

Cardiff Coastal Defence

Procurement Options Report

Cardiff City Council

30 March 2021



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Introduction

This report has been produced to summarise various procurement options and discussions for the Cardiff City Council (CCC) Coastal Defence Scheme. This paper summarises an appraisal of the current delivery strategy and outlines recommendations based on discussions with the CCC project team supporting decisions on the procurement approach.

1. Introduction

1.1. Purpose

This report refines the procurement strategy for the Coastal Defence project (the “Project”). It sets out in more detail how the proposed delivery and contractual models for the Project are to work. A series of matters to note at this juncture, as well as recommendations as to the way forward are also set out.

1.2. Scheme Background

The project is a coastal erosion and flood risk management scheme for Cardiff Coastal Defences, between Rover Way in the west and Lamby Way in the east, extending up the River Rhymney as far as the railway bridge. The project aims to improve the existing coastal and fluvial defences to provide improved protection to people and property in parts of south east Cardiff from coastal erosion and flood risk and prevent the erosion of two decommissioned landfill sites; The Frag Tip and Lamby Way Tip.

Much of the coastline across the project area is eroding and with predicted sea level rise due to climate change, the flood and erosion risk will increase into the future. The proposed scheme will manage flood risk to 1,116 residential and 72 non-residential properties over 100 years, as well as preventing erosion of landfill material, key road infrastructure and the Rover Way Travellers Site.

1.3. Business Case

The City of Cardiff Council (CCC) submitted an Outline Business Case (OBC) to Welsh Government (WG) in March 2018 as part of a funding application, which was subsequently approved by WG.

The consultancy services for the Outline Business Case were carried out by Jeremy Benn Associates (JBA) and procured under the Construction Consultancy Framework (ref. NPS-PS-0027-15) managed by the National Project Service (NPS), using the relevant 'Water Management' Lot under the framework.

The development of the Full Business Case and detailed design was also awarded to Jeremy Benn Associates (JBA) following a competitive tender under the NPS Framework.

2. Current Approach

2.1. Current Delivery Model

Cardiff Council have adopted a traditional procurement approach for this project, having tendered the development the Full Business Case and detailed design as one package under the Construction Consultancy Framework (ref. NPS-PS-0027-15) managed by the National Procurement Service (NPS), using the relevant 'Water Management' Lot under the framework. The subject matter expertise of the consultants on this Lot and continuity through the design stages made a traditional approach favourable to an alternative such as Design and Build.

Welsh Government awarded funding to the project for the development of the full business case and detailed design. The requirement to develop the design and full business case concurrently with all required permissions, consents, and licenses for construction, including planning permission, marine license and flood risk activity permit, made a traditional approach most appropriate for this project.

2.2. Early Contractor Involvement

Cardiff Council and JBA agreed to employ a Contractor (Knights Brown) to provide Early Contractor Involvement (ECI) advice through the developed and detailed design stages. This enables the Client team to benefit from the knowledge and experience of a Contractor to advise on buildability of the design, programme and cost estimating whilst maintaining control of the design and statutory processes.

Furthermore, there are additional benefits to a traditional approach with ECI in that the continuity of service and knowledge from the prelim phase of design into detailed ensures that information isn't lost, and time isn't spent going back over previous issues.

The introduction of a tender process following the detailed design for a Contractor to deliver the construction of the project will provide competition which should offer the client value for money.

The current approach is summarised in Table 2-1 below.

Table 2 -1 - Current procurement model

Procurement requirement	Procurement status	Prelim Design	Developed design	Detailed Design	Construction
Designer – JBA	JBA – already appointed through PSF				
ECI Contractor – advice only	Sub-contracted to JBA				
Contractor	To be single stage tender			*start tender process*	
NEC SM/ PM – F+G	F+G – already appointed				

3. Contracting Model

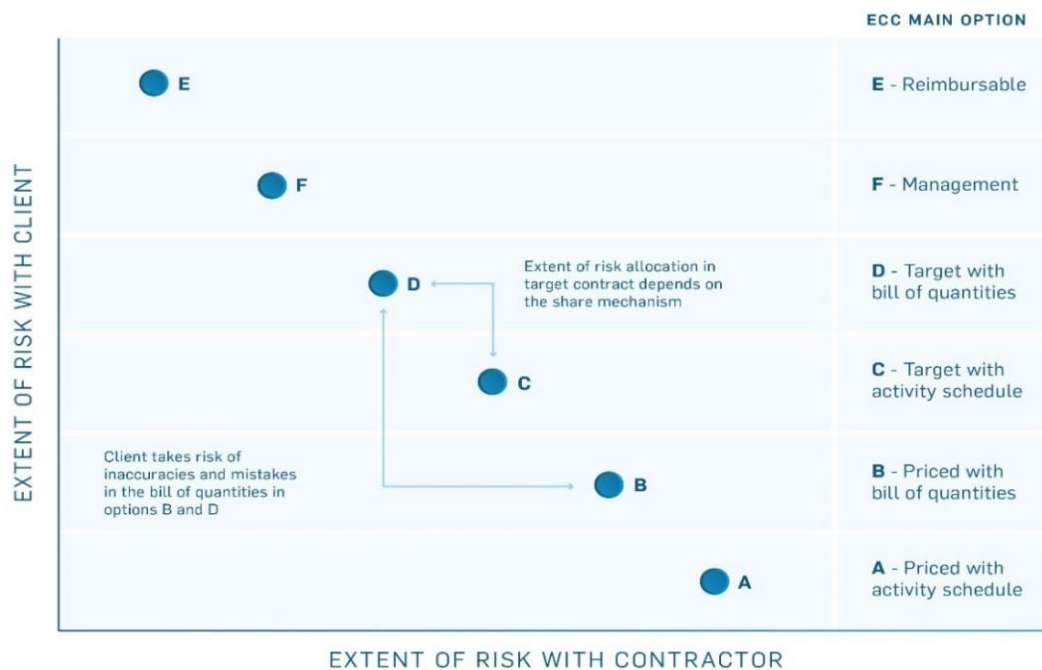
3.1. Contract Options

The following table summarises and evaluates options for the contractual model to deliver the construction stage of the project.

	Analysis	Conclusion/Recommendation
Contract type	<p>There are three primary options for contracting:</p> <p>NEC4 – Most commonly used contract model for this sector and by CCC and Welsh Government. Minimal amendments will be required, largely off-the-shelf option.</p> <p>JCT – Rarely used in this sector. Minimal amendments will be required, largely off-the-shelf option.</p> <p>Bespoke – Rarely used in this sector due to market appetite for this. Significant time and legal exercise would be required.</p>	<p>It is recommended to use NEC suite of contracts.</p> <p>It is recommended that independent legal specialists are employed to support in the flow-down from funding agreement to the construction contract.</p>
Pricing type	<p>There are two primary options for contracting:</p> <p>Price-based – Fixed price or bills of quantities</p> <p>Cost-based – Target cost or cost reimbursable</p>	<p>It is recommended to use target cost contract (NEC ECC Option C) to share risk and reward in the construction stage. This approach should prove attractive to the market due to the incentives provided by pain/gain mechanism and shared risk between parties.</p> <p>The risk profile for this project is high and CCC will likely get better value for money with this approach as a fixed sum contract (e.g. Option A) would likely include a significant risk allowance within the lump sum price.</p>

The risk profile of NEC4 ECC contract main options is shown in Figure 3-1 below:

Figure 3-1 - NEC4 ECC Main Options Risk Profile



3.2. Key Risk Transfer Mechanisms

The risk profile for this project is high and needs key consideration when developing the contract. Key considerations for contract drafting are:

- Ground conditions and abnormalities
- Availability and lead in time for materials
- Utilities procurement and management
- Social value and local supply chain engagement
- Stakeholder impact (HE buy-in)
- Share % in Contract Data
- Flow-down from WG funding agreement
- Legal Agreements (e.g. Marine license and planning conditions).

4. Routes to Market

4.1. General

There are five recognised routes to market available for the procurement for the project:

Open procedure– Notice issued inviting all interested Contractors / Suppliers to submit a tender for consideration. Selection criteria can be included in the notice to identify the appropriate suppliers at the outset.

Restricted procedure – Notice issued inviting all interested Contractors to express interest in submitting a tender. Selection Questionnaire (SQ) issued to interested parties and evaluated prior to issue of formal Invitation to Tender to a restricted number of suppliers.

Competitive Dialogue procedure – Designed primarily for complex Private Finance Initiative (PFI), Public-Private Partnership Model (PPP) and major infrastructure projects. Contract requirements, procedures and proposed solutions can be discussed with shortlisted tenderers (minimum 3) who meet initial contract notice criteria.

Competitive Negotiated procedure – Terms of contract can be negotiated with chosen Contractors following competitive tender process.

Framework procedure – CCC have access to the following existing frameworks, which will be discussed further in Section 4.3.

- SEWH
- Crown Commercial Services Civil Engineering Works
- PAGABO Major Projects Frameworks
- Scape for Civil Engineering

4.2. Advantages and Disadvantages

An overview of the options for the route to market or procurement procedures are shown in the table Table 4-1 below.

Table 3-1 - Overview of procurement procedures

Procedure	Specific requirements for using the procedure	Stages	Level of Competition likely to be generated	Likely level of workload for AUTHORITY	Potential for procurement challenge	Opportunity for innovation	Opportunity for negotiation/dialogue during the tender process	Likely minimum timeframe from OJEU Publication to contract award (excluding reductions for E-submissions)
Open	None	1. Selection and evaluation	High	HIGH All compliant tenders must be examined by AUTHORITY and this can delay the award. Resource intensive for both AUTHORITY and the tenderers	LOW Decision made with a straightforward focus on the award. Limited transparency risks as an open, transparent, competitive procedure	Low	None	4 to 5 months
Restricted	None	1. Prequalification 2. Selection and evaluation	Medium - Limited to shortlisted tenderers	MEDIUM Limited number of tenders to evaluate and therefore less resource intensive for AUTHORITY Two-stage procedures might be longer in order to respect the required time limits	MEDIUM Greater potential for challenge due to the increased exercise of discretion by AUTHORITY	Low	None	6 to 8 months

Competitive Dialogue	<p>Fulfil one or more of the following criteria: (1) An open or restricted procedure has attracted only irregular or unacceptable tenders. (2) The needs of the AUTHORITY cannot be met without the adaptation of available solutions. (3) The subject matter includes design or innovative solutions. (4) The technical specifications cannot be established with sufficient precision by the AUTHORITY with reference to defined standards or technical requirements. (5)The contract</p>	<p>1. Prequalification 2. Negotiation and evaluation</p>	<p>Medium - Limited to shortlisted tenderers</p>	<p>HIGH The burden of proof for the circumstances allowing for the use of the procedure rests with AUTHORITY. AUTHORITY is highly involved in the negotiation/dialogue with tenderers. Limited number of tenders to evaluate and therefore less resource intensive for AUTHORITY. Two-stage or three stage procedures might be longer in order to respect the required time limits.</p>	<p>MEDIUM Greater potential for non-compliance with PCR2105 rules due to the increased exercise of discretion by AUTHORITY</p>	<p>Medium</p>	<p>High</p>	<p>10 - 18 months</p>
Competitive procedure with negotiation	<p>Fulfil one or more of the following criteria: (1) An open or restricted procedure has attracted only irregular or unacceptable tenders. (2) The needs of the AUTHORITY cannot be met without the adaptation of available solutions. (3) The subject matter includes design or innovative solutions. (4) The technical specifications cannot be established with sufficient precision by the AUTHORITY with reference to defined standards or technical requirements. (5)The contract</p>	<p>1.Prequalification 2. Dialogue 3. Selection and evaluation</p>	<p>Medium - Limited to shortlisted tenderers</p>	<p>HIGH The burden of proof for the circumstances allowing for the use of the procedure rests with AUTHORITY. AUTHORITY is highly involved in the negotiation/dialogue with tenderers. Limited number of tenders to evaluate and therefore less resource intensive for AUTHORITY. Two-stage or three stage procedures might be longer in order to respect the required time limits.</p>	<p>HIGH Greater potential for non-compliance with PCR2105 rules due to the increased exercise of discretion by AUTHORITY. Transparency requirements are particularly challenging during the dialogue.</p>	<p>High</p>	<p>High</p>	<p>5 to 6 months</p>

cannot be awarded without prior negotiations due to specific risks or circumstances related to the nature, complexity, or legal and financial matters.							
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4.3. Frameworks

The term 'framework agreement' is regularly used within the context of project/ programme development and delivery, across multiple markets. It is a term however that can also cause confusion, and as such it is felt prudent to provide clarity as to what framework agreements are, and what role they may play in delivering the CCS programme.

As set out in UK Government guidance "a framework agreement is a general phrase for agreements with providers that set out terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the agreement. In most cases a framework agreement will not itself commit either party to purchase or supply, but the procurement to establish a framework agreement is subject to the EU procurement rules"¹

It is critical to remember from the programme's perspective that a framework agreement can feature:

- as a legitimate delivery and contracting model (e.g. analysis could show that an arm's length, non-committal framework arrangement should be utilised, enabled via a bespoke drafted framework agreement) **and**
- feature as a route to market (e.g. analysis could show that an alliance model and contract should be used, but ultimately there would be no need to procure the same in open competition via OJEU; reliance being able to be put on an already established framework such as one owned by CCS, TfW, WG etc.)

Ultimately, establishing the correct delivery and contract model is different to determining the right route to market – one follows the other:

Step 1 – determine the correct delivery and contractual model (A and B in the preceding paragraphs)

Step 2 – decide on the appropriate route to market, i.e. reliance on pre-existing framework or stand-alone procurement.

Once the correct delivery and contracting model is arrived at a decision then has to be made as regards the route to market to deliver that contracting model, i.e. an answer is required to the simple question – how can we appoint someone to deliver the work on the basis of the delivery model/ contract model we've identified?

The use of already existing framework agreements may well be an appropriate and legitimate answer to this question, and an analysis of such a route will be carried out immediately following the identification of the appropriate delivery model and contracting model. An example of that 'type' of analysis (using agreements prevalent in the UK market and available to CCC) is set out below.

¹
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560268/Guidance_on_Frameworks_-_Oct_16.pdf

Table 4-1 - Existing Frameworks

	SEWH	SCAPE for Civil Engineering	PAGABO for Major Works	Crown Commercial Services for Construction Works and Associated Services
Financial Limits	£10m	£50k to £100m	Lot 1 (£10-30m) Lot 4 (£30-£80m) Lot 5 (£80m+)	Lot 3.2 (£10-£30m) Lot 4.1 (£30-£80m) Lot 5 (£80m+)
Award Mech.	Direct award or Mini-Comp	Direct Award	Direct award or Mini-Comp	Direct award or Mini-Comp
Cost to Access	Nil	Nil	Nil	Nil
Fee to Use	2%	2%	0.3%	2%
Framework Duration	4	4	4	7
Framework Expiry	January 2023	January 2023	April 2026	October 2026
No. of Suppliers	8	1	6	19, 14, 14
T&Cs Form/ Suite	NEC4 ECC – Options A-E	NEC4 ECC Option A or C	Open	NEC, JCT, PPC 2000, TAC-1
OJEU coverage	Yes	Possibly	Possibly	Yes

The available frameworks which have been identified to date as listed in Table would not be the most value for money option for CCC. The SEWH has a cap in value of £10m which will be exceeded in this case. More importantly, this project will require a Contractor who specialises in the marine environment and none of the frameworks listed have a specialist Lot to access such Contractors. It is highly likely that if a Contractor was appointed under these frameworks that they would employ a Subcontractor to undertake the majority of works which would add to the overall cost to CCC.

5. Other Points for Consideration

5.1. Soft Market Testing

The benefit of Soft Market Testing is to establish what might encourage or deter potential bidders. It is also an opportunity to understand current trends and issues within the market to help better inform the tender process and programme. It may also appeal to a contractor if the rock armour was to be procured and stockpiled by the Client prior to the main construction. This would also offer significant programme benefits. There could also be consideration around employer's/contractor's risks distribution and Z-clauses to minimise contractor's risk, ensuring that a balance is maintained between appealing to potential bidders and protecting the employer's interests.

6. Draft Recommendations

It is recommended that CCC progress with a 'traditional' approach with Early Contractor Involvement. This will provide the benefit of the knowledge and experience of a Contractor to advise on buildability of the design, programme and cost estimating whilst maintaining control of the design and statutory processes. It will also provide CCC with continuity through the final stages of design, which will the greatest programme benefits.

It is recommended that a restricted procedure is followed as the route to market as this will provide CCC with access to the specialist Contractors required for the works.

We would recommend a contracting model based on the NEC4 Option C (target cost) contract to share risk and reward in the construction stage.

Appendices



Appendix A. Heading 6

A.1. Heading 7

Body Text (Appendix) style

A.1.1. Heading 8

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A.1.1.1. Heading 9

Body Text (Appendix) style

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