives reflect and reinforce the value for money focus of the UK Government's own procurement policy. The policy requires that all public procurement must be based on the concept of value for money - defined as "*the optimum combination of whole-life cost and*

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<sup>12</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm10\\_e.htm#govt](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm#govt)

<sup>13</sup> [http://www.opsi.gov.uk/si/si2006/uksi\\_20060005\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf)

<sup>14</sup> [http://www.opsi.gov.uk/si/si2006/uksi\\_20060006\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060006_en.pdf)

quality to meet the user's requirement"<sup>15</sup>, and which must be applied at the contract award stage of the procurement process. The definition makes it clear that the user (i.e. procuring entity) has the discretion to decide *what* is procured as long as *how* it is done is on the basis of whole life cost and quality.

### **3.3 Other On-going or Planned Transparency/Anti-corruption/Good Governance Initiatives**

The purpose of this section is to address Baseline Study Objective 5: To provide information on other on-going initiatives affecting the procurement and management of construction contracts and how these relate to CoST. These are listed in table 3.2. To understand the context CoST operates within the UK, it is important to understand how best practice in the procurement of publicly financed construction projects has evolved.

During the 1970s and 1980s the performance of the publicly funded construction projects was poor with 70% of projects late and 73% over tender price<sup>16</sup> coming in on time and budget with profit margins very small. In the early 1990s the construction sector particularly suffered during the economic recession with many companies going out of business.

This led to calls for change in the way that publicly funded projects were procured and delivered and for improvements in the performance of the construction industry. In 1994 a government commissioned report by Sir Michael Latham entitled, *Constructing the Team* reported that the fragmented nature of the construction industry and adversarial culture meant that the client's objectives were not being met and construction companies were not achieving sufficient profit margins to maintain health investment in innovation and improved industry outcomes. In 1998 a second report by Sir John Egan entitled *Rethinking Construction* identified similar issues and set a number of targets for industry improvement.

Both reports recommended a change in organisational culture with greater integration in the planning, design and build of publicly finance construction projects. This would require greater collaboration between the client and the supply chain. Partnering became the new ethos with new forms of contract such as the NEC based on project management principles enabling greater integration and collaboration.

To improve the quality of the construction projects, PEs have been directed by the UK Government through Best Value legislation and related Government procurement policy documentation to select their suppliers on basis of best value and not lowest price. This approach has also reduced the number of claims from contractors for time and money during the course of the project.

The number and range of contract strategies has increased to allow clients to manage the risk appropriately. Design and build has become the norm on major projects with the contract price based on actual costs rather than traditional bills of quantities. Framework contracts have become very popular as it allows the client to build a long-term relationship with a few suppliers and benefit from efficiency savings as well as reducing significant costs to the public purse.

With EU procurement rules meaning a tender process can take 9 months to complete for each new project, frameworks allowed a PE to only carry out a strategic competitive process

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<sup>15</sup> HM Treasury (2000) '*Government Accounting 2000*' Annex 22.2 *Procurement Policy Guidelines*

<sup>16</sup> Report by the Comptroller and Auditor General, *Modernising Construction*, National Audit Office (2001), p4

within EU rules every 3 to 4 years. The PE can either then select directly from the framework or carry out further competition with those companies on the framework for each new project.

A recent report by Constructing Excellence found that whilst construction industry performance was moving in the right direction, it has fallen well short of Egan's targets. This has been put down to clients and industry being slow to adopt and embrace the new culture with a lack of integration in the delivery process impeding continuous improvement.<sup>17</sup> In 2005 the National Audit Office reported that where suppliers are involved at an early stage the quality of design is better, leading to efficient and higher quality construction that delivers lower whole life costs and the required service delivery outcomes.

Over this period attitudes to corruption and transparency within the construction have also changed. In 2004 an alliance of UK business associations, professional institutions, civil society organisations and companies with interests in the domestic and international infrastructure, construction and engineering sectors was formed. The UK Anti-Corruption Forum includes membership from various prestigious associations, institutions and other organisations, together representing over 1,000 UK companies and 350,000 professionals. Its objective is to help create a business environment that is free from corruption including the promotion of transparency.

These changes impact on CoST in a number of ways:

1. CoST expects increased transparency to lead to increased competition in the market place and improvements in time, cost and quality, and improved management information. The ethos of collaboration, integration and building long-term relationships, particularly with the use of frameworks has led to an enhanced competition based on quality.
2. Procurement based on best value has led to increased accountability on publicly financed construction projects, improved construction performance better risk management and efficiency, but information disclosure to the public remains limited.
3. There is a considerable body of opinion that increases in transparency and accountability will require changes in regulation and legislation. Changes in regulation maybe required but changes in organisational culture will be just as important.
4. Industry is likely to support measures that lead to increased transparency.

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<sup>17</sup> Wolstenholme A. (2009) Never Waste a Good Crisis: A Review of Progress since Rethinking Construction and Thoughts for Our Future, Constructing Excellence p19

**Table 3.2 Other On-going Initiatives (T = Transparency; AC = Anti-corruption; GG = Good governance)**

Name of Initiative	Owner and Sponsors	Overview	Activities and outcomes	How Initiative Relates to CoST			
				T	A C	G G	
<b>Transparency International (TI) UK Initiatives including Project Anti-Corruption System (PACS)</b>	TI UK	The UK Chapter of the world's leading non-governmental anti-corruption organisation. TI's mission is to create change towards a world free of corruption.	Business tools, reports, and information to help prevent corruption on construction projects.  Supplemented by additional sources of information including broader anti-corruption initiatives, and rating metrics.	✓	✓		TI UK activities integrated into UK CoST through Executive Director place on the CoST MSG.
<b>UK Anti-Corruption Forum</b>	Firms, Professional Bodies, Trade Associations, NGOs	Forum bringing together UK companies, professional institutions, trade associations and NGO with a common interest in curbing corruption in international and UK construction.	Speaks with one professional voice representing a large and wide-ranging constituency. As a result, is taken seriously and consulted widely.  Always adopts a constructive approach in discussion.	✓	✓		The chair of the UK MSG was joint founder of the UK Anti-Corruption Forum.
<b>Global Infrastructure Anti-Corruption</b>	GIACC	GIACC is an independent, not-for-profit organisation which provides resources and services for the purpose of preventing and dealing	Free information and resources reflecting international best practice in combating corruption in construction, from the perspectives of different		✓		

Name of Initiative	Owner and Sponsors	Overview	Activities and outcomes	How Initiative Relates to CoST			
				T	A C	G G	
<b>Centre (GIACC)</b>		with corruption in the infrastructure, construction and engineering sectors.	stakeholder groups.				
<b>Ethical Edinburgh</b>		Web site exploring the potential to establish an International Centre for Transparency in Construction that would provide practical support services.	Web site has helped raised the profile of corruption in construction, and clarified the need for additional services to be provided.  No International Centre for Transparency in Construction has been founded yet though.	✓	✓		
<b>The Anti-Corruption Unit (ACU)</b>	The Department for Business, Innovation and Skills	Provides guidance to UK business on bribery law and in managing the risks of international corruption and working on country-specific issues.	Promotes leading UN and OECD best practice standards for avoiding bribery and support Government procedures to safeguard public money from being tainted by contact with international corruption.	✓	✓		
<b>Criminal Investigations and Prosecutions</b>	Office of Fair Trading and Serious Fraud Office	The Office of Fair Trade (OFT) has undertaken several major investigations into the construction industry to ensure transparent and effective competition.	In September 2009 it was announced by the OFT that 103 construction companies infringed competition law through their involvement in bid rigging activities, in particular cover pricing.		✓		Raises the profile of corruption in construction and awareness that problems are being tackled.

Name of Initiative	Owner and Sponsors	Overview	Activities and outcomes	How Initiative Relates to CoST			
				T	A C	G G	
<b>Transforming Government Procurement (TGP)</b>	HM Treasury and Office of Government Commerce	Set up to improve the efficiency of government procurement and ensure wider implementation of the OGC's best practice guidance.	The Major Projects Review Group (MPRG) linked to TGP is a panel of commercial experts from across government whose role is to provide advice on the deliverability, value for money and affordability of the largest and most complex procurement projects (particularly major construction projects e.g. Nuclear, Crossrail).	✓		✓	
<b>Public Sector Construction Clients' Forum (PSCCF)</b>	The Government hosted by the Office of Government Commerce	In December 2005, the PSCCF consists of senior officials from various departments and government agencies, together with industry representatives, including the Strategic Forum and Constructing Excellence.	The PSCCF's purpose is to strengthen the leadership and co-ordination of public sector construction activity. The work of the Forum is supported by a number of limited-life working groups that are developing proposals on specific themes, including: public sector demand and industry capacity to deliver; fair payment; and improved embedding of best practice.	✓		✓	
<b>Achieving Excellence in Construction</b>	Office of Government	The AEC initiative is the government's construction client improvement programme and the	Achieving Excellence Guide 6 - Procurement and Contract Strategies				



Name of Initiative	Owner and Sponsors	Overview	Activities and outcomes	How Initiative Relates to CoST			
				T	A C	G G	
(AEC)	Commerce	response to the construction industry's Rethinking Construction improvement initiative.	<p>"Making competition work for you"</p> <p>The guide also recognises the risks of suppliers engaging in anti-competitive behaviour, such as bid rigging. It highlights some of the practical steps you can take to mitigate these risks.</p>	✓		✓	
<b>Policy through Procurement Initiatives</b>	Office of Government Commerce and various Government Departments	A number of government sponsored documents have been produced on wider policy goals that can be delivered through transparent procurement. Wider policy goals include sustainability, social issues in purchasing, skills, equality, innovation and SMEs.	The key activity is the production of reports and policy guidance notes to encourage PEs to use procurement to deliver wider policies. For example the 2008 and Glover report published by HM Treasury was titled: <i>'Accelerating the SME economic engine: through <b>transparent</b>, simple and strategic procurement'</i> .	✓		✓	
<b>Fair Payment in Construction</b>	Office of Government Commerce	In 2007 the Public Sector Construction Clients' Forum achieved cross-industry agreement on best Fair Payment practice. This agreement is enshrined in the Guide to Best 'Fair Payment' Practices.	The agreement includes the principles of Fair Payment, a model Charter and guidance on Project Bank Accounts. The Charter commits clients, lead contractors and supply chains to greater transparency, no unfair withholding of retentions, more efficient payment procedures and	✓	✓	✓	Increases transparency in the public construction supply chain.

Name of Initiative	Owner and Sponsors	Overview	Activities and outcomes	How Initiative Relates to CoST			
				T	A C	G G	
			payment periods not exceeding 30 days.				
<b>Common Minimum Standards (CMS)</b>	Office of Government Commerce	Key common minimum procurement standards which apply to any procurement of a built environment across England by a public sector client.	The CMS identify those policies/initiatives essential to whole-life value for money, while delivering safe, well designed, sustainable and well managed projects.			✓	If the CMS were to be updated they would offer a great opportunity to make more transparency requirements mandatory in all public sector construction.
<b>Public Audit</b>	National Audit Office (NAO) and Audit Commission (AC)	The two major public audit bodies that will investigate public construction. The NAO remit includes central government and public agencies. The AC remit includes local government and housing organisations.	Major audit investigations and keynote reports relating to construction include:  Modernising Construction 2001, PFI: Construction Performance 2003, Improving Public Services through Better Construction 2005.	✓	✓	✓	Transparency could be considered in future NAO investigations.
<b>The Construction Commitments</b>	Strategic Forum	The Commitments set out widely agreed current best practice for construction industry and client behaviour. They are based on the 2012 Construction Commitments, which were developed to embed industry best practice in delivery of	The Commitments are divided into six themes: procurement and integration; client leadership; design quality; commitment to people; sustainability; and health and safety.			✓	The Commitments include direct focus on transparency, namely 'client procurement decisions will be transparent' and 'supply chain partners will be required to demonstrate

Name of Initiative	Owner and Sponsors	Overview	Activities and outcomes	How Initiative Relates to CoST			
				T	A C	G G	
		the various construction works for the 2012 Olympic Games in London.					their competency and their commitment to a culture of trust and transparency'.
<b>The Construction Clients' Charter</b>	Construction Clients Group	Signatories to the Charter are expected to exhibit a number of best practice behaviours, defined under the broad themes of leadership and a focus on the client; working in integrated teams; whole life quality; and having a respect for people.	The new charter will reflect the six key themes of the Construction Commitments, namely procurement and integration; client leadership; design quality; commitment to people; sustainability; and health and safety.			✓	The new charter could be designed to include more transparency and public release of information activities.
<b>The Development of New Contracts</b>	The Institution of Civil Engineers (ICE)	An example is the development of NEC standard contracts, which have aimed to promote better relationships and transparency between the parties by means of a clear and simple documentation. Other forms of standard contract from other providers such as the Project Partnering Contract (PPC 2000) and the JCT Constructing Excellence contract adopt similar approaches.	The NEC approach encourages transparency and cooperation, helping to eliminate corruption and promote best practice. NEC achieves transparency by making sure that clients and suppliers have access to the same information at the same time, and that there are no hidden transactions.	✓		✓	ICE provide the management of CoST UK.

### 3.4 The Legal Requirements for the Release of MPI

The purpose of this section is to address Baseline Study Objective 1: Identify which items of 'Material Project Information' (MPI) are currently required to be released into the public domain by the agencies responsible for procuring construction projects (Procuring Entities or PEs).

Table 3.3 below details whether there is a legal requirement for the release of each MPI<sup>18</sup>. Where there is a legal requirement for the release of a particular item of MPI the source of the requirement is listed.

Table 3.3 reveals that the legal requirements for the release of MPI through the UK Contract Regulations / EU Procurement Directives are most focussed on the early items of MPI and the competition / tendering stages of procurement. This is because transparency at these stages helps to achieve the primary objective of the EU procurement rules – to open up the 'internal' public procurement market and ensure the free movement of supplies, services and works across the EU.

There is little attention paid to transparency during the execution of contracts and post-contract completion. These phases have been identified as the core area of disclosure for the CoST initiative but the UK/EU regulatory system requires only limited transparency and disclosure of information into the public domain during these phases. The focus of the UK/EU regulatory system for public construction procurement can therefore be described as being on '**how**' construction is procured (i.e. the process of competitive tendering) and not '**what**' is procured, '**why**' it is procured or '**the final price**' it is procured for.

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<sup>18</sup> Requirement is checked against projects over the 2010 EU public works threshold  
[http://www.ogc.gov.uk/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules\\_eu\\_procurement\\_thresholds.aspx](http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds.aspx)

**Table 3.3 Legal Requirements for the Release of MPI on projects above EU Works threshold**

Please Note:

PIN = Prior Information Notice

CN = Contract Notice

CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
Prior disclosures in support of CoST	<b>Project identification</b>	Project specification	<b>NO</b>	Contracting authorities are encouraged to publish the specifications and the additional documents in their entirety on the Internet <sup>19</sup> . Article 23 2004/18/EC states that the technical specifications as defined in point 1 of Annex VI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents but do not have to be published.	
		Purpose	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: PRIOR INFORMATION NOTICE (3.)</i> In the case of public works contracts: the nature and extent of the works and the place of execution.	PIN II.4) Short description of nature and scope of works

<sup>19</sup> ANNEX VIII FEATURES CONCERNING PUBLICATION - Publication of complementary or additional information - Publication of notices 2004/18/EC

CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
				<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT NOTICE: (6.a) For Public works contracts: nature and extent of the works and general nature of the work; and information concerning the purpose of the work or the contract.</i>	CN II.1.5) Short description of the contract or purchase(s):
	Location	<b>YES</b>		<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: PRIOR INFORMATION NOTICE: (3.) In the case of public works contracts: the nature and extent of the works and the place of execution.</i>	PIN II.2) Main site or Location of Works
				<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT NOTICE: (5.) Place of execution/performance of the works, for delivery of products or of the provision of services.</i>	CN II 1.2) Main site or Location of Works
	Intended beneficiaries	<b>NO</b>			
	Feasibility study	<b>NO</b>			
<b>Project funding</b>	Financing agreement	<b>NO</b>			

CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
		Budget	NO		
		Engineer's estimate	YES	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: PRIOR INFORMATION NOTICE: (3.) In the case of public works contracts... if available, an estimate of the range of the cost of the proposed works.</i>	PIN II.4) Estimated cost of works
	<b>Tender process for the contract for project design</b>	Tender procedure	YES	DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT NOTICE: (3.a) The award procedure chosen and 4. Form of the contract.	CN IV.I) Type of Procedure
		Name of main consultant	YES	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT AWARD NOTICE (7.) Name and address of the successful economic operators.</i>	CAN V.3) Name and address of economic operator(s)
	<b>Tender process for the contract for project supervision</b>	Tender procedure	YES	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT NOTICE: (3.a) The award procedure chosen and 4. Form of the contract.</i>	CN IV.I) Type of Procedure

CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
		Name of main consultant	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT AWARD NOTICE (7.) Name and address of the successful economic operators.</i>	CAN V.3) Name and address of economic operator(s)
<b>Tender process for the main contract for works</b>	Tender procedure	<b>YES</b>	DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT NOTICE: (3.a) The award procedure chosen and 4. Form of the contract.	CN IV.I) Type of Procedure	
	List of tenderers	<b>NO</b>	DIRECTIVE 2004/18/EC Article 43 states: For every contract the contracting authorities shall draw up a written report which shall include at least the names of the successful tenderers and the reasons for their selection; and the names of the tenderers rejected and the reasons for their rejection. However, this report does not have to be released unless the European Commission requests so. Only the number of tenders received is released through the publication of the Contract Award Notice (CAN 6).		
	Tender evaluation report	<b>NO</b>			
<b>Details of the contract for project</b>	Contract price	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices: CONTRACT</i>	CAN II 2.1) Total final value of contracts	



CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
	<b>supervision</b>			AWARD NOTICE (8.) Price or range of prices (minimum/maximum) paid.	
		Contract scope of work	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices:</i> CONTRACT AWARD NOTICE (3.) Public works contracts: nature and extent of the contract, general characteristics of the work.  <i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices:</i> CONTRACT NOTICE (10.) Where applicable particular conditions to which the performance of the contract is subject.	CAN II. 1.4) Short description of contract(s)  CN III 1.4) Other particular conditions to which the contract is subject
		Contract programme	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices:</i> CONTRACT NOTICE (8.) Any time limit for completion of services or duration of the services contract.	CN II.3) Duration of the contract or time-limit for completion
<b>Core disclosures in</b>	<b>Details of the main contract for works</b>	Contractor name	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices:</i> CONTRACT AWARD NOTICE (7.) Name and address of the successful economic operators.	CAN V.3) Name and address of economic operator(s)
		Contract price	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which</i>	CAN II 2.1) Total final

CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
				<i>must be included in public contract notices:</i> CONTRACT AWARD NOTICE (8.) Price or range of prices (minimum/maximum) paid.	value of contract(s)
		Contract scope of work	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices:</i> CONTRACT AWARD NOTICE (3.) Public works contracts: nature and extent of the contract, general characteristics of the work.  <i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices:</i> CONTRACT NOTICE (10.) Where applicable particular conditions to which the performance of the contract is subject.	CAN II. 1.4) Short description of contract  CN III 1.4) Other particular conditions to which the contract is subject
		Contract programme	<b>YES</b>	<i>DIRECTIVE 2004/18/EC ANNEX VII A - Information which must be included in public contract notices:</i> CONTRACT NOTICE (8.) Any time limit for completion of works or duration of the works contract.	CN II.3) Duration of the contract or time-limit for completion
	<b>Execution of the contract for project supervision</b>	Significant changes to contract price, programme, scope with	<b>NO</b>		

CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
		reasons			
	<b>Execution of the main contract for works</b>	Individual changes to the contract which affect the price and reasons for those changes	<b>NO</b>		
		Individual changes to the contract which affect the programme and reasons for those changes	<b>NO</b>		
		Details of any re-award of main contract	<b>YES</b>	If the re-awarded contract is above the OJEU threshold it will be subject to the standard publication requirements for Contract Award Notices.	
	<b>Post contract completion details of the main contract for works</b>	Actual contract price	<b>NO</b>		
		Total payments made	<b>NO</b>		
		Actual contract scope of work	<b>NO</b>		

CAN = Contract Award Notice		Initial List of Disclosures	Required to be Released	Procurement Directive Document Reference	OJEU Template Reference
Stage in Project Cycle					
		Actual contract programme	<b>NO</b>		
		Project evaluation and audit reports	<b>NO</b>		

### 3.5 The Barriers to the Release of MPI

The purpose of this section is to address Baseline Study Objective 3: To assess (from the same sample set of PEs) the barriers (legal, administrative) to the release of this information.

The public works Directive 2004/18/EC can be examined to determine potential legal barriers that could prevent the release of MPI. A major legal barrier is potentially commercial confidentiality which prevents procuring entities from disclosing information forwarded to it by economic operators which they have designated as confidential; such information includes, in particular, technical or trade secrets and the confidential aspects of tenders<sup>20</sup>. Articles 10 and 14 of the Directive 2004/18/EC also clarify that the Directives shall not apply to services or works which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned<sup>21</sup>.

During face-to-face and telephone interviews with project managers associated with the CoST baseline sample projects the following perceived barriers emerged:

- The release of MPI will take time and resources and potentially produce an administrative burden that might distract from the main objective of delivering projects;
- The anticipated benefits of releasing more MPI are “ambitious” and the general public are probably not interested in the vast majority of the information so release of more MPI might be for little benefit and whilst costing significant time and money;
- The point was made that only people with a vested interest in the construction industry might use the MPI. Some participants were also worried that the market could use MPI against clients and in a potentially uncompetitive manner and thus timing for the release of certain information might be an issue.
- Questioning of whether there is a direct link between the release of MPI into the public domain and transparency and accountability;
- Questioning of whether the proposed release of MPI will really help tackle corruption and improve accountability or will it merely provide more of a smokescreen and make it difficult for people to find out about real corruption;
- Confidentiality and commercial sensitivity concerns on behalf of private sector partners;
- Concerns that increased release of MPI and association with transparency initiatives can damage the reputation of organisations because they might be perceived as having done something wrong or hiding things previously.

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<sup>20</sup> Article 6, Directive 2004/18/EC

<sup>21</sup> Articles 10 and 14, Directive 2004/18/EC

## 4. Baseline Study Indicators

### 4.1 Commentary on the Project Level Baseline Indicators (Table 4.1)

An overview of each sample project was captured (See Appendix B) to provide meaning to the data included in Table 4.1 and the Baseline Study Worksheets. As highlighted in the project summaries included in Appendix B a variety of procurement routes and delivery options were used across the sample projects. These ranged from in-house delivery of certain elements by PEs (Broadland Housing Association, Environment Agency and Durham County Council) to call-offs from a national construction consultancy framework that was procured by a central government agency (OGC Buying Solutions) that is available for all public clients in the country to use (Durham County Council). Several of the projects were integrated design and construct (e.g. Highways Agency) whilst in some of the sample projects the design and project supervision elements were combined and awarded to a single company or delivered in house (e.g. Durham County Council). It must also be noted that at the time that the sample projects were originally procured (around 2004 / 2005) Broadland Housing Association were not classified as a public procuring entity and were not subject to the same EU procurement directives as the other PEs.

The different methods of delivery for almost all of the sample projects make comparison between them both difficult and potentially inaccurate. Moreover, the 12 projects investigated are only sample projects and cannot be judged as being representative of contemporary procurement practice in the UK overall. It is therefore with caution that the following broad comments are made:

Indicator Grouping	Discussion
1. Bidding Statistics	There was generally more competition (number of companies expressing interest, shortlisted and bidding) for the works contracts on the sample projects than the design and project supervision elements. This can be explained by two main factors: (a) PEs undertook the design and project supervision elements on some of the sample projects in-house and (b) PEs used consultancy framework agreements for these service elements that did not involve any mini-competition during project call-off – although there would have been competition initially for firms to get on to the frameworks. Works frameworks were rare and not used on the majority of sample projects.
2. Main Works Contract Time (% change)	Two sample projects out of the twelve were delivered to the original programme. One project was delivered ahead of schedule. The remaining nine projects were delivered later than originally predicted. Overall the average time from contract start to completion as a percentage of the original programme was 108.83%.
3. Works Supervision Cost (%)	There is less change in works supervision costs between the estimated price and the contract

change)	commencement price (-5.63%) compared to the change between contract commencement date price and the final completion cost (32.25%). The later average is significantly increased by one project (with a 156% change) that had to be deliberately undervalued at contract commencement because of limited funds remaining to cover the contract in the financial year of commencement (sufficient funds were drawn down in the next financial year to cover the full project supervision costs).
4. Main Works Contract Cost (% change)	The overall pattern shows that the costs for the main works contract increase between both the original estimate and contract commencement date price, and the contract commencement date price and final completion cost. The average change between contract commencement date price and final cost (7.17%) was less than the average change between the original estimate and contract commencement date price (7.33%). There is also a much greater range (high and low) of percentage changes between the estimate price and contract commencement date price (63% increase on one project and -31% decrease on another) than between contract commencement date price and final completion price (37% increase and -8% decrease).
5. Instances of re-award of the main contract for works	No re-awards of contracts were found in the UK sample projects.
6. Number of formal instructions for remedy of defects	In only one of the sample projects were formal instructions to remedy defective works recorded and they were all successfully corrected.

On certain sample projects it was found that some programme and pricing data provided by project managers did not always relate to just the main construction works. Additional elements like the cost of purchasing land (in the case of the Environment Agency) would be included in the contract pricing data. In the case of the schools at Durham landscaping and playing fields elements would be included in the main contract of works programme. The implication of this was that although the main school facilities had been delivered and handed-over on time other non-critical elements (e.g. landscaping) that were not delivered at the same time (with agreement from the client) made it look like the whole project was delivered late. Where there were changes to the scope of projects this could also relate to additional contractual elements and not the main build. For example, in the case of one school project changes to the scope of the contract related to whether demolition of an existing school would be included in the main contract of works for the new school or not.

**Table 4.1 Summary of the Project Level Baseline Indicators (See also associated CoST Baseline Worksheets and Project Summaries)**

	Broadland Housing			Durham County Council			Environment Agency			Highways Agency			Average
	Bodham	Dereham	Kitchens	Durham J	Peterlee	Seaham	Bampton	Fordingbric	Hunstanton	A1 Braham	A2 Cobham	A419 Blun	
<b>1. Bidding Statistics</b>													
No of Cos expressing interest: Design	0	1	n/a	5 (Fwk)	In house	In house	4 (Fwk)	4 (Fwk)	4 (Fwk)	n/a	n/a	n/a	
Number of Cos shortlisted: Design	1	1	n/a	5 (Fwk)	In house	In house	1 (Fwk)	1 (Fwk)	1 (Fwk)	n/a	n/a	n/a	
Number of Cos bidding: Design	1	1	n/a	5 (Fwk)	In house	In house	1 (Fwk)	1 (Fwk)	1 (Fwk)	n/a	n/a	n/a	
% of Cos interested who went on to be shortlisted	n/a	100%	n/a	100%	n/a	n/a	25%	25%	25%	n/a	n/a	n/a	55.00%
% of Cos shortlisted who went on to bid	100%	100%	n/a	100%	n/a	n/a	100%	100%	100%	n/a	n/a	n/a	100.00%
No of Cos expressing interest: Supervision	0	1	In house	5 (Fwk)	In house	In house	4 (Fwk)	4 (Fwk)	4 (Fwk)	12 (Fwk)	14 (Fwk)	14 (Fwk)	
Number of Cos shortlisted: Supervision	1	1	In house	5 (Fwk)	In house	In house	1 (Fwk)	1 (Fwk)	1 (Fwk)	1 (Fwk)	1 (Fwk)	1 (Fwk)	
Number of shortlisted Cos bidding: Supervision	1	1	In house	5 (Fwk)	In house	In house	1 (Fwk)	1 (Fwk)	1 (Fwk)	1 (Fwk)	1 (Fwk)	1 (Fwk)	
% of Cos interested who went on to be shortlisted	n/a	100%	n/a	100%	n/a	n/a	25%	25%	25%	8%	7%	7%	37.13%
% of Cos shortlisted who went on to bid	100%	100%	n/a	100%	n/a	n/a	100%	100%	100%	100%	100%	100%	100.00%
No of Cos expressing interest: Works	0	10	1 (Fwk)	15	21	18	In house	7 (Fwk)	12	11	13	12	
Number of Cos shortlisted: Works	4	5	1 (Fwk)	5	21	6	In house	1 (Fwk)	5	5	5	5	
Number of shortlisted Cos bidding: Works	4	5	1 (Fwk)	4	6	6	In house	1 (Fwk)	3	5	5	5	
% of Cos interested who went on to be shortlisted	n/a	50%	100%	33%	100%	33%	n/a	14%	42%	45%	38%	42%	49.70%
% of Cos shortlisted who went on to bid	100%	100%	100%	80%	29%	100%	n/a	100%	60%	100%	100%	100%	88.09%
<b>2. Main Works Contract Time (%)</b>													
Time from contract start to completion as % of original prog	100%	126%	100%	114%	114%	116%	110%	110%	82%	104%	126%	104%	108.83%
<b>3. Works Supervision Cost (% change from)</b>													
Estimated price to commencement date price	-9%	0%	n/a	n/a	n/a	n/a	0%	12%	-48%	0%	0%	0%	-5.63%
Commencement date price to final completion cost	2%	1%	n/a	n/a	n/a	n/a	55%	21%	156%	58%	-30%	-5%	32.25%
<b>4. Main Works Contract Cost (% change from)</b>													
Engineer estimate to commencement date price	-4%	0%	0%	-5%	-11%	-1%	26%	2%	-31%	4%	63%	45%	7.33%
Commencement date to final completion cost	3%	10%	1%	2%	10%	-8%	-3%	37%	-6%	12%	9%	19%	7.17%
<b>5. Instances of re-award of the main contract for works</b>													
Number	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>6. Number of formal instructions for remedy of defects</b>													
Issued	0	0	0	0	0	0	0	0	0	0	0	4	0.33
Implemented	0	0	0	0	0	0	0	0	0	0	0	4	0.33

**n/a** = Not applicable (for example if Design was undertaken by the Main Contractor)

**in house** = work undertaken by in house teams

**Fwk** = Procurement undertaken through a Framework Agreement, therefore competition or selection process will have already taken place prior to this project and therefore may not be visible at project level e.g. only one company short listed at the project level and only one company bidding at the project level.



**Table 4.2 Summary of PE’s understanding of the MPI that is required to be disclosed on a typical construction project**

CoST Project Lifecycle Stage	List of MPI Items	Legally required disclosures			Procuring Entities			
		Above EU threshold	Below EU threshold	Framework Agments	BHA	DCC	EA	HA
Project identification	Project specification	No	No	No	No	No	No	Yes
	Purpose	Yes	Yes	No	Yes	Yes	Yes	Yes
	Location	Yes	Yes	No	Yes	Yes	Yes	Yes
	Intended beneficiaries	No	No	No	Yes	Yes	Yes	Yes
	Feasibility study	No	No	No	No	No	No	Yes
Project funding	Financing agreement	No	No	No	No	No	Yes	Yes
	Budget	No	No	No	No	Yes	Yes	Yes
	Project cost estimate	Yes	No	No	Yes	Yes	No	Yes
Tender process for the contract for project design	Tender procedure	Yes	No	No	Yes	Yes	No	Yes
	Name of main consultant	Yes	No	No	Yes	Yes	Yes	Yes
Tender process for the contract for project supervision	Tender procedure	Yes	No	No	Yes	Yes	Yes	Yes
	Name of main consultant	Yes	No	No	Yes	Yes	Yes	No
Tender process for the main contract for works	Tender procedure	Yes	No	No	Yes	Yes	Yes	Yes
	List of tenderers	No	No	No	No	No	Yes	No
	Tender evaluation report	No	No	No	No	No	No	No
Details of the contract for project supervision	Contract price	Yes	No	No	No	No	No	No
	Contract scope of work	Yes	No	No	No	No	No	No
	Contract programme	Yes	No	No	No	No	No	No
Details of the main contract for works	Contractor name	Yes	No	No	Yes	Yes	Yes	Yes
	Contract price	Yes	No	No	No	No	Yes	Yes
	Contract scope of work	Yes	No	No	No	No	No	Yes
	Contract programme	Yes	No	No	No	No	No	Yes
Execution of the contract for project supervision	Significant changes to contract price, programme, scope with reasons	No	No	No	No	No	No	No
Execution of the main contract for works	Individual changes to the contract which affect the price and reasons for those changes	No	No	No	No	No	No	No
	Individual changes to the contract which affect the programme and the reasons for those changes	No	No	No	No	No	No	No
	Details of any re-award of main contract	Yes	No	No	Yes	Yes	No	Yes
Post contract completion details of the main contract for works	Actual contract price	No	No	No	No	No	No	No
	Total payments made	No	No	No	No	No	No	No
	Actual contract scope	No	No	No	No	No	No	No
	Actual contract programme	No	No	No	No	No	No	No
	Project evaluation and audit reports	No	No	No	No	No	Yes	No

Responses were made on the following basis: **BHA** and **DCC** = No use of frameworks; **EA** = Use frameworks for project supervision, design and works; **HA** = Use frameworks for project supervision but not design and works.

**Table 4.3 Summary of Actual Disclosure of MPI by the PE on a typical construction project**

CoST Project Lifecycle Stage	List of MPI Items	Legally required disclosures			Procuring Entities			
		Above EU threshold	Below EU threshold	Framework Agments	BHA	DCC	EA	HA
Project identification	Project specification	No	No	No	Never	Never	Always	Always
	Purpose	Yes	Yes	No	Always	Always	Always	Always
	Location	Yes	Yes	No	Always	Always	Always	Always
	Intended beneficiaries	No	No	No	Always	Always	Always	Always
	Feasibility study	No	No	No	Never	Never	Always	Always
Project funding	Financing agreement	No	No	No	Never	Never	Majority	Always
	Budget	No	No	No	Never	Always	Minority	Always
	Project cost estimate	Yes	No	No	Always	Always	Minority	Always
Tender process for the contract for project design	Tender procedure	Yes	No	No	Always	Always	Minority	Always
	Name of main consultant	Yes	No	No	Always	Always	Always	Always
Tender process for the contract for project supervision	Tender procedure	Yes	No	No	Always	Always	Minority	Never
	Name of main consultant	Yes	No	No	Always	Always	Majority	Always
Tender process for the main contract for works	Tender procedure	Yes	No	No	Always	Always	Minority	Never
	List of tenderers	No	No	No	Minority	Never	Minority	Never
	Tender evaluation report	No	No	No	Never	Never	Minority	Never
Details of the contract for project supervision	Contract price	Yes	No	No	Never	Never	Majority	Never
	Contract scope of work	Yes	No	No	Never	Never	Minority	Never
	Contract programme	Yes	No	No	Always	Never	Minority	Never
Details of the main contract for works	Contractor name	Yes	No	No	Always	Always	Always	Always
	Contract price	Yes	No	No	Never	Never	Minority	Always
	Contract scope of work	Yes	No	No	Never	Never	Minority	Always
	Contract programme	Yes	No	No	Always	Never	Majority	Always
Execution of the contract for project supervision	Significant changes to contract price, programme, scope with reasons	No	No	No	Never	Never	Minority	Never
Execution of the main contract for works	Individual changes to the contract which affect the price and reasons for those changes	No	No	No	Never	Never	Minority	Never
	Individual changes to the contract which affect the programme and the reasons for those changes	No	No	No	Never	Never	Minority	Never
	Details of any re-award of main contract	Yes	No	No	Always	Always	Minority	Always
Post contract completion details of the main contract for works	Actual contract price	No	No	No	Never	Never	Minority	Never
	Total payments made	No	No	No	Never	Never	Minority	Never
	Actual contract scope	No	No	No	Never	Never	Minority	Never
	Actual contract programme	No	No	No	Always	Never	Minority	Never
	Project evaluation and audit reports	No	No	No	Never	Never	Minority	Always

Responses were made on the following basis: BHA and DCC = No use of frameworks; EA = Use frameworks for project supervision, design and works; HA = Use frameworks for project supervision but not design and works.

**Table 4.4 Summary of MPI Disclosure Findings**

<b>1</b>	<b>What MPI is being stored and How is it Stored?</b>
	<ul style="list-style-type: none"> <li>All of the MPI listed in the CoST Baseline Study Worksheets is being stored by each Procuring Entities (PEs) investigated.</li> <li>MPI was most frequently found to be stored electronically.</li> </ul>
<b>2</b>	<b>What information is being forwarded and to which other public bodies?</b>
	<p>The MPI forwarded to other public bodies is either:</p> <ul style="list-style-type: none"> <li>(A) Contract tendering MPI (like contract purpose, location, and tender procedure) forwarded to the Official Journal of the European Union (OJEU) to advertise contract opportunities or notify of contract awards, or</li> <li>(B) Specific project information forwarded to departments or agencies to comply with funding requirements (like the actual contract price and contract scope forwarded to The Homes and Community Agency by Broadlands Housing Association).</li> </ul>
<b>3</b>	<b>Which items of MPI are the PEs required by law to disclose?</b>
	<ul style="list-style-type: none"> <li>The general pattern shows that the different PEs are required to release similar MPI into the public domain and this MPI tends to be associated with the requirements of the EU procurement directives and is focused at the beginning of the construction project lifecycle (e.g. project purpose, location and tender procedure).</li> <li>The PEs are <b>not</b> required to release the core CoST MPI disclosures that concern actual contract price, total payments made, actual contract scope and programme.</li> <li>The required release of certain MPI might differ between PEs because of the different procurement approaches used in each respective organisation, for example, framework agreements do not legally require disclosure of certain MPI (like contractor name and contract scope of works) at the project level. In addition, certain sectors (e.g. housing, education) might have additional statutory duties that require release of certain MPI through public consultation events and notices for example.</li> </ul>
<b>4</b>	<b>Which items of MPI are actually being released into the public domain?</b>
	<ul style="list-style-type: none"> <li>The general pattern shows that the different PEs do release the MPI they are legally required to into the public domain and this MPI is most focused on the beginning of the construction process / MPI lifecycle (e.g. project purpose, location and tender procedure).</li> <li>The PEs do <b>not</b> release the core CoST MPI disclosures into the public domain (i.e. changes to the contract, actual contract price, total payments made, actual contract scope and programme).</li> </ul>

	<ul style="list-style-type: none"> <li>The actual release of certain MPI might differ between PEs because of the different procurement approaches used in each respective organisation, for example, framework agreements do not require disclosure of certain MPI (like contractor name and contract scope of works) at the project level.</li> </ul>
<b>5</b>	<b>How is the information being disclosed?</b>
	<p>MPI is being disclosed in a variety of ways:</p> <ul style="list-style-type: none"> <li>The Internet is the most frequent method of disclosure because all tendering opportunities above the EU thresholds are uploaded on to the OJEU website and some projects even have their own dedicated web pages on their respective PEs' website (for example Highways Agency).</li> <li>Statutory planning and public consultation requirements require for project identification MPI to be released via public meetings and newspaper notices.</li> <li>In addition, site boards, council executive reports, project newsletters have also been identified as other methods of disclosing MPI.</li> </ul>
<b>6</b>	<b>What information is required to be released on demand?</b>
	<ul style="list-style-type: none"> <li>The UK Freedom of Information (Fol) Act was identified by all PEs as an instrument that could require for the vast majority of MPI to be released into the public domain on demand.</li> <li>The only items of MPI that would not be released on demand relate to commercial sensitive information (like tender evaluation reports) for which the PEs believed they could refuse an (FOI) request.</li> </ul>
<b>7</b>	<b>What MPI is prevented by law from being disclosed?</b>
	<ul style="list-style-type: none"> <li>The only items of MPI prevented by law from being disclosed relate to commercial sensitive information (like tender evaluation reports).</li> </ul>

## 4.2 Commentary on the MPI Disclosure Findings (Tables 4.2, 4.3 and 4.4)

The following commentary relates to the findings on the disclosure of MPI by the PEs investigated in the Baseline Study.

Indicator Group	Discussion
1. What MPI is being stored and How is it Stored?	<p>All of the MPI listed in the Worksheets is being stored by each Procuring Entity investigated. MPI was most frequently found to be stored electronically. The Environment Agency for example (see Worksheet PE3-S1), have all of the MPI available in electronic format and Durham Country Council have the majority of MPI available in electronic format. A pattern emerged that certain contractual information like Actual Contract Price, Scope of Work and Programme might only be available in hard copy (PE1-S1 and PE2-S1). It was interesting to note that even when MPI was stored electronically representatives of PEs were not always sure on which system it would be stored and how it could be accessed. Therefore electronic storage of MPI does not always mean instant accessibility.</p>
2. What information is being forwarded and to which other public bodies?	<p>The MPI forwarded to other public bodies can be divided into two types (a) contract tendering MPI forwarded to the Official Journal of the European Community (OJEU) to advertise contract opportunities or notify of contract awards, and (b) project information forwarded to funding departments or agencies. When undertaking projects with contract values above the OJEU thresholds Broadlands and Durham County Council forward contract tendering information to the OJEU who store this information for up to five years. An organisation like the Environment Agency who draw down contractors and consultants from their own framework agreements do not forward individual contract opportunities to OJEU. Where other specific project information was forwarded by the PEs to other organisations it was not forwarded to a procurement oversight authority or audit body but to the respective central government department or agency funding or part funding the project. In the case of The Highways Agency this was The Department of Transport, Durham Country Council - Partnership for Schools, and Broadlands Housing Association - The Homes and Community Agency.</p>
3. Which items of MPI are the PEs	<p>Generally a pattern did emerge that more information related to prior disclosures in support of CoST (e.g.</p>

<p>required by law to disclose?</p>	<p>project identification and tendering process MPI) is required to be released by PEs than MPI related the core disclosures in support of CoST (e.g. contract execution and completion information). The required release of certain MPI might differ slightly between PEs because of the different procurement approaches used in each respective organisation, for example, framework agreements do not legally require disclosure of certain MPI (like contractor name and contract scope of works) at the project level. An additional explanation for some of the inconsistencies between PEs in the legal requirements for the release of MPI could relate to the different regulatory requirements in each respective construction sector (e.g. the highways sector has statutory requirements for release of road management information that flood defence/environmental works do not).</p>
<p>4. Which items of MPI are actually being released into the public domain?</p>	<p>Generally a pattern did emerge that more information related to prior disclosures in support of CoST (e.g. project identification and tendering process MPI) is released by PEs than MPI related the core disclosures in support of CoST (e.g. contract execution and completion information). The actual release of certain MPI might differ slightly between PEs because of the different procurement approaches used in each respective organisation, for example, framework agreements do not legally require disclosure of certain MPI (like contractor name and contract scope of works) at the project level. An additional explanation for inconsistencies between PEs could relate to the different organisational practices in each respective construction sector (e.g. the construction programme dates are released into the public domain in the social housing sector through local authority Choice-based lettings websites that state when new build social homes will be completed and available from).</p>
<p>5. How is the information being disclosed?</p>	<p>The Internet is the most frequent method of disclosure because all tendering opportunities above the EU thresholds are uploaded on to the OJEU website and some projects even have their own dedicated web pages on their respective PEs' website (for example Highways Agency). Statutory planning and public consultation requirements require for project identification MPI to be released via public meetings and newspaper notices. In addition, site boards, council executive reports, project newsletters have also been identified as other methods of disclosing MPI.</p>

<p>6. What information is required to be released on demand?</p>	<p>Although MPI is not always released into the public domain the vast majority of MPI was found to be available to the public on demand because of the Freedom of Information Act that all public bodies must adhere to. Despite PEs being prepared to release MPI on demand they receive very few requests to do so.</p>
<p>7. What MPI is prevented by law from being disclosed?</p>	<p>The main legal barrier that prevented certain MPI (like tender evaluation reports) from being made available to the public related to commercial confidentiality and sensitivity. No other legal barriers were identified.</p>



## 5. CONCLUSION

### 5.1 Baseline Study Objectives

Each main objective has been achieved and an overview of the main findings related to each objective is presented below.

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**Objective 1 – Identify MPI required to be released into the public domain**

The legal requirements for the release of MPI through the UK Contract Regulations / EU Procurement Directives are most focussed on early items of MPI and the competition / tendering stages of procurement. There is little attention paid to transparency during the execution of contracts and post-contract completion. These phases have been identified as the core area of disclosure for the CoST initiative but the UK/EU regulatory system requires only limited transparency and disclosure of information into the public domain during these phases. The focus of the UK/EU regulatory system for public construction procurement can therefore be described as being on **‘how’** construction is procured (i.e. the process of competitive tendering) and not **‘what’** is procured, **‘why’** it is procured or **‘the final price’** it is procured for (See Report Section 3.4 The Legal Requirements for the Release of MPI).

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**Objective 2 – Assess which items of MPI are currently released into the public domain on sample projects**

The general pattern shows that the different PEs do release the MPI associated with the requirements of the EU procurement directives (e.g. project purpose, location and tender procedure) into the public domain. The PEs do not release the core CoST MPI disclosures into the public domain (i.e. changes to the contract, actual contract price, total payments made, actual contract scope and programme).

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**Objective 3 – Assess the barriers to the release of MPI**

Barriers can be divided into different themes

- *Technical:* Questioning of whether there is a direct link between the release of MPI into the public domain and transparency and accountability.
- *Administrative:* Time and resources required to release the MPI.
- *Cost/Benefit:* With doubts over the interest of the general public in the vast majority of the information the release of more MPI might be for little benefit and whilst costing significant time and money. Plus the potential risk that the market could use MPI against PEs and in a



potentially uncompetitive manner.

- *Cultural:* Concerns that increased release of MPI and association with transparency initiatives can damage the reputation of organisations because they might be perceived as having done something wrong or hiding things previously.
- *Legal:* Commercial confidentiality and sensitivity concerns on behalf of private sector partners. (See Report Section 3.5 The Barriers to the Release of MPI)

<p><b>Objective 4 – Provide a point of reference for core indicators that are expected to change over time</b></p>	<p>Tables 4.1, 4.2, 4.3 and 4.4 and the Baseline Study Spreadsheets provide the reference point (See Report Section 4: Baseline Study Indicators).</p>
<p><b>Objective 5 – Provide information on other on-going initiatives and how these relate to CoST</b></p>	<p>Initiatives related to civil society (e.g. Transparency International), procurement policy (e.g. Public Sector Construction Clients’ Forum), enforcement (e.g. Office of Fair Trading) and industry led initiatives (e.g. Construction Commitments) were identified. The multi-stakeholder UK CoST group has a good appreciation of these initiatives through its members and their networks (See Report Section 3.3 Other On-going or Planned Transparency/Anti-Corruption/Good Governance Initiatives).</p>

## 5.2 CoST Baseline Methodological Issues

### 5.2.1 UK CoST Baseline Process

In partnership with representatives of the UK MSG we made a number of modifications to the generic CoST material and the proposed Baseline methodology during the completion of the UK Baseline Study.

This included creating two additional worksheet templates relating to framework agreements that could be embedded within the CoST spreadsheet. Procurement through framework agreements is very popular amongst public clients in the UK and additional worksheets needed to be created to:

- Separate out release of MPI for the initial procurement of framework agreements from the release of MPI for the call-off and execution of individual projects;
- Separate out procurement data (e.g. number of companies tendering) related to the initial appointment of firms to frameworks and the appointment of firms to individual projects.

A sample project summary template was also created that helped to capture a high-level overview of each project and the procurement / contract strategies used in each project to support interpretation of the spreadsheet data.

We also made the decision to investigate which MPI was actually released in practice on the sample projects. When individual project managers were asked for the procurement data relating to the sample projects we requested that they complete the MPI worksheet at the same time to reveal which information was actually released into the public domain on each sample project. This proved to be a valuable exercise because it revealed inconsistency of practice between the different sample projects in the same PEs and also knowledge gaps amongst the project managers of legal requirements and their own organisation's procedures relating to release of MPI.

It proved to be a time consuming exercise to collate the procurement data (and information on the release of early MPI items) for most of the sample projects because the projects had been completed several years earlier and the project managers contacted did not hold this information themselves. In most cases the project managers were only involved in project delivery and not directly involved in the earlier tendering processes so they had to contact others in their PE who could find this information. It became clear that in every PE responsibilities for different elements of the procurement / project delivery process (and therefore responsibilities for different items of MPI) belonged to different individuals. No single individual had all the information required to complete the CoST Baseline spreadsheets. Representatives of each sample project often had to request information from other colleagues in their organisation and this took time. One PE used one of its consultants to complete the data collection and reporting process because of limited in-house resource.

The potential weaknesses of using individual respondents to record current practice in each PE must also be noted. For example, participants in the CoST process might not fully understand or be trained on all of the legal or procurement requirements that they are not personally responsible for within their own job role. In this respect the data collected can be most accurately described as representing the perceptions of individuals participating in the study and not conclusively representative of standard practice within each PE. An alternative methodology would have to be designed and include a much larger survey of sample projects to find a true reflection of actual disclosure of MPI in each PE.

In recognition of the potential weaknesses outlined above the original CoST Baseline methodology was also extended to include a formal verification phase relating to the release of MPI by each PE. The verification process involved collation of the responses from individual project managers and a process of rationalisation with the lead contact to the MSG for each PE. The lead contact to the MSG for each PE would take responsibility for assembling what they believed to be a true reflection of their organisation's practice and then pass this on to a colleague within their organisation (with responsibility for policy and procedures) for verification and approval.

### **5.2.2 Clarifications**

For the record different interpretations of CoST terminology and certain clarifications were required during the completion of the UK Baseline Study. These included:

- Which list of MPI was the final list and why there were certain inconsistencies (e.g. why the release of procurement strategy and contract type MPI was only for requested for the project design element);

- The meaning of the Project Supervision role (e.g. project manager or client agent);
- The scope of the Project Specification MPI (e.g. high-level project specification or detailed design specification);
- Whether the Programme MPI meant a detailed programme or just release of start and end dates into the public domain;
- How to differentiate between the number of companies expressing interest versus number short listed versus number bidding (was it the number invited to bid or number actually bidding and how does this relate to two-stage tendering etc.).

It is recommended that instructions on how to complete the CoST MPI worksheets and definitions of the different items of MPI are included in future updates to the CoST worksheets to ensure consistent understanding and interpretation across all users in all projects and PEs in all countries.

### 5.2.3 Feedback from Baseline Participants

Several interesting points were raised by the individuals representing the PEs during the completion of the Baseline study:

- Some individuals reflected on the CoST Baseline process and felt that it was a very useful exercise for their PE because it gave them chance to reflect on what they were doing regarding the release of MPI and if training was required to improve practices and also ensure standard organisational procedures were being consistently followed on all projects.
- Participating in the CoST Baseline process was also recognised as being of value because it allowed each PE to take a step back and look at its operations from a wider perspective as well as sharing of knowledge and practice with clients from other sectors. For example, one common concern that was identified by several representatives of the different PEs was what appeared to be a lack of competition relating to the award of certain work elements in the sample projects (work was sometimes awarded to in-house teams without any tendering and many of the framework agreements used did not have any formal competition in the project call-off processes, so work appeared to be awarded based on 'opaque' criteria or no criteria).
- The point was made on several occasions that most work in the public sector requires compliance with regulations and procedures. If the procedures exist and individuals are aware of them then they will be followed and if a step change in the release of MPI was desired by the CoST initiative regulatory changes would be the most useful instrument to achieve it. However, it was also pointed out that there is a knowledge gap for most employees between the procedures and the principles behind the procedures so individuals do not know if they could be voluntarily doing more and doing things in different ways (e.g. release MPI to the public in different ways) to improve overall outcomes.

Certain points were made on several occasions across the different PEs:

- Although it was generally agreed that the release of information into the public domain is good for stakeholders, a consensus of opinion appears to be that the general public do not appear interested in most public construction projects. Very few questions get asked by the public and although PEs are aware requests for MPI

could be made at any time via the Freedom of Information Act, the mechanism is rarely used.

- The point was made that only people with a vested interest in the construction industry might use the MPI. For example, at the moment it is construction trade magazines, recruitment agencies, subcontractors and suppliers that use the PE contact details provided on OJEU notices to request more information and ask questions to PEs. If this is the case the question can be posed as to who is going to use the MPI and hold the PEs to account when required? Some participants were also worried that the market could use MPI against clients in a potentially uncompetitive manner and thus timing for the release of certain information might be an issue.
- One of the most interesting aspects of public construction that participants felt would benefit from more transparency is the location and business cases of certain public projects. It was felt that certain communities would be more aware of how to access MPI and use it for their own purposes than others (e.g. local pressure groups campaigning against a construction project).
- Evaluation processes were judged to not be very well developed in the UK and could be improved by focusing on how effective procurement processes were and if completed projects actually delivered their intended benefits. Transparency here was argued to not only hold PEs to account but also to demonstrate benefits and impact to government and taxpayers and thus justify continued public funding.

## Appendix A: CoST UK BASELINE GLOSSARY

**Accountability:** CoST's aim is to enhance the accountability of procuring bodies and construction companies for the cost and quality of public-sector construction projects. The core accountability concept is to 'get what you pay for'. The 'you' in this context applies equally to national governments, affected stakeholders and to the wider public.

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**Benchmarking:** Comparison of performance against other organisations or providers of similar services, particularly those recognised as undertaking best practice.

**Best Practice:** The most effective and desirable method of carrying out a function or process derived from experience rather than theory.

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**Competitive Tendering:** Awarding contracts by the process of seeking competing bids from more than one contractor.

**Contract:** A binding agreement made between two or more parties, which is intended to be legally enforceable.

**Contract Award Notice:** Notice of an award of a contract published in the Official Journal of the European Union (OJEU) in fulfilment of the requirements of EU public procurement directives.

**Contract Documents:** Documents incorporated in the enforceable agreement between the Procuring Entity and the contractor, including contract conditions, specification, pricing document, form of tender and the successful tenderers' responses (including method statements), and other relevant documents expressed to be contract documents (such as correspondence, etc.)

**Contract Notice:** Notice published in the Official Journal of the European Union (OJEU) by Procuring Entities (contracting authorities in OJEU terminology) seeking expressions of interest or inviting companies to tender.

**Contract Value:** The total monetary value of a contract over its duration.

**Contracting Authorities:** (EU terminology for Procuring Entities) The State, regional or local authorities, bodies governed by public law, or associations formed by one or several of such authorities that procure works, goods and services with full or part public funding.

**Contractor:** An organisation or individual who has made a contract to undertake works, supply goods or provide services.

**Contract fixed price:** A contract that provides for a fixed price not subject to any adjustment on account of cost increases that a contractor may experience in the execution of the contract.

**Contract modification:** Any change in the provision of any one or more of the terms and conditions of a contract, proposed by one party and carried out with the agreement of the other party. Legally a modification in a contract amounts to agreeing to a new contract unless the intended modifications are provided for in the contract, e.g. plus/minus option on quantities, lot sizes.

**Contract period:** An arrangement for the supply of works, goods or services established for a fixed period of time.

**Cost estimate / Engineers estimate:** A cost estimate prepared by the buyer of works, goods or services which provides a benchmark or a basis for evaluation and/or negotiation when tenders/offers are received from tenderers. It also serves as an instrument of project planning and budgeting.

**Construction Sector Transparency (CoST) Initiative:** An international multi-stakeholder initiative designed to increase transparency and accountability in the construction sector.

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**E-Procurement:** The use of electronic methods in the purchasing process which can include elements such as e-auctions, online payment and online contract management.

**EC / EU:** The European Community and The European Union regional grouping of countries whose members share common public procurement legislation.

**EU OJEU threshold:** A spend limit, defined annually, above which public contracts must be advertised through the Official Journal of the European Union.

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**Feasibility study:** an evaluation of a proposed project to determine the difficulty and likely success and benefits of implementing the project.

**Framework Agreement:** An arrangement under which a Procuring Entity establishes with a provider of goods, works or services, the terms under which contracts subsequently can be entered into or called off (within the limits of the agreement when particular needs arise).

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**Invitation to Tender (ITT):** An invitation to contractors, suppliers or service providers to bid for the provision of works, goods or services.

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**Key Performance Indicators (KPIs):** Indicators that help to measure the performance of suppliers against their contractual obligations.

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**Material Project Information (MPI):** MPI in this context is intended to indicate that information disclosed on a project is sufficient to enable stakeholders to make informed judgements about the cost and quality of the infrastructure concerned.

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**Negotiated procedure:** A procedure within the EU Procurement Directives that allows contracting authorities to negotiate with more than one supplier.

**Non-conformance:** The failure of services and/or material supplied by a supplier to conform to technical specifications and/or terms of reference incorporated in the contract.

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**Offer:** An offer can be the positive answer issued by a tenderer in response to a tender invitation, or an announcement to deliver goods, carry out works and/or services to every or a specific buyer without a specific request or invitation to tender. Also refers to an expression of readiness by a tenderer to enter into a contract.

**Open procedure:** A procedure within the EU Procurement Directives where all eligible applicants can tender.

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**Pre-qualification:** The process that selects prospective suppliers for a tender list. It involves their assessment judged against pre-set and objective criteria.

**Pre Qualification Questionnaire (PQQ):** A questionnaire completed by companies that wish to be considered for a procurement activity. The purpose is to assess the company's general suitability in terms of financial and economic standing, technical capability and experience, quality assurance, health and safety procedures, environmental issues and equalities considerations.

**Procurement:** The process of acquiring goods, works and services, covering acquisition from third parties and from in-house providers. The process spans the whole life cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset.

**Procurement regulation:** legal restrictions that guides the process of procuring goods and services

**Procuring Entities (PEs – also referred as clients and contracting authorities):** The State, regional or local authorities, bodies governed by public law or associations formed by one or several of such authorities that procure works, goods and services with full or part public funding.

**Project budget:** an amount of money allocated to a project or scheme

**Project specification:** is an essential part of the design, and states how the work should be executed to ensure that it meets the designer's assumptions.

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**Restricted tendering:** A procedure within the EU Procurement Directives open only to certain prequalified tenderers and implementing a format method of procurement.

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**Tender:** An official written offer to an invitation that contains a cost proposal to perform the works, services or supplies required, and is provided in response to a tendering exercise. This normally involves the submission of the offer in a sealed envelope to a specified address by a specified time and date

**Tender Documents:** Documents provided to prospective tenderers when they are invited to tender and that form the basis on which tenders are submitted, including instructions to tenderers, contract conditions, specification, pricing document, form of tender and tenderers responses

**Tender Evaluation:** Detailed assessment and comparison of contractor, supplier or service provider offers, against lowest cost or most economically advantageous (cost and quality based) criteria.

**Transparency:** In the context of the CoST initiative transparency relates to the disclosure of material project information on construction projects.

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**Value for Money:** The optimum combination of whole-life cost and quality to meet the PEs and user's requirement.



## Appendix B: Sample Project Summaries

### BROADLAND HOUSING ASSOCIATION Sample Project Summary

<b>Procuring Entity</b>	Broadland Housing Association
<b>Project Name</b>	Hall Close, Bodham
<b>Design Contractor</b>	<u>Pre Contract</u> Architect – Richard Pike Associates Engineer – Scott Wilson <u>Post Contract</u> Draper & Nichols
<b>Project Supervisor</b>	Davis Langdon
<b>Main Contractor</b>	Draper & Nichols
<b>Start Date of Main Contract for Works</b>	16 March 2007
<b>Practical Completion Date of Main Contract for Works</b>	14 February 2008
<b>Works Contract Price (Pre-construction)</b>	£890,926.00
<b>Actual Works Contract Cost</b>	£906,295.00

#### 1. Project Overview

The scheme, which comprises 10 new homes – eight for affordable rent and two for part-buy part-rent was completed in February 2008. The new homes have achieved an EcoHomes rating of “Very Good”. They have been built using a modern method of construction with high levels of insulation, making them extremely affordable to run. The installation of mains gas to the scheme has enabled neighbours in nearby private properties to connect to the supply, and tackled the issue of fuel poverty which affects so many rural communities.

#### 2. Procurement Strategy and Contract Type for Design

##### Pre Contract

The pre contract design team was selected from the PE’s list of approved consultants and comprised an architect and engineer to provide design services up to and including RIBA stage D. The appointments were on the consultant’s standard terms and conditions of engagement.

##### Post Contract

Design was managed by the main contractor with a requirement for the pre contract team to be employed by the main contractor.

### 3. Procurement Strategy and Contract Type for Project Supervision

Project Supervision was undertaken via an Employer’s Agent selected from the PE’s list of approved consultants. The appointment was on the consultant’s standard terms and conditions.

### 4. Procurement Strategy and Contract Type for the Main Contract for Works

The works were undertaken through a single Design and Build Contract using the JCT Standard Form of Contract with Contractors Design 1998 Edition incorporating amendments 1 to 5 and further minor PE’s amendments. Contractor selection was from the PEs list of approved contractors via a single stage design and build tender issued to 4 contractors. This was in accordance with the PE’s approved procedures.

#### BROADLAND HOUSING ASSOCIATION Sample Project Summary

<b>Procuring Entity</b>	Broadland Housing Association
<b>Project Name</b>	Norwich Road, Dereham
<b>Design Contractor</b>	<u>Pre Contract</u> Architect – Ingleton Wood Engineer – Scott Wilson <u>Post Contract</u> John Youngs
<b>Project Supervisor</b>	Davis Langdon
<b>Main Contractor</b>	John Youngs Limited
<b>Start Date of Main Contract for Works</b>	12 February 2007
<b>Practical Completion Date of Main Contract for Works</b>	11 September 2008
<b>Works Contract Price (Pre-construction)</b>	£6,180,596.00
<b>Actual Works Contract Cost</b>	£6,225,586.55

#### 1. Project Overview

Design and construction of 65 dwellings together with associated site works and drainage in the Norfolk market town of Dereham. The new properties consist of 21 flats, 2 wheelchair bungalows and 42 houses. The new homes, 45 of which are rented and 20 of which are for part buy/part rent (shared ownership) have been built using a modern method of structurally insulated panel construction which provides high insulation properties and keeps space

heating costs as low as possible and achieved an Eco Homes “Very Good” rating. The development also included the installation of high level safety fencing for the nearby Cricket Club, and the inclusion of large open spaces within the design of the scheme for the use of the community.

## 2. Procurement Strategy and Contract Type for Design

### Pre Contract

The pre contract design team was selected from the PE’s list of approved consultants and comprised an architect and engineer to provide design services up to and including RIBA stage D. The appointments were on the consultant’s standard terms and conditions of engagement.

### Post Contract

Design was managed by the main contractor with a requirement for the pre contract team to be employed by the main contractor.

## 3. Procurement Strategy and Contract Type for Project Supervision

Project Supervision was undertaken via an Employer’s Agent selected from the PE’s list of approved consultants. The appointment was on the consultant’s standard terms and conditions.

## 4. Procurement Strategy and Contract Type for the Main Contract for

The works were undertaken through a single Design and Build Contract using the JCT Standard Form of Contract with Contractors Design 1998 Edition incorporating amendments 1 to 5 and further minor PE’s amendments. Due the value of the main contract works contractor selection was through an OJEU Works Contract Notice using the Restricted Procedure. This notice stated that 5 contractors would be selected for a 2 stage competitive tender. The stage one tender was based on a cost plan with Contractors pricing based on preliminaries and over heads and profit, the second stage being negotiation of the construction works using the planning drawings and the previously tendered preliminaries and overheads and profit.

### **BROADLAND HOUSING ASSOCIATION Sample Project Summary**

<b>Procuring Entity</b>	Broadland Housing Association
<b>Project Name</b>	Kitchen Refurbishment Scheme
<b>Design Contractor</b>	Mears Group PLC
<b>Project Supervisor</b>	Broadland
<b>Main Contractor</b>	Mears Group PLC
<b>Start Date of Main Contract for Works</b>	01/04/2009
<b>Practical Completion Date of Main Contract for Works</b>	31/03/2010

<b>Works Contract Price (Pre-construction)</b>	£731,600
<b>Actual Works Contract Cost</b>	£737,800

### **1. Project Overview**

The yearly kitchen replacement programme for various properties around Norfolk and Suffolk, in relation to Decent Homes standards.

### **2. Procurement Strategy and Contract Type for Design**

The whole partnership was procured through an OJEU process and the successful tenderer was Mears Group PLC (formerly Spring Grove). The contract used is TPC and is for 5 years with 2 yearly possible extensions. The kitchen programme is part of the partnering agreement and is called off each year.

### **3. Procurement Strategy and Contract Type for Project Supervision**

Project supervision is carried out in house by Broadland.

### **4. Procurement Strategy and Contract Type for the Main Contract for Works**

Mears carry out both the design and the works.

## DURHAM COUNTY COUNCIL Sample Project Summary

<b>Procuring Entity</b>	Durham County Council
<b>Project Name</b>	Durham Johnston Comprehensive School Replacement
<b>Design Contractor</b>	Turner and Townsend
<b>Project Supervisor</b>	Turner and Townsend
<b>Main Contractor</b>	GB Building Solutions
<b>Start Date of Main Contract for Works</b>	24 September 2007
<b>Practical Completion Date of Main Contract for Works</b>	14 April 2009
<b>Works Contract Price (Pre-construction)</b>	£23,812,507
<b>Actual Works Contract Cost</b>	£24,279,471

### 1. Project Overview

A new 1450 Place Comprehensive School on one site of a split-site school. Enabling works of £1.2 million preceded the works contract. The scheme included the complete renewal of grounds and playing fields. Planning considerations, including the position of the site on the rim of the "Durham Bowl" with potential impact on views from the tower of Durham Cathedral, dictated the location of the buildings. Architecturally, the scheme was required to reflect the standing of this popular and high performing school on a highly trafficked urban route through the City. Facilities were enhanced substantially during the construction period by contributions from the School for furniture and equipment. Although funded initially from DCSF and land sales, the project was subsumed into the Councils BSF programme and became its first completed BSF school.

### 2. Procurement Strategy and Contract Type for Design

Bids were obtained from members of the OGC Buying Solutions Project Management and Full Design Services Framework together with a bid from the Council's then Strategic Building Alliance partner on the basis that the works contract would be Design and Build with novation of the design team to the works contractor. The Project Manager and Cost Manager remained with the Council throughout.

Bids were assessed on both quality and cost with each bidder making a written quality submission and a presentation from the whole team. The successful team was Turner and Townsend incorporating Architects Ryder HKS.

### 3. Procurement Strategy and Contract Type for Project Supervision

Project supervision was included in the design services bid and Turner and Townsend remained with the Council as Project Managers and Cost Managers.

#### 4. Procurement Strategy and Contract Type for the Main Contract for Works

Due to the scale of the project and commensurate time and cost risks to the Council it was decided to seek tenders on a Design and Build basis. When the project came into the BSF programme the form of contract was specified as the Partnerships for Schools Design and Build Contract.

Tenders were obtained through a OJEU process for a two-stage appointment. At RIBA Stage D a preferred contractor was selected, GB Building Solutions, following a quality and price submission with prices based on overhead and profit percentages, preliminaries costs and pre-construction costs. As part of the quality selection the bidders took part in a value engineering exercise to identify possible savings and give early assurance on affordability of the proposals. In RIBA Stage E the preferred contractor worked with the design team to refine proposals and obtain work package prices leading to an agreed fixed price. At that point the designers were novated to the contractor (in parallel, the Council's in-house works department carried out a range of enabling works including demolitions and temporary accommodation to release the new-build site area).

#### DURHAM COUNTY COUNCIL Sample Project Summary

<b>Procuring Entity</b>	Durham County Council
<b>Project Name</b>	Peterlee Eden Primary School
<b>Design Contractor</b>	Durham County Council
<b>Project Supervisor</b>	Durham County Council
<b>Main Contractor</b>	Morgan Ashurst
<b>Start Date of Main Contract for Works</b>	10 <sup>th</sup> Sep 2007
<b>Practical Completion Date of Main Contract for Works</b>	26 <sup>th</sup> Sep 2008
<b>Works Contract Price (Pre-construction)</b>	£4,746,670.00
<b>Actual Works Contract Cost</b>	£5,332,039.00

#### 1. Project Overview

The construction of a new primary school on the former and demolished Ellison Primary school site. The new school replaces a school erected in 1954 housed in separate buildings to house the infant and junior schools. These buildings have been demolished under a separate contract. The new school has a capacity for 390 pupils plus a 39 place nursery and the new school buildings included accommodation for a separate children's centre. Accommodation was provided to enable the school to provide extended services such as after school clubs, a training/meeting room for parents and accommodation for the multi-agencies that use the premises. The scheme included within the site boundary the provision

of new car parking, play grounds, multi-use games area and playing fields. The scheme is part of the County Council's strategy to remove surplus places across the county.

## 2. Procurement Strategy and Contract Type for Design

The scheme was designed in house by Durham County Council design services and there was no requirement for the Durham County consultant frameworks to be used, or for a design tendering process.

## 3. Procurement Strategy and Contract Type for Project Supervision

The Project supervision was included with the in house Durham County Council design services package provided and there was no requirement for the Durham County consultant frameworks to be used, or for a design tendering process.

## 4. Procurement Strategy and Contract Type for the Main Contract for Works

A bill of quantities was prepared, as this was considered to be most appropriate for this scheme, and the tenders were sought using the JCT Standard Form of Building Contract (with quantities) 2005 Edition.

An OJEU notice was issued for the project and expressions of interest were received from 21 companies. 6 Companies were short listed for tender, after the expressions of interest had been evaluated. All of these companies submitted formal tenders for the works to be completed within the 50 week construction period identified in the contract documents. The lowest priced tender submitted by Morgan Ashurst was accepted.

### DURHAM COUNTY COUNCIL Sample Project Summary

<b>Procuring Entity</b>	Durham County Council
<b>Project Name</b>	Seaham Trinity Primary School
<b>Design Contractor</b>	Durham County Council
<b>Project Supervisor</b>	Durham County Council
<b>Main Contractor</b>	Surgo Construction Ltd
<b>Start Date of Main Contract for Works</b>	10 <sup>th</sup> September 2007
<b>Practical Completion Date of Main Contract for Works</b>	22 <sup>nd</sup> August 2008 (Phase 1) 13 <sup>th</sup> March 2009 (Phase 2)
<b>Works Contract Price (Pre-construction)</b>	£5,318,179.61
<b>Actual Works Contract Cost</b>	£4,866,970.11

## **1. Project Overview**

The construction of a new primary school on the former playing fields of Seaham Princess Road School. The new school replaces three separate schools, Camden Sq Infants School, Parkside Infants School and Seaham Princess Road School. These buildings have now all been demolished, one as part of the main project and two under separate contracts. The new school has a capacity for 390 pupils plus a 39 place nursery. Accommodation was provided to enable the school to provide extended services such as after school clubs, a training/meeting room for parents and accommodation for the multi-agencies that use the premises. The scheme included within the site boundary the provision of new car parking, play grounds, multi-use games area and playing fields. The scheme is part of the County Council's strategy to remove surplus places across the county. The project was carried out in 2 phases. The first phase comprised the construction of the new school which had to be completed before Phase 2 could commence. Phase 2 comprised the demolition of the old Princess Road School and the construction of the car park, new multi-use games area and completion of external landscaping.

## **2. Procurement Strategy and Contract Type for Design**

The scheme was designed in house by Durham County Council design services and there was no requirement for the Durham County consultant frameworks to be used, or for a design tendering process.

## **3. Procurement Strategy and Contract Type for Project Supervision**

The Project supervision was included with the in house Durham County Council design services package provided and there was no requirement for the Durham County consultant frameworks to be used, or for a design tendering process.

## **4. Procurement Strategy and Contract Type for the Main Contract for Works**

The project was procured under a two stage strategy utilising the NEC Standard Form of Engineering and Construction Contract; Option C Target Cost Contract with Activity Schedule; November 2000. An OJEU notice was issued for the project and expressions of interest were received from 18 companies. 6 Companies were short listed for tender, after the expressions of interest had been evaluated. Following issue of tender documentation which included preliminaries, contract requirements and a priced activity schedule all of the selected companies submitted formal tenders. The tenders included details of the construction strategy, works programme, priced preliminaries, pre-construction costs and an overhead and profit percentage. The submissions were evaluated and the tender submitted by Surgo Construction Ltd was accepted and they were appointed for the pre-construction phase/2<sup>nd</sup> Stage. The pre-construction phase/2<sup>nd</sup> Stage involved development of the design, production of drawings and the agreement of the target cost. Following successful completion of the pre-construction/2<sup>nd</sup> Stage Surgo Construction Ltd were appointed as main contractors for the project.



## ENVIRONMENT AGENCY Sample Project Summary

<b>Procuring Entity</b>	The Environment Agency
<b>Project Name</b>	Bampton
<b>Design Contractor</b>	Halcrow
<b>Project Supervisor</b>	Halcrow
<b>Main Contractor</b>	In House Operation
<b>Start Date of Main Contract for Works</b>	
<b>Practical Completion Date of Main Contract for Works</b>	
<b>Works Contract Price (Pre-construction)</b>	240,469.00
<b>Actual Works Contract Cost</b>	233,000.00

### 1. Project Overview

The project was to improve the standard of protection using embankment, walls and a gate just upstream of Bampton. It was a very small scale works package but very effective.

### 2. Procurement Strategy and Contract Type for Design

The Environment Agency's area design staff undertook the hydrology and the hydraulic design in house. Halcrow were appointed as designers of the civils element of the scheme. The Consultant was awarded the feasibility, design and project supervision elements under The Environment Agency's National Engineering and Environmental Consultancy Agreement (NEECA) Framework 1 system by direct award based on their work load not the new mini-bid completion system used in NEECA 2.

### 3. Procurement Strategy and Contract Type for Project Supervision

Design and site supervision were direct awarded to Halcrow under previous framework arrangements due to small nature of project.

### 4. Procurement Strategy and Contract Type for the Main Contract for Works

Because of the very small size of the scheme the works element was undertaken by Environment Agency's Operations Delivery term (In-house work force 'Operations Delivery'). The scope did not change. There were design improvements made during the construction period and design changes were needed when excess water was found.

## ENVIRONMENT AGENCY Sample Project Summary

<b>Procuring Entity</b>	The Environment Agency
<b>Project Name</b>	Hunstanton (Heacham & Snettisham Beach Renourishment)
<b>Design Contractor</b>	Jacobs (then Babtie Brown & Root)
<b>Project Supervisor</b>	Jacobs (then Babtie Brown & Root)
<b>Main Contractor</b>	Jackson Civil Engineering
<b>Start Date of Main Contract for Works</b>	July 2005
<b>Practical Completion Date of Main Contract for Works</b>	21 Nov 2005
<b>Works Contract Price (Pre-construction)</b>	4,496,000.00
<b>Actual Works Contract Cost</b>	4,233,000.00

### 1. Project Overview

The works included in this contract were part of a five year strategy carried out by the Environment Agency to reduce the risk of coastal flooding between Hunstanton and Snettisham on the North west coast of Norfolk. Over the course of the five year strategy works included at Heacham Dam the construction of a flexible concrete block revetment with a small concrete wave wall. At Snettisham Scalp, a flexible concrete revetment of alternating block sizes was constructed to provide stepped access to the lower foreshore with the crest revetment constructed of solid blocks. The construction of new concrete stepwork revetment between Kala Juga boat ramp and Jubilee boat ramp which was laid over the existing flexible concrete revetment. The raising of the wave return wall, construction of a new pedestrian access and access steps and the rebuild of the boat ramp all at Hunstanton and, the extension of the outfall at Heacham to enable the subsequent re-nourishment works at Heacham to take place.

The contract of works for Beach Renourishment involved the re-nourishment of the 'soft' defences by importing (by barge) material dredged from the sea bed and placing this material on the beaches at Heacham and Snettisham to defined profiles.

### 2. Procurement Strategy and Contract Type for Design

Jacobs (then Babtie Brown & Root) were directly awarded the 'over-arching' Hunstanton Heacham Sea Defence Project under The Environment Agency's National Engineering and Environmental Consultancy Agreement (NEECA) Framework. The project covered the full five year strategy of which the above works/contract formed part.

### 3. Procurement Strategy and Contract Type for Project Supervision

Jacobs (then Babtie Brown & Root) were directly awarded the project supervision as part of the Hunstanton Heacham Sea Defence Project under the The Environment Agency's National Engineering and Environmental Consultancy Agreement (NEECA) Framework.

#### 4. Procurement Strategy and Contract Type for the Main Contract for Works

This contract went out to competitive tender to five contractors who had previously been short listed from an initial list of twelve companies who had expressed an interest in tendering following OJEU advertisement.

##### ENVIRONMENT AGENCY Sample Project Summary

<b>Procuring Entity</b>	The Environment Agency
<b>Project Name</b>	Fordingbridge
<b>Design Contractor</b>	Halcrow Group Ltd
<b>Project Supervisor</b>	Halcrow Group Ltd
<b>Main Contractor</b>	Team Van Oord
<b>Start Date of Main Contract for Works</b>	May 2005
<b>Practical Completion Date of Main Contract for Works</b>	May 2006
<b>Works Contract Price (Pre-construction)</b>	£3,909,000
<b>Actual Works Contract Cost</b>	£5,372,000

#### 1. Project Overview

The town of Fordingbridge in Hampshire has a population of approximately 5,500. The principal watercourses present are the River Avon, Ashford Water and Sweatsford Water, which have subjected the town to eight notable flood events between 1960 and 2001. These were typically of long duration due to the nature of the Avon catchment. Due to the repeated disruption, cost and resulting health effects to the residents provision of a flood alleviation scheme for the town was considered important. A flood defence scheme was therefore progressed through the Agency's Capital Programme.

The flood defence was designed through the integration of engineering, environmental and economic considerations and comprises:

- New flood defence structures (banks and walls) around properties at risk from fluvial flooding;
- A 5km long bypass channel to divert peak flood flows away from the town;
- Improvement of surface drainage, including pumping station, to reduce the impact of rising groundwater and pollution from sewage;
- Upgrading watercourses to improve their conveyance capability and the ecology of the area.

- Designed to reduce the risk of flooding to 1% (1:100 year return period)

## **2. Procurement Strategy and Contract Type for Design**

Halcrow Group Ltd were directly awarded a Professional Services Contract (PSC) to appraise, design and supervise the project under The Environment Agency's National Engineering and Environmental Consultancy Agreement (NEECA) Framework. The project covered the full four year period of which the above works/contract formed part.

## **3. Procurement Strategy and Contract Type for Project Supervision**

As explained in 2. above.

## **4. Procurement Strategy and Contract Type for the Main Contract for Works**

The construction contract was awarded to Team Van Oord under The Environment Agency's National Contractors Framework (NCF). TVO also worked with the project team during the appraisal and design stages of the project on a Professional Services Contract (PSC) providing "Early Contractor Involvement" (ECI) advising on how particular designs could be constructed and estimating costs of options to ensure that most economic design option was progressed.

## HIGHWAYS AGENCY Sample Project Summary

<b>Procuring Entity</b>	Highways Agency
<b>Project Name</b>	A1 Bramham to Wetherby Upgrading
<b>Design Contractor</b>	Atkins
<b>Project Supervisor</b>	Pell Frischmann Consultants
<b>Main Contractor</b>	Balfour Beatty
<b>Start Date of Main Contract for Works</b>	October 2003 (ECI inc prep and works) (Start date of construction: May 2007)
<b>Practical Completion Date of Main Contract for Works</b>	June 2010
<b>Works Contract Price (Pre-construction)</b>	£43,500,000.00
<b>Actual Works Contract Cost</b>	£48,600,000.00

### 1. Project Overview

This section of the A1 forms part of the strategic route between London and Edinburgh as well as providing a trunk road link to principal towns. It involves widening the existing D2AP section of A1 around Wetherby to three-lane motorway with construction of a new bridge over the River Wharfe, and replacement of the existing bridges at Wetherby Grange and Walton Road. The project also involves upgrading the D3AP section of A1 between Bramham Crossroads and Grange Moor Junctions to D3M standard, closing junctions at Bramham, Wetherby Grange and Walton Road and providing a supporting local access road network and network for cyclists, horse riders and pedestrians.

### 2. Procurement Strategy and Contract Type for Design and Construction Works

The Design and Construction Works for this project were procured through its own OJEU procurement process. A two stage procurement process used. Following prequalification 5 companies were invited to submit an offer. The successful contractor was appointed to design and construct the scheme based on a quality and price contract award criteria. The contract form was NEC Engineering and Construction Contract: Option C with activity schedule.

### 3. Procurement Strategy and Contract Type for Project Supervision

The Highways Agency's supervisor was appointed from the Project Support Framework to provide support services, including supervisor duties under the NEC Engineering and Construction Contract and provide such assistance as is required by the HA EC Project Manager to enable him to perform his duties within the EC Contract.

## HIGHWAYS AGENCY Sample Project Summary

<b>Procuring Entity</b>	Highways Agency	
<b>Project Name</b>	A2 Bean Cobham - Phase 2 Pepprhill to Cobham	
<b>Design Contractor</b>	Amey	
<b>Project Supervisor</b>	Hyder / Mouchel	
<b>Main Contractor</b>	Skanska Construction Ltd	
<b>Start Date of Main Contract for Works</b>	31 July 2003	Start of Construction Works 9 September 2006
<b>Practical Completion Date of Main Contract for Works</b>	27 February 2009	
<b>Works Contract Price (Pre-construction)</b>	£95,952,670.00	
<b>Actual Works Contract Cost</b>	£104,989,982.00	

### 1. Project Overview

The A2 Bean to Cobham Phase 2 Scheme was the section of the A2 from Pepperhill to Cobham. It included the widening of the carriageway from dual three lane carriageway with hard shoulders to dual four lane carriageway with hardshoulders. It consisted of 4.5km offline widening (new build) and 3km of online widening, (widening the existing carriageway). It also included two new grade separated junctions, a road bridge carrying a side road over the A2 and two new footbridges over the A2. The 4.5km section of the old A2 has been landscaped and includes a combined footway/cycleway along its length, together with a separate equestrian route.

### 2. Procurement Strategy and Contract Type for Design

The Design and Construction Works for this project were procured through its own OJEU procurement process. A two stage procurement process used.

The Contractors who tendered for the contract appointed their own designers, who were involved in the bid process. The designers were appointed by the contractors based on collaboration on previous schemes.

### 3. Procurement Strategy and Contract Type for Project Supervision

The project supervisor role was appointed from a National Highways Agency Project Support Framework. The Framework runs from July 2006 to July 2010.

The project supervisor appointed to this project was selected from the list of Type A Service suppliers.

No competition or bidding process was involved in the framework call-off process.

The contract used for the project supervision role was the Consultancy Framework for Design Services and Project Management Support Framework.

#### 4. Procurement Strategy and Contract Type for the Main Contract for Works

This was a Highways Agency hybrid ECI Contract (Early Contractor Involvement). It was a two stage tendering process, with the emphasis on quality. It was a hybrid contract because the Highways Agency set the initial Target Cost, this was given to tenderers to accept at tender stage.

The object of an ECI contract is to get a contractor involved in the early stages of a contract so their expertise can be used to identify and minimise the area of land to be included in the Compulsory Purchase Order, and to bring innovation and buildability to the design and construction methods to enhance value for money.

#### HIGHWAYS AGENCY Sample Project Summary

<b>Procuring Entity</b>	Highways Agency
<b>Project Name</b>	A419 Blunsdon
<b>Design Contractor</b>	Mouchel
<b>Project Supervisor</b>	WSP UK
<b>Main Contractor</b>	Carillion (formerly Alfred McAlpine)
<b>Start Date of Main Contract for Works</b>	11 September 2006
<b>Practical Completion Date of Main Contract for Works</b>	31 March 2009
<b>Works Contract Price (Pre-construction)</b>	£34,570,706.00
<b>Actual Works Contract Cost</b>	£41,002,587.00

#### 1. Project Overview

This scheme has provided a dual carriageway bypass to the west of Blunsdon. At the southern end, Turnpike Roundabout has been replaced by two signal controlled junctions with a local road connecting them, a new junction at Turnpike and another close to Lady Lane, which is on a new bridge over the bypass. This allows access to Blunsdon and Swindon and allows traffic to flow freely on the A419. Turnpike Junction maintains access to Cricklade Road and Thamesdown Drive. A dedicated pedestrian/cycle way has been provided on the local connecting road. Pedestrian/cycle phases have been incorporated in the signalised Lady Lane Junction

## **2. Procurement Strategy and Contract Type for Design**

See 4.

## **3. Procurement Strategy and Contract Type for Project Supervision**

Project supervision was procured through the Project Support Framework.

## **4. Procurement Strategy and Contract Type for the Main Contract for Works**

The project was procured through the ECI process. The main contractor is Carillion and Mouchel are their designer. The Contract is NEC 2 Option C Target Cost with Activity Schedule.