Highways Roundtable 2

Beale & Company hosted its second Highways Roundtable in March this year; the latest in an ongoing series of industry focused roundtables.

The roundtable was held under Chatham House Rules and provided an opportunity for leading figures to debate the challenges facing the highways industry now and in the future. We were also joined by two guests from the new roads authority, Highways England, to discuss how they will be dealing with some of these issues as the new structure takes shape.

The roundtable covered a range of topics, including:

- The transformation of the Highways Agency to Highways England;
- Highways procurement;
- Technologies on the network; and
- Ongoing investment in Highways.

It is clear that there is great ambition in Highways England’s plans for the future, but that there are a number of practical hurdles to be overcome.

This note summarises some of the changes being implemented by Highways England and highlights the key themes from our discussions, including matters which will need to be taken into account by Highways England as the changes are implemented. For example:

- There is a real risk that the Collaborative Delivery Framework will not provide a better platform for procurement given suppliers’ real dislike for repeated secondary competition on established frameworks; and

- The need for collaboration to be a two way process, involving both suppliers and clients.

We will feed back these matters to our contacts at Highways England, as well as through the Crown Commercial Service’s Procurement “Mystery Shopper” Service, which now has statutory backing, pursuant to section 40 of the Small Business, Enterprise and Employment Act, which came into force on 26 May 2015.
Highways England – what’s new?

Highways England’s Delivery Plan was published shortly after the Roundtable, and we were privileged to gain early insight into their aims and plans for achieving these. Highlights of the plans which are aimed at transforming both Highways England and the wider roads sector include:

- A budget of £11 billion to invest in the first five years in modernising and maintaining the strategic road network, with a requirement for efficiency savings of £1.2 billion over five years and £2.6 billion over ten years;
- Five strategic outcomes:
  - supporting economic growth; and delivering:
  - a safe and serviceable network;
  - a more free-flowing network;
  - an improved environment; and
  - a more accessible and integrated network;
- Delivery of 112 major road improvement schemes, including 15 smart motorways and 280 miles of additional capacity; and
- A promise to generate £4 in long term economy benefit for every £1 invested.

The progress of Highways England will be measured by the newly created Highways Monitor, part of the recently renamed Office of Rail and Road. The Highways Monitor has the power to impose fines for non-delivery and a key concern for suppliers will be how any fines might be passed down the supply chain by Highways England. A separate body, the rebranded Transport Focus, will act as the ‘eyes and ears’ of road users as these plans are implemented.

Highways England – facing the challenges together

*Highways England are promising an organisation which is radically more commercial and which offers a refreshed approach to procurement.*

Increased commerciality is welcomed by the industry and will hopefully lead to more pragmatic procurement (and there is much to be improved in this area in light of the recent procurement of the Collaborative Delivery Framework and retendered Asset Support Contracts) and there was considerable discussion regarding the new company’s ability to deliver these improvements.

Highways England face two major challenges in putting their Delivery Plan into action; managing substantial change within the organisation while also changing the manner in which highways services are planned, procured and managed. In the first instance, they face the potentially significant challenge of transforming from a civil service focused organisation into a much more commercial entity. This is a significant behavioural change which will not happen overnight.

However, this is not a one-sided process and Highways England are clear that they will need engagement and support from the industry if they are to be successful and this presents opportunities for contractors and consultants alike. For its
part, the industry welcomes the ambitious plans, but is keen to see signs that Highways England will be able to deliver on these promises and that suppliers will see real change in the way highways services are procured.

There remains concern that the political ambition of Highways England may outstrip the delivery capabilities of the organisation and its suppliers. The Conservative party forming a majority government seems to have prevented any further change in direction. Nevertheless, this will be exacerbated if too much emphasis is placed on very rigid processes and targets by Highways England and the new Highways Monitor; Highways England recognise that a realistic approach is required and that their processes must build in opportunities to do things differently.

A procurement slow down?
Following the creation of Highways England there is potential for a slow down in the award of new work. Although Highways England is working hard to ensure “business as usual” while implementing the changes, experience from previous projects has shown that there can often be a significant period of up to twelve months during which less work is undertaken at the outset while cultural changes take place. Combined with the slow down which has already resulted from the implementation of the new Collaborative Delivery Framework, including laborious secondary tendering, and the recent change in Government, it is clear that the industry requires careful management if it is to make a strong start to this new era.

Doing more with less
One major theme of the transition to Highways England and its Delivery Plan is the need to “do more with less” – although funding is increasing, with four times as much to be spent, the delivery targets are also moving and the industry is being challenged to deliver five times as much work.

Details of the spending plans remain to be finalised for the later years, but those in the short term are well established. As part of its plans, Highways England is seeking large scale efficiency savings from its suppliers, totalling £2.6 billion over ten years, with £1.2 billion to be delivered in the first five years. Delivering these efficiency targets is likely to be a real challenge for suppliers, particularly given that places on existing frameworks, including the Collaborative Delivery Framework, have already been partly won on price. The relationship between Highways England and its suppliers and the manner in which work is procured will need to change, on both sides, in order to deliver these savings.

Much has been made of the challenge posed to suppliers to achieve these goals, but perhaps less has been said so far about how Highways England will be helping suppliers. For example, will the new company be able to run procurement more quickly and efficiently? As noted below, secondary competition, which remains prevalent for many works, inevitably slows down the process and can add at least a month to even the smallest of jobs.

Collaboration between Highways England and suppliers?
Increased collaboration is highlighted as being key to delivery of the efficiency savings sought by Highways England. However, suppliers are clear that collaboration must be a “two way street” and requires real collaboration by Highway England. Progress is already being made (for example, fifty per cent of the senior leadership team for the Smart Motorways programme consists of suppliers), but Highways England will need to allow for greater involvement from its suppliers, including in relation to identifying and programming work.
Suppliers remain open to increased collaboration, but this means building trust and relationships between the parties and defining outcomes — **suppliers are not yet convinced that the Collaborative Delivery Framework provides the right environment for this to take place and improvements will be needed to the pre-delivery process.**

**Highways Procurement – can things be done differently?**

Highways suppliers put much time and effort into the recent procurement of the Collaborative Delivery Framework, spending very significant sums on a large scale tender. However, early indications suggest that there is likely to be significant secondary competition for the work on offer and it is not yet clear how the collaborative element will work in practice. As a result, there is a risk that, rather than heralding a new era of efficient procurement and collaboration, the Collaborative Delivery Framework could represent a step-back, or at least a case of maintaining the status quo, with many of the names and ways of doing things familiar from previous projects.

Secondary tendering is not popular with suppliers, particularly when significant time, effort and money has already been spent to achieve a place on a framework. Where collaboration is expected or required, many suppliers consider that they can achieve better results if contractors and consultants are permitted to join up at the outset in order to bid and deliver projects, rather than being appointed separately and being ‘forced’ to collaborate. Suppliers ask: if the contracting authority has selected the right parties at the outset, why can’t they be left “to get on with it” and deliver the work in the most efficient way possible?

Suppliers are also suspicious that secondary competition is simply used to further squeeze suppliers on price. For suppliers who won places on price one or two years previously, how can they make the further efficiency gains now required by Highways England while remaining profitable? Forcing further price reductions post-tender is unlikely to be conducive to good working relationships, collaboration or efficient delivery.

Under the Highways Agency, secondary tendering was seen as a way for clients to demonstrate market testing and value for money. However, suppliers are convinced that there are better ways of doing things and part of the challenge will be to ensure that Highways England are open to these new ways of working. Increased trust and cooperation between the supply chain and the new, more commercial, Highways England is likely to be key to diffusing this tension.

In addition, providing suppliers with longer term certainty of workload would help ease the commercial pressures which can otherwise limit collaboration when suppliers are encouraged to share best practice, but need to retain their commercial advantage in order to win further work. Experience on other frameworks has shown that this approach can lead to real collaboration and efficiency savings.

**Certainty of workload also means that suppliers can invest in delivery and innovation, rather than in repeated tendering.** Resources can be planned (and hired, trained and retained) on the basis of secure workloads, rather than
reacting to short term needs. Highways England recognise this issue, highlighting a need to ensure that suppliers have access to a mix of work across various highways programmes.

**Realising the potential of technology on the network**

Smart Motorways are now well established, to the point where Highways England is concerned that suppliers will become weary of repeatedly delivering very similar projects. However, there remains much to be done to ensure that the industry is making the most of the potential benefits of using technology across the network.

At the least, certainty of workload and visibility of procurement will help technology suppliers in this regard. For example, under the framework for the National Roads Telecommunications Network, suppliers know what technology is required and what their pipeline looks like. By contrast, significant secondary competition under the Collaborative Delivery Framework means that suppliers do not know what is required at an early stage and are unable to offer best value.

More significantly, there could be real benefit from a more integrated approach to the use of technology on the network. For example, technology providers should be leading projects such as Smart Motorways to ensure that all the benefits are “baked in” at the outset. Too often technology providers are a step removed from the procurement and design process, being brought in only at the end when many of the opportunities to make improvements or savings have already been lost.

A flatter and more integrated structure would see technology companies as providers and allow greater involvement at an early stage, moving away from a traditional tiered structure with technology companies at the bottom. **Ensuring that technology informs the decisions made at all stages of the procurement and design process will help ensure that Highways England is in a position to deliver a modern network and to meet its efficiency targets.**

In addition, rather than continuing to trial technologies which are already commonplace in Europe, Highways England should be looking to introduce new products and the technology companies and specialist suppliers should be at the heart of this drive. This is an area where Highways England could learn from approaches in other industries where procurement is tied to technology at the outset and may be an area where increased dialogue between the highways and rail industries, through the involvement Highways Monitor and the shared Office of Road and Rail, will pay dividends.

**The Future – who will be doing all this work?**

Increasing work volumes over the next five to ten years highlight the already serious resource shortage, both in delivering current projects and in bringing new resources into the industry more generally.

Addressing some of the procurement challenges above will ensure that suppliers have the confidence to invest in long term recruitment and training plans. However, it is also important that the industry as a whole gets into schools and universities to sell what can be achieved to ensure more young people are aware of and interested in engineering and technology careers. **The ever increasing use of technology on the network is an obvious place to focus with the aim of engaging young engineers and students at an early stage.**
**Actions**

Highways England has great ambitions, both in terms of delivering more for less and in working better with its supply chain. However, as highlighted above, there are a number of issues to be considered and actions to be taken if these aims are to be realised, including:

- Working towards true collaboration with suppliers;
- Moving away from continual secondary competition to more efficient forms of procurement;
- Providing suppliers with visibility and certainty of workload to allow investment in delivery, innovation, recruitment and training;
- Ensuring that technology providers are included in procurement and design processes to allow the benefits of technology to be properly realised; and
- Encouraging a new generation of engineers to choose careers in the industry.

Given the importance of addressing these issues, we will be raising these directly with our contacts at Highways England, as well as via the Crown Commercial Service’s Procurement Mystery Shopper Scheme.

The Mystery Shopper scheme was recently given statutory backing (pursuant to section 40 of the Small Business, Enterprise and Employment Act, which came into force on 26 May 2015). The scheme provides a route for suppliers to raise concerns about public procurement practice and is intended to identify areas of poor procurement practice to allow the CCS to work with contracting authorities to put them right and help to ensure similar cases do not arise in future, as well as identifying best practice to be shared between authorities. While section 40 of the Small Business, Enterprise and Employment Act provides for contracting authorities to provide information and documents within 30 days, the recently published Cabinet Office Procurement Policy Note (09/15) sets out guidance for authorities involved in procurement investigations, indicating that the Mystery Shopper team will ask for a response as quickly as possible, typically within two weeks or sooner for ‘live’ procurements. These measures demonstrate a commitment to ensuring that procurement lessons are learnt and provide a further useful method by which suppliers can raise concerns regarding contracts awarded by Highways England and other public bodies.

**Future Events**

Beale & Company recently hosted a BIM Roundtable and will be holding a second Rail Roundtable, as well as events in other industry sectors, in due course.

In order to preserve the discussion led nature of the roundtable format, numbers for these events will continue to be strictly limited. However, if you would like to express your interest in contributing to further discussions, we would be very pleased to hear from you.

In the first instance, please direct any expressions of interest to Jonathan Roscoe at j.roscoe@beale-law.com or call +44 (0) 20 7469 0467.

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