

## **The Commercial Case**

1. This document should be read in conjunction with '*The Transport Business Case*', which is available on the Department's website ([www.dft.gov.uk](http://www.dft.gov.uk)).

### ***What is the commercial case?***

2. The commercial case provides evidence on the commercial viability of a proposal and the procurement strategy that will be used to engage the market. It should clearly set out the financial implications of the proposed procurement strategy. It presents evidence on risk allocation and transfer, contract timescales and implementation timescale as well as details of the capability and skills of the team delivering the project and any personnel implications arising from the proposal.

### ***What questions will be asked?***

3. The commercial case will contribute towards the overall business case presented for consideration by ministers. Prior to this more detailed evidence will be scrutinised by the relevant investment committee alongside the wider business case. The questions likely to be asked by an investment committee include:
  - Is there a robust contracting and procurement strategy?
  - Is the risk transfer supported by incentives (positive or negative) that prompt the intended outcomes, e.g. will the contractor lose money if there are any cost overruns?
  - Who is taking marginal risk, including on planning consent, demand, revenue availability and integration risk?
  - How was the proposed procurement approach developed? For major projects, has the Department's Director of Procurement been consulted on the procurement strategy?
  - Is there a developed market for the proposed procurement approach and financing arrangements?
  - How confident are we that appropriate contractual/commercial arrangement can be defined to make the structure and risk transfer work in practice?
  - Is the proposed risk allocation consistent with the cost estimate?
  - How does the mechanism incentivise performance, efficiency and innovation?

### Contents of the commercial case

4. The following elements make up the minimum requirement for the commercial case. These should be easily identifiable in the business case in order to demonstrate that they have been covered.
5. This document provides generic guidance but promoters will need to consult their departmental sponsor for sector specific format and content requirements for the commercial case.
6. The table below sets out how and when these minimum requirements should be **outlined** (initial findings), **completed** (a full assessment) and **updated** (past information is verified and new information incorporated) for each iteration of the business case. Blank/no colour indicates 'optional' where evidence should be provided if relevant.

Commercial case		Strategic Outline	Outline	Full
Introduction	Outline the approach taken to assess commercial viability.	C	U	U
Output based specification	Summarise the requirement in terms of outcomes and outputs, supplemented by full specification as annex.	O	C	U
Procurement strategy	Detail procurement/purchasing options.	O	C	U
Sourcing options	Explain the options for sources of provision of services to meet the business need e.g. partnerships, framework, existing supplier arrangements, with rationale for selecting preferred sourcing option.		O	C
Payment mechanisms	Set out the proposed payment mechanisms that will be negotiated with the providers e.g. linked to performance and availability, providing incentives for alternative revenue streams. (See the Office for Government Commerce's <i>Achieving Excellence</i> briefing for advice on payment mechanisms for construction projects.)		O	C
Pricing framework and charging mechanisms	To include incentives, deductions and performance targets.		O	C
Risk allocation and transfer	Present an assessment of how the types of risk might be apportioned or shared, with risks allocated to the party best placed to manage them subject to achieving value for money.		O	C

Commercial case		Strategic Outline	Outline	Full
Contract length	Set out scenarios for contract length (with rationale) and proposed key contractual clauses.		O	C
Human resource issues	Personnel/people management/trade union implications, where applicable, including TUPE (Transfer of Undertakings (Protection of Employment)) regulations.			
Contract management	Provide a high level view of implementation timescales. Detail additional support for in service management during roll-out / closure. Set out arrangements for managing contract through project / service delivery.		O	C

### Tools & Guidance

7. Sources of further guidance can be found on the Department's website ([www.dft.gov.uk](http://www.dft.gov.uk)):

- **Treasury's Green Book**
- **WebTAG** – the Department's website for guidance on the conduct of transport studies.
- **Office for Government Commerce's Achieving Excellence in Construction** - advice on payment mechanisms for construction projects.