



# A12 Suffolk's Energy Gateway Outline Business Case

Suffolk County Council

Commercial Case

B3553C02-JAC-XXX-00-REP-TR-0005 | P00

December 2017



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Project No: B3553C02  
Document Title: Commercial Case  
Document No.: B3553C02-JAC-XXX-00-REP-TR-0005  
Revision: P00  
Date: December 2017  
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Client No:  
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File Name: I:\UNIF\Projects\B3553C02  
A12\_Suffolk\_Energy\_Gateway\N\_Delivery\1\_Draft\_Response\In  
CRA\SEGway\_Commercial\_Case.docx

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### Document history and status

Revision	Date	Description	By	Review	Approved
P00	14/12/17	Final	JW	SJ	CMcG

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## 1. Introduction

### 1.1 Suffolk's Energy Gateway

A12 Suffolk's Energy Gateway (SEGway) comprises an improvement to the 4.5 mile (7 km) section between the B1078 at Wickham Market and the A1094 at Saxmundham in East Suffolk. It:

- Joins two sections of existing dual carriageway through a new offline alignment segregated from local roads.
- Bypasses the four communities of Marlesford, Little Glemham, Stratford St. Andrew and Farnham currently subject to all the adverse impacts of traffic.
- Incorporates upgrades to sub-standard junction layouts at both the B1078 and A1094 intersections.
- Enables an increase in local walking and cycling to essential services and the countryside.
- Starts construction in April 2021 and opens to the public in April 2023.

**Option LB1d** comprises a Dual Carriageway (70mph speed limit) version of the above.

**Option LB2s** comprises a Single Carriageway (60mph speed limit) version of the above.

### 1.2 Purpose of the Commercial Case

The Commercial Case outlines the commercial viability of the scheme, and the indicative procurement strategy which could be used to engage the market. It provides details on both contract and implementation timescales, as well as commentary on the capability and technical expertise of the team delivering the project.

The Commercial Case is discussed under the following headings:

- Outcome Based Specification
- Review of Procurement Options
- Cabinet Approval of Chosen Procurement Strategy
- Payment Mechanisms
- Contract Length
- Contract Management
- Risk Allocation and Transfer
- Procurement Programme
- Conclusion.

The Commercial Case also makes reference to discrete sections within the Management Case, namely project governance, the Assurance and Approval Plan, and the project programme.

### 1.3 Limitation Statement

The sole purpose of the report is to support the business case for the A12 Suffolk's Energy Gateway (SEGway) scheme.

The document should be read in full, with no excerpts to be representative of the findings. It has been prepared exclusively for Suffolk County Council, Suffolk Coastal District Council, Waveney District Council and the Department for Transport and no liability is accepted for any use or reliance on the report by third parties.

## 2. The Commercial Case

### 2.1 Outcome Based Specification

The Commercial Case for A12 Suffolk's Energy Gateway (SEGway) is based on the need to achieve a preferred procurement strategy that delivers best value for Suffolk County Council and the Department for Transport (DfT). This should be evaluated in its ability to procure a scheme delivery route that:

- achieves the desired scheme outputs and outcomes described in the Management Case;
- with the optimum amount of further design development and survey work to provide appropriate certainty that the scheme outputs and outcomes can be delivered within the available funding constraints.

This will need to be monitored at various stages as the project moves through further development internally within Suffolk County Council in 2018 and also through the three-staged gateway process of funding approval from programme entry (assumed May 2018) through to conditional approval and full approval. This will be achieved through the Assurance and Approval Plan described in Section 2.2 of the Management Case, and updated in more detail in the Full Business Case.

### 2.2 Review of Procurement Options

Future public procurement legislation post exiting the European Union will be heavily influenced by the nature of any future trade agreements between the UK and the EU which is currently unknown. Any significant changes to public procurement post 2019 will need to be considered as part of the update to the Full Business Case, but for the purposes of the Outline Business Case we have assumed the current approach remains the same.

Currently the Official Journal of the European Union (OJEU) is the publication in which all public-sector tenders valued above £4,104,394 (for infrastructure projects) must be advertised if not covered by an existing framework agreement.

There are several procurement procedures available to schemes to which the OJEU values apply and all options will be considered, including traditional two-stage procurement (design and construction as separate packages) and design and build (D&B), as the new road design is developed. These each have particular benefits and use cases, as follows:

- OJEU Notice – Open Procedure
- OJEU Notice – Restricted Procedure
- OJEU Notice – Accelerated Restricted Procedure
- OJEU Notice – Competitive Dialogue Procedure
- OJEU Notice – Competitive Procedure with Negotiation
- Future replacements of Scape Group's National Construction Framework and Highways England's Collaborative Delivery Framework. The current procurement frameworks are due to expire prior to the date at which Suffolk County Council would seek to procure this contract.

Based on current information it was concluded that the scheme would be sourced through advertisement in the Official Journal of the European Union (OJEU) due to the scale of project and best value considerations. This will allow companies from across the UK and EU to bid for the work.

#### 2.2.1 Open Procedure

This procedure allows an unlimited number of interested parties to tender against defined parameters. There are no restrictions (e.g. pre-qualification) on the parties who are permitted to tender, meaning that some parties may not be suitable to carry out the work. This procedure is straightforward and transparent but can attract a large number of potential bidders (which will require a greater degree of assessment and resource requirements). This route is not usually recommended for construction projects due to the high number of

tenders that could be expected and the particular skills and experience that may be required of potential bidders.

### **2.2.2 Restricted Procedure**

This is a two-stage procedure. The first stage allows the contracting authority to set the minimum criteria relating to technical, economic and financial capabilities that the potential bidders have to satisfy. Following evaluation of the responses to the first stage a minimum of five bidders (unless fewer qualify) are invited to tender in the second stage. This process is typically used to appoint consultants or contractors on traditionally procured projects.

### **2.2.3 Accelerated Restricted Procedure**

This procedure is only intended for use where, for reasons of urgency, the contracting authority must procure the contract in a reduced time frame. Any contracting authority wishing to use this procedure must be able to demonstrate the reasons of urgency that necessitate its use. It is identical to the Restricted Procedure except that the timescales for each stage are reduced.

### **2.2.4 Competitive Dialogue Procedure**

This procedure is appropriate for complex contracts where contracting authorities:

- are not objectively able to define the technical means capable of satisfying their needs or objectives; and/or
- are not objectively able to specify the legal and/or financial make-up of a project.

This is a multi-stage procedure. The first stage is a pre-qualification to select the potential bidders to participate in the dialogue. In the second stage the contracting authority enters into a dialogue with the potential bidders to identify and define the means best suited to satisfying their needs.

Any aspect of the contract may be discussed, including technical requirements for the works to be delivered and the commercial/contractual arrangements to be used. The dialogue may be conducted in successive phases with the remaining bidders being invited to tender. By the end of the dialogue phase the contracting authority's requirements will have been determined such that the scheme can be tendered. In the final stage, the remaining bidders from the dialogue phase are invited to tender for the scheme.

### **2.2.5 Competitive Procedure with Negotiation**

This procedure is intended to be used where minimum requirements are able to be specified but negotiations with bidders may be needed to improve the initial tenders. The grounds for using this procedure are as follows:

- Where needs cannot be met without adaptation of readily available solutions;
- Where the contract includes design or innovative solutions;
- Where the requirement is complex in nature, in its legal and financial makeup or because of its risks;
- Where the technical specifications cannot be established with sufficient precision; or
- In the case of unacceptable/irregular tenders.

Within this procedure, bidders initially submit tenders based on the information issued by the contracting authority. The contracting authority is then able to review the tenders it has received and negotiate with the bidders, following which the tenders will be resubmitted. This procedure may therefore be useful where the requirements are well developed initially and full tender documents can be produced but there may be advantage in retaining the ability to hold negotiations if there are certain aspects which bidders raise.

### **2.2.6 Use of a Framework to which Suffolk County Council has access**

Scape Group is a public sector owned built environment specialist offering a full range of regional and national frameworks for design and construction services. The current suite of contracts that Suffolk County Council could use for a project such as SEGway, run out in 2019 and so the suitability of the replacement framework would need to be considered prior to the finalisation of the procurement approach for SEGway.

Highways England is also in the process of procuring design and construction services to deliver its Road Investment Strategy through its "New Routes to Market" framework. The suitability of this replacement framework would also need to be considered prior to finalisation of the procurement approach for SEGway.

The issue with these framework contracts is that they typically govern short timescales and Suffolk County Council cannot sign up a contractor until Full Approval of the scheme by DfT. Suffolk County Council will keep open the option of using these replacement contracts depending on their timing and provisions.

## **2.3 Preferred procurement procedure**

The current intention is that the OJEU process will be followed. Suffolk County Council have advertised the Lake Lothing Third Crossing scheme in Lowestoft through OJEU and Suffolk County Council intend to use this procurement route for the Upper Orwell Crossing in Ipswich.

SEGway will likely be procured using the Negotiated Procedure due to the fact that it will be possible to publish a well-defined tender package for bidders to price against and allow the opportunity for bidders to provide innovative proposals to reduce cost and/or add value.

Suffolk County Council currently uses the Negotiated Procedure for procuring highway engineering schemes (such as the Lake Lothing Third Crossing) and is well-practised in its use. This will provide benefits, such as being able to discuss initial tenders with the bidders if they identify elements of the scheme that could be improved (with resultant cost savings or improved management of risk) if carried out differently from the tender proposals.

Suffolk County Council will also keep open the option of the Restricted Procedure route. The Restricted Procedure has defined timescales for each stage which would allow the Council to ensure that the tenders can be received by the dates required by the overall project programme. It would also be less onerous in terms of staff resources.

Suffolk County Council intend to progress further work on the procurement strategy in early 2018 and the selected procedure will be confirmed to the DfT during its oversight of the development of the Full Business Case.

## **2.4 Cabinet Approval of Chosen Procurement Strategy**

Suffolk County Council plan to use the Project Board (referenced in the *Management Case*) to provide oversight and approval of the chosen procurement strategy at various stages of the process. Suffolk County Council's Cabinet will either give final approval, or provide delegated approval to the Project Board, to decide the preferred contractor. This will be reaffirmed in the Full Business Case.

## **2.5 Payment Mechanisms**

The payment mechanisms between Suffolk County Council and the appointed contractor will be set out in the future construction contract, which will identify the work to be undertaken in a priced Activity Schedule. On-site inspections and regular reviews will be carried out; payment will only be made against completed activities (i.e. only work undertaken will be paid for). It would be expected that payment would be made to the contractor by monthly valuation with a BACS payment within 30 days of issue of the initial valuation.

This section will be expanded as necessary within the Full Business Case.

## 2.6 Contract Length

The latest scheme programmes (please refer to the Management Case – Section 2.3) forecasts that the main construction works for Option LB1d – Dual Carriageway will take approximately 24 months, from April 2021 to April 2023 for Option LB1d with a likely 8% duration saving for Option LB2s – Single Carriageway.

The construction contract will cover the duration of the main construction works as well as a design period and advanced environmental works (prior to the main construction works).

The scheme programme provides an initial view on phasing of the construction, with more detail on the construction programme to be produced once a contractor has been procured. Further details will be provided within the Full Business Case.

## 2.7 Contract Management

Timescales for implementation will be as detailed within the programme contained within the *Management Case* (Section 2.3).

Suffolk County Council will use the NEC3 or NEC4 Engineering and Construction (E & C) form of contract which is the standard form of contract used for construction works in the UK. The NEC3 and NEC4 E & C consists of a set of Core Clauses to which is added one of the following Options A to F:

- Option A: Priced with activity schedule;
- Option B: Priced with bill of quantities;
- Option C: Target cost with activity schedule;
- Option D: Target cost with bill of quantities;
- Option E: Cost reimbursable; and
- Option F: Management contract.

It is proposed currently that either Option C or Option D will be selected in order to provide increased incentivisation of the contractor. The form of contract selected provides Suffolk County Council with a suitable contract at construction to minimise risk, but with increased ability to bring forward the detailed design process earlier in the programme.

Suffolk County Council will use an E&C Project Manager, Supervisor and site based supervision team to administer the contract management arrangements during the implementation stage. The E&C Project Manager and Supervisor will also provide a site presence to deal with all contract variations, issues, early warnings and compensation events.

This approach will enable the construction work to be programmed and coordinated in line with Suffolk County Council's desired outputs and outcomes. Suffolk County Council's contract management will seek to ensure certainty of programme and best value for this project whilst minimising wider impacts on local highway users, residents and business.

SEGway will be delivered in line with Suffolk County Council's existing effective programme and project management procedures. Moving on to the next phase of the project (and subsequent phases), the Project Board (its representatives are detailed in the Management Case – Section 2.1) will set out approval processes, with project tolerances approved by Suffolk County Council's Senior Responsible Owner (Sue Roper).

Moving on to the implementation phase, the contract will establish progress reporting against leading and lagging performance indicators to enable early visibility of performance issues and trends for corrective action. If agreed tolerances are exceeded, an exception report will be raised by Suffolk County Council's Project Manager (to be appointed). If it is predicted that any one tolerance is likely to be exceeded; this will be raised as an issue to the Project Board for agreement on the resolution.

This section will be expanded as necessary within the Full Business Case.

## 2.8 Risk Allocation and Transfer

The form of contract selected (Option C or D) provides Suffolk County Council with a suitable contract at construction to minimise risk, but with increased ability to bring forward the detailed design process earlier in the programme. Suffolk County Council will also provide officers to perform the role of contract manager and create a site based supervision team as described above.

The contract will spell out where the risks sit and who is best placed to manage them.

This section will be expanded as necessary within the Full Business Case.

## 2.9 Procurement Programme

The current anticipated procurement programme based on either traditional two-stage procurement (Design and Construction separate) or a Design & Build route is shown below. This was developed in conjunction with a review of the scheme's overall programme at a scheme planning workshop in Ipswich involving representatives of Suffolk County Council, Suffolk Coastal District Council and Jacobs on 29 November 2017.

Procurement Milestone	Indicative Date(s)
Further development of procurement strategy and decision	January 2018 to February 2018
Procurement of Ground Investigation and Topographical surveys	June to August 2018
<b>Option 1 – Traditional Two-Stage Procurement</b>	
Appoint designer from existing framework options	May 2018
Prepare OJEU Notice	February 2020 to April 2020
Upload and Publish OJEU notice	May 2020
OJEU and Tender Return Period (assumed to be combined selection questionnaire/tender)	May 2020 to September 2020
Initial Construction Costs Available	July 2020
Tender Evaluation	October 2020 to December 2020
SCC Cabinet Approval of Contract Award	January 2021
Mobilisation	January 2021 to April 2021
Construction Phase	April 2021 to April 2023
<b>Option 2 – Design and Build (D&amp;B)</b>	
Prepare OJEU Notice	October 2018 to December 2018
Upload and Publish OJEU notice	January 2019
OJEU and Tender Return Period (assumed to be combined selection questionnaire/tender)	January 2019 to May 2019
Appoint D&B Contractor	June 2019
D&B Detailed Design	June 2019 to May 2020
Agree Target Cost	September 2020
Award Construction Contract	January 2021
Mobilisation	January 2021 to April 2021
Construction Phase	April 2021 to April 2023

Table 2.1 : Procurement Programme (Indicative)

### 3. Conclusion

The Assurance and Approval Plan will provide appropriate steps for Suffolk County Council to achieve Conditional Approval and Full Approval of the scheme's funding and risk profile to meet the desired outputs and outcomes, on time and on budget – essentially value for money. It is the job of the contracting and procurement strategy to assure that can be suitably achieved before Full Approval is given.

It is currently proposed that the scheme will use an OJEU 'Negotiated Procedure' procurement tendering process, which has been utilised by the Council previously and currently on large-scale transport infrastructure schemes, including the Lake Lothing Third Crossing in Lowestoft.

There is a well-developed market for the proposed procurement approach in Suffolk. It is anticipated, based on previous evidence of procuring large infrastructure schemes in Suffolk (such as the Stowmarket Relief Road, the Lowestoft Southern Relief Road and the Lowestoft Northern Spine Road), that there will be a high demand and strong competition amongst engineering contractors to secure the contract for the construction of this scheme.

The Council will keep open the option of traditional two-stage procurement or a design and build contract, with further work on the procurement strategy in 2018. The Council will also draw upon expertise from the DfT's Procurement centre of Excellence as required to determine the most appropriate route.

The preferred procurement option identified in this section is based on an initial assessment only and may be subject to change as the scheme is developed further, and if new routes to procurement emerge.

#### **Full Business Case Update**

*The following tasks will need to be undertaken in order to update the Commercial Case:*

- *Confirmation of the procurement route*
- *Confirmation of the contract terms and conditions including contract length, payment mechanisms, risk allocation and transfer*
- *Confirmation of approach to contract management*
- *Confirmation of design and build or separate design and construction contracts*
- *Confirmation of procurement programme.*