

Elland Access Package Main Works - Procurement Strategy

Project Name:	Elland Access Package
Date:	April 2024
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Funding:	WYCA (West Yorkshire-plus Transport Fund & Transforming Cities Fund)
Version No:	V1.3

Note: This document is only valid on the day it was printed.

Document Location

The source of the document will be found at this location:

T:\Transportation\Elland Rail Station & Access\3 Legal & Commercial\3.1
Procurement\Procurement Strategy

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1. Executive Summary

The purpose of this document is to set out the procurement routes available to the Elland Access Package scheme for the main works and set out a recommendation.

The strategy will also identify the most appropriate contracts for engagement of the Contractor.

The procurement types considered for the scheme are as follows:

- Traditional
- Single Stage Design and Build
- Two Stage Design and Build

The contract types considered are as follows:

- NEC4 Option A
- NEC4 Option C

Ultimately, the strategy will recommend that the Elland Access Package main works adopts the method of a 2-Stage Design and Build procurement under the NEC4 Option A contract.

2. Project Introduction

The Elland Access Package is a Calderdale led project, which is coupled with Elland Rail Station, a West Yorkshire Combined Authority (WYCA) led scheme. The project is jointly funded by both the West Yorkshire-plus Transport Fund (WY+TF) and Transforming Cities Fund (TCF).

The scheme includes the provision of two new pedestrian and cycle bridges in Elland and West Vale. It will also see the upgrade of walking and cycling routes to the new station, including shared cycleway and footway, along with public realm enhancements.

The bridge design, retaining walls and canal tow path widening have been designed to an advanced outline stage for planning approval, land requirements identification and the Outline Business Case (OBC). The contractor will take these designs and performance specification and finalise the detailed and construction ready designs.

Other minor route improvement elements of the scheme which include small scale kerb realignment, additional gully connections and upgrade of surfacing will be undertaken by Highways minor framework contractors.

The current contract, through highways professional services provider, employs consultant JBA up to delivery, with further extension of their services through delivery also being explored. JBA have completed proposed Stage-1 tender documentation and sent to project team for review.

The project has previously engaged with the YORcivil Framework to procure future contractors. An initial Expression of Interest (EoI) was released on 25/05/2021, to obtain information on the market's preferred procurement approach.

High level contractor involvement to review and price particular elements of the scheme has been utilised.

Further to this, Expression of Interest was released to the Framework Manager on 08/01/2024, with an accompanying pre-tender briefing on 18/01/2024. 14 out of the 16 involved contractors expressed interest to participate in the subsequent Stage-1 tender.

Decision to approve the recommended procurement strategy for the main works is required to continue procurement activities and prevent possible delays in awarding the future contract(s).

3. Procurement Routes

The procurement options that have been identified for the scheme are as follows:

- Traditional
- Single Stage Design and Build
- Two Stage Design and Build

3.1 Traditional

Overview

With Traditional Contracting, design is clearly and separated from the construction phase. There are three key teams in the procurement process: the Employer, the Designer, and the Contractor.

The traditional procurement route sees the client appoint a consultant to design the project in detail. Bills of quantities are usually drawn up by the cost consultant and an estimated cost produced once the pre-contract design is complete.

At an appropriate stage, usually RIBA stage 4 (for applicable projects), Contractors are invited to tender for the works and submit a price, quantifying and costing every specific work item from the bills of quantities and or a specification. Tenders are submitted and a Contractor is selected. The Contractor agrees to deliver exactly what has been drawn and specified in the documents and therefore has no design liability.

The client can retain the consultant design team for design responsibility and liability post-contract during the construction phase to prepare any additional design information that may be required.

Advantages

- Traditional Contracting can allow for a greater level of cost comparison between tendering parties, therefore allowing the client to choose based on the lowest price/highest quality.
- It allows the client more time to invest in detailed design.
- During design, the client has a more direct relationship with design consultants, allowing more control and input into detailed design.
- The Employer has the flexibility to change a design element during construction (at a cost).

Disadvantages

- Traditional Contracting is considered a slower method of procurement as the detailed design and specification need to be completed prior to tendering the works and a long tender period is required to accurately price the works during the tender period.
- With the contractor having no input into design, this could lead to constructability issues.

- As the employer remains responsible for the detailed design, any lack of accuracy in this design is corrected at the Employer's expense.
- Cost certainty can only really be attained once the works have been tendered, which takes place once the design is substantially complete. Should the submitted tenders be significantly higher than the cost estimate prepared by the cost consultant, therefore requiring a significant redesign to reduce costs, then there will be a substantial amount of abortive design and cost. This will delay the project by many months.
- Traditional contracting does not facilitate Early Contractor Involvement.

3.2 Design and Build

Overview

In Design and Build, the Employer provides the Contractor with a set of performance requirements defining what is to be provided. The Contractor responds with a contractor's proposal, including prices for the required works and any remaining design.

The Employer and Contractor negotiate to ensure the contractor's proposals accurately reflect the Employer's requirements (Works Information (NEC3) / Scope (NEC4)) and agree a mutually acceptable specification.

Under this form of contract, the Contractor is solely responsible for design, fabrication and co-ordination of the works as described in the contractor's proposals, including the appointment of specialist consultants and Sub-contractors.

The Employer will usually utilise a separate consultant to prepare the Employer's requirements and to monitor the progress and quality of the works on site.

Advantages

- Under Design and Build, the Contractor is responsible for all aspects of the work. This "single point" responsibility can be highly attractive and advantageous to the Employer.
- Design and Build can offer more cost certainty as the Contractor is obliged to do whatever is necessary to comply with the contractual requirements.
- Cost certainty can be attained at an earlier stage if there is early Contractor involvement in the design and abortive costs are therefore less likely.

Disadvantages

- Tendered costs may be slightly higher than with other procurement routes to cover the Contractor's liability or risk.
- Reduced influence of the Employer could lead to quality control concerns.
- It is costly to vary the works once the contract has been engaged.

Within a Design and Build procurement route, there are two options:

- Single Stage
- Two Stage

3.3 Single Stage Design and Build

Overview

The Single-stage Design and Build approach requires the design to be developed to a certain stage at which point the work is tendered and a fixed price obtained for the works. A detailed set of Employer's requirements will also be prepared along with other key information to set out exactly what the Employer requires, and this will form part of the tender documentation.

Advantages

- Time advantage as design work does not have to be completed before construction works can begin.
- Selection of the Contractor can be made on both financial and quality aspects of the tender submission with a single stage tender.
- Contractors are more likely to take on risk through a single-stage tender as they are in competition.
- Provides the Client with an early contractual commitment on price, creating further cost certainty.
- The Client and the Contractor have a clear statement of risk allocation in the Contract.
- Further time advantage due to there being no negotiation period.

Disadvantages

- The firm price is only as good as the design information on which it is based.
- Changes introduced by the Client or Design Team will undermine the certainty achieved with a lump-sum tender.
- The Contractor's bids are based on logistics options prescribed in the tender documentation and may not represent the best value solution.
- Single-Stage bids are more resource-intensive and Contractors have a lower chance of winning a job (relative to the cost to them of tendering).
- Single-Stage traditional procurement offers limited scope for a team to develop a shared objective or for a Contractor to contribute to design development.
- The Client has a limited opportunity to influence the selection of Specialist Contractors.
- Sequential design and construction removes opportunities for acceleration of the overall programme.
- Clarification of Contractor's Proposals related to Contractor-Designed work may take an extended period.
- Contractors will most likely be unwilling to tender for Single Stage Design and Build Contracts in a good economic climate. They are only likely to tender during an economic downturn or where they are needing work.

3.4 Two Stage Design and Build

Overview

The Two Stage Design and Build procurement route involves two stages to the tender.

The first stage invites tenderers to confirm what their overheads, profit and prelims (labour costs and plant costs) will be (the financial bid) and provide details on their experience, proposed team, track record, health & safety, etc. (the quality submission). The Contractor is selected on a combination of these two aspects of their bid submission.

The design is then worked up with the appointed Contractor to an agreed level of detail at which point the Contractor obtains costs from their Sub-contractors, to which the agreed overheads, profits and prelims are added to provide a fixed cost for delivering the works; this is the second stage. This is effectively an open book tender process, until the contract is entered.

Whilst this procurement route involves the Contractor much earlier, a guaranteed fixed price is not obtained for the works until Sub-contractor prices have been obtained on work packages.

A pre-construction fee is also commonly applicable under the Official Journal of the European Union (OJEU) or public compliant frameworks for the pre-construction activity work undertaken due to the Contractor's early engagement under a Two-stage Design and Build procurement route.

Advantages

- The Contractor is brought on board much earlier on in the design process and can therefore contribute to buildability and programme issues.
- The Contractor is selected on both cost and quality and a better quality of Contractor (often called tier 1) can be attracted to submit a tender.
- The Contractor will often approach more experienced Sub-contractors to reduce their risk on the project.
- If an Employer led design team has been engaged, part or all the design team can be novated to the Contractor, which is likely to help to protect the design integrity or quality.
- The overall programme can be reduced by involving the Contractor earlier.
- By tendering work packages on an open book basis, this enables a client-side cost consultant to be able to evaluate quotations received for work packages on behalf of the Employer. The outcome is that the Contractor is paid a fair or reasonable price for the works, which tries to ensure quality as the Contractor is less likely to cut corners.
- Risks can be mitigated earlier and passed to the Contractor.
- High level of interest from Contractors arising from low cost, low risk tendering process.
- Early appointment of the Contractor, potentially bringing forward the completion date of the Project.
- Competitive First-Stage through Contractors pricing of Preliminaries, Profit and Overheads.
- Promotes a specific focus during the later stages of design on issues of buildability and economic construction.
- Second-Stage tender should be based on more complete information and a better understanding of the scope of works, so the final account should be closer to the Contract Sum.

- Opportunity to obtain Contractor buy-in to the Client's viability model through agreement not to exceed costs at the end of Stage-One.
- Ability to continue the development of the design during the Second-Stage in conjunction with the Main Contractor and Specialist Subcontractors (with the benefit of his resources, expertise and collaborative working).
- Improved quality and efficiency of design (Contractor involvement in design development).
- Reduced Main Contractor bidding costs.
- Improved identification of Project risks within a timescale where action can be undertaken.
- Open-book approach to Subcontractor tendering.
- The opportunity to achieve the certainty of a fixed Contract Sum at the end of the Second-Stage before Contracts are executed.
- Ability to procure Work Packages ahead of First-Stage tender – to be incorporated into Second-Stage via novation.
- Client has no contractual commitment beyond the Pre-Construction Services Agreement (PCSA) prior to the completion of Stage-Two.
- Increased input of client and consultants during Second-Stage tender.

Disadvantages

- Attracting a tier 1 Contractor usually comes at a cost (often as much as 10%) due to the lack of competition during the second stage.
- Although a Contractor may sign up to a target cost, he will not commit to this until the design has been completed to the agreed stage and prices have been obtained from the Sub-contractors. The Contractor can walk away at any stage if an agreement cannot be reached. Cost certainty is therefore obtained at the same stage for both single-stage and two-stage approaches.
- Lack of price certainty in form of bid for works until the end of the first stage.
- Can be used to mask the inadequacy of design development on a Project.
- Costs of Second-Stage tenders tend to be higher because of negotiation premiums and the inclusion of additional risk transfer allowances. The Second-Stage tender could also provide the opportunity to talk up prices.
- Risk of price escalation, and negotiations becoming adversarial in the Second-Stage.
- Potential for a Contractor not to retain a focused commitment through the second stage of the tendering process (thereby not achieving the most advantageous and timely Work Package prices).

4. Contract Options

Within the NEC4 contract suite, there are six contract options available. These can be selected according to the preference of the Employer based on obtaining best value. The two most suitable contract options for the Elland Access Package are as follows:

- Option A: Priced contract with activity schedule
- Option C: Target contract with activity schedule

These options are compatible with both Traditional and Design and Build procurement routes.

4.1 NEC4 Option A

Overview

This option contains a priced lump sum contract. The lump sum contract is then linked to a contract programme with an activity schedule. Each activity on the schedule is then allocated a price.

Each interim payment is then made upon the completion of:

1. Each group of completed activities (without defect)
2. Each completed activity not within a group

Often used upon appointment of a contractor to carry out infrastructure, highways, buildings, and process plants. Can be used regardless of the level of design responsibility.

Advantages

- Simplified payment process – it's easier to measure when an activity is completed.
- Greater cost certainty than with a Target Cost option.

Disadvantages

- There is no provision for part payment.

4.2 NEC4 Option C

Overview

This option includes a target contract linked to an activity schedule. The target contract contains a price commonly referred to as a target cost.

Under Option C, the interim payment process is as follows:

1. The contractor submits an application for payment to the client's representative (often the Project Manager) on a monthly basis.

2. The application will contain a breakdown of the contractors' cumulative "defined cost" plus fee minus any "disallowed cost". This combined is known as the "Price for Work Done to Date" (PWDD).
3. The application is then reviewed by the client to ensure all cost is allowable under NEC
4. The agreed cumulative cost is then deducted from the amount previously paid under the contract. This amount is then paid to the contractor.

As the works progress the target cost may be adjusted to reflect any agreed Compensation Event.

Once the works are completed, the final "Defined Cost" plus fee and the Target Cost are compared. The difference between the two is then shared between the contractor and client. This is known as the "pain/gain" mechanism and the method of how the split is calculated will vary from project to project. For example, let's say there is an agreement that both pain and gain is split 50/50. The contractor finished work and the final PWDD is £800k. This, in comparison to the target cost of £1mil, means the project is £200k in gain. Due to the 50/50 "pain/gain" arrangement, the contractor will receive an extra £100k on top of their final PWDD. The final account will be issued to the contractor for £900k. Alternatively, assuming the same target cost in the previous example, the final PWDD could have been £1.2 million, resulting in a £200k pain. In this scenario and assuming the same 50/50 split arrangement is in place, the contractor's final account will be their PWDD minus £100k (£1.1 mil).

Advantages

- Allows for both parties to work collaboratively as the financial success or failure is shared by both client and contractor. This can reduce disputes.

Disadvantages

- Some share ranges can sometimes be disproportionately unfavourable.

5. Key Constraints

- Specialist design input will be required to include technical detail at detailed design stage, including bridge structures, piling and canal wall.
- Cost certainty is required before being Full Business Case (FBC) appraisal and Approval to Proceed (AtP) from the WYCA assurance process.
- Due to current uncertainty around both the Rail Station's costs and programme, additional cost certainty would be required before the combined FBC submission to inform any interim change requests for the scheme overall.
- TCF funding (currently £8,037,000 of the total £10,677,000) must be spent before the March 2027 deadline.

6. Recommendation

In light of the constraints and the options available, it is recommended that the Elland Access Package adopt a two stage design and build procurement route for the main works, using the NEC4 Option A contract.

The award of a single stage D&B would require the release of full funding from the WYCA as the Council would be entering into contract for the entirety of the works. This would only be possible after the FBC. The current interface programme suggests the combined FBC and AtP will be submitted in September 2025. Waiting until this time to commence procurement and start detailed design would critically delay the project and diminish cost certainty.

A two-stage design and build approach is recommended for the main works of Elland Access Package, as it successfully addresses the project's key constraints. Ultimately, it will provide early contractor involvement to secure additional cost certainty while allowing for specialist input into the detailed design.

Considering the design constraint that specialist technical input is required, a two stage design and build allows for the contractor to enlist specific suppliers and subcontractors to obtain relevant expertise. During the first stage, the progression of detailed design will help reduce the risk of scope change, while allowing for contractual and programme flexibility to develop cost effective solutions.

Early and ongoing costings by the contractor throughout the first stage of design will also allow for a more robust understanding of costs prior to FBC submission. This would be done without needing to financially commit to stage two costs before FBC and AfP. Effective risk management can also help us ensure the correct risk budgets are taken into delivery phase.

The open-book approach of a two stage design and build provides the opportunity for a collaborative relationship before getting to site, and a better understanding of the scheme at the time of its costing and FBC approval. This will allow the project team to better mitigate programme issues and deliver in a timely manner with fewer complications.

The main concern of a two stage design and build procurement route is based on contractors submitting non-competitive pricing for a second stage tender, due to lack of competition. To address such concerns, a period of retendering is allowed for within the programme, should it be felt that second stage costs received are not competitive. Assessment will be undertaken by both internal colleagues and external consultants to ensure value for money.

The increased certainty, and the involvement of the contractor in the design will provide the required clarity for both parties to be able to enter into a value for money, fixed price NEC4 Option A contract.

Overall, this approach allows for the required specialist input, increased cost certainty at FBC, as well as a better understanding the scheme risks and therefore programme. Given the wider Elland Rail Station and Access Package are likely to require further additional funding approvals (either prior to or at FBC), a mechanism to provide that cost

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certainty is of particular importance in ensuring the likely success of business case approval and project delivery.

It is therefore recommended that a two stage design and build, with NEC4 Option A for stage 2, procurement approach is endorsed.