Technology is changing the way in which many transport projects are designed, built and operated; from Smart Motorways and electronic toll collection, to rail systems that include advanced in-cab signalling.

This is demonstrated by the ICE's State of the Nation 2017 report which looks at how advances in digital technology and data are transforming how the industry designs, delivers and operates infrastructure.

But the legal contracts drawn up for companies involved in these projects do not always fully consider the important role which technology plays. Contract drafting needs to reflect the new ways of working and the use of technology.

The concern, according to specialist law firm Beale & Company, is that if contracts do not adequately deal with the issues arising out of technology, this could lead to uncertainty as to each party’s rights and obligations and be detrimental to the project.

Will Buckby, a partner at the firm who leads its projects and contract advisory team, suggests that many contracts he sees are not fit for purpose in the technological and digital age.

He adds that contracts which deal with technology in respect of applicable standards, protocols and information requirements, as is increasingly the approach with tools such as BIM.

"Furthermore, such contracts should contain among other things provisions dealing with the protection of intellectual property, software licences, collaboration and data sharing, and cyber security and data protection risks.

"There is likely to be a significant technological element to any major transportation project in the future," Will Buckby adds. "This means that those involved in motorways or railways, for instance, need to ensure that their contract documents look beyond just the construction and engineering and towards the technology side of things too."

And given that the incoming Government is likely to continue investing in transport infrastructure through the use of technology he says it is increasingly important that the industry is up to speed with achieving fit for purpose contracts which adequately deal with technology.

PROFILE

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