

<b>Key Decision Required:</b>	<b>Yes</b>	<b>In the Forward Plan:</b>	<b>Yes</b>
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## CABINET

21 NOVEMBER 2013

### REPORT OF ENVIRONMENT AND COAST PROTECTION PORTFOLIO HOLDER

#### **A.1 CLACTON AND HOLLAND-ON-SEA COAST PROTECTION PROJECT UPDATE AND PROPOSED PROCUREMENT PROCESSES, KEY MILESTONES AND RISKS**

(Report prepared by Mike Badger, Richard Barrett and Lisa Hastings)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

To provide Members with a project update including:

- Key Project Milestones
- Procurement Processes, including a review of the Environment Agency's WEM framework
- Choice of Contract
- Risk Review
- Project Governance and External Project Review
- Consultation and public engagement

##### **EXECUTIVE SUMMARY**

- The development of the project has continued throughout 2012/13 and 2013/14 to date with a 'start on site' date planned for 2014/15.
- The project is supported by funding from the Environment Agency (EA), Essex County Council and from the Council's own resources with the project costs, inclusive of the risk contingency, estimated at £36 million.
- The development of the project is being undertaken via a Project Team and Project Board with member involvement at various stages such as site visits and presentations.
- Public consultation has taken place at key stages. Further public engagement will continue to form an important element of the project via a communication strategy and as part of specific activities such as the planning process.
- Several activities have been undertaken and completed early to maintain project pace and confidence with activities such as the finalisation of the physical modelling and detailed design still in progress.
- The procurement process and contract arrangements are the next key focus in terms of delivering a construction ready project at the earliest opportunity.
- The WEM framework provided by the Environment Agency (EA) has been reviewed both internally and by an experienced external coastal engineer with the outcome being the proposed use of this framework as it provides a number of advantages to

the Council. The framework also sets out a number of 'standard' evaluation criteria with flexibility to include additional 'sub' criteria.

- It is proposed that the development of tender evaluation criteria will be reviewed by Ernst and Young (EY) as the Council's External Auditor both as part of their annual assessment of the Council's arrangements to secure value for money and in managing risk, but also where they are able to, drawing on their expertise in providing additional services and support on the Council's approach to contract management and procurement. The Council is currently reviewing a specification of audit work and services before engaging EY on this.
- The proposed forms of contract are based on the recognised industry standard for this type of project with options considered to manage risk and value for money.
- A risk register has been developed and is regularly reviewed by the Project Team with the most up to date version set out in Appendix 1.
- A number of steps are being taken to secure a 'start on site' position in 2014/15 which are set out in the last section of this report.
- The project programme will be developed with the successful contractors and the Council continues to deliver the project on time and on budget.

#### **RECOMMENDATION(S)**

**It is recommended that:**

- a) Cabinet note the updated position and key milestones that are required to enable the project to commence in 2014/15.**
- b) The Portfolio Holder for Environment and Coast Protection be a member of the Project Board.**
- c) Cabinet approves the use of the WEM Procurement Framework for the Construction Works Contractor and Contract Management and Supervision Consultant based on the final design and works information.**
- d) The evaluation criteria to be used in assessing tenders is developed by the project team and that delegation to the Corporate Director (Public Experience) in consultation with the Portfolio Holders for Environment and Coast Protection and Finance and Asset Management is agreed in respect of the final criteria to be applied in the formal tender process.**
- e) Cabinet approves using the standard form of engineering contract NEC Options C and A for the Construction Works and Contract Management and Supervision respectively.**
- f) The inclusion of secondary options or additional clauses within the NEC Contract are delegated to the Corporate Director (Public Experience) in consultation with the Legal Services Manager.**
- g) Subject to c) and d) above, the decision to award contracts to those**

**contractors whose tenders have been evaluated in accordance with relevant criteria is delegated to the Environment and Coast Protection and Finance and Asset Management Portfolio Holders.**

- h) Cabinet notes the Risk Register and the actions being taken to manage and mitigate the risks associated with the project.**

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The Council's Corporate Plan, Tendring Life, recognises that Tendring's 36 miles of coastline and award winning sandy beaches are both our greatest assets as well as our most difficult and expensive management issues. Both the priorities 'Our Place' and 'Our Prosperity' are impacted by coastal defence issues, in that they relate to the development of a thriving tourist industry and of course protecting our environment. The project provides a major regeneration and tourism opportunity with the scale of the works and potential benefits making a significant contribution to the delivery of the Council's economic aims and priorities.

### **FINANCE, OTHER RESOURCES AND RISK**

#### **Finance and other resources**

To date the Council has identified a £3 million budget from within its own resources, which provided the necessary impetus to bring about the delivery of the project.

Along with the external funding secured to date of £31 million, this brings the total identified budget to £34 million. A breakdown of external funding is as follows:

- £512k from the Government following a bid by the Council under an 'acceleration and growth' programme.
- £27.5 million from the Environment Agency following their approval of the scheme on 10 September 2013 (this sum includes a £6m risk contingency)
- £3 million from Essex County Council

A further £1million contribution from this Council to the scheme is currently being considered as part of the Financial Strategy process for 2014/15. Essex County Council is also exploring the possibility of increasing their current contribution which would bring the total funding for the project to approximately £36 million.

In addition to the above, the Council is actively engaging with other key partners and stakeholders who have an interest in the benefits that the scheme will bring, to potentially increase the level of external contributions to the scheme.

The £512k 'acceleration and growth' funding highlighted above is currently being applied to support a start on site date in 2014/15.

Work will also be undertaken to identify spending profiles to ensure that external funding can be accessed in a timely way to coincide with expenditure and to ensure that the Council's treasury management function supports the successful delivery of the project, which will span financial years.

As part of the whole life cost of the project, it is acknowledged that it will be necessary to 'recharge' the beach in the future to maintain the level of protection of the coast which is a

normal requirement of this type of coast defence project. Although the timing of such 'recharges' will be subject to the performance of the scheme, at present it is anticipated that a 10% 'recharge' would be required approximately every ten years, which was reflected in the original PAR document. Based on this approach, such a 'recharge' is estimated to cost approximately **£1.4million**.

On-going monitoring of the scheme's performance will be carried out with regular beach level surveys undertaken. It may be possible that the Environment Agency will consider further financial support in contributing to the cost of 'recharging' the beach in the future.

However at the present time a practical option is for the Council to set aside the necessary funding over an initial 10 year period, which will need to be considered as part of the Financial Strategy and budget setting processes in the intervening years. This will also enable the opportunity to take into account the outcomes from the on-going monitoring work, working with the Environment Agency to identify further funding opportunities in addition to identifying new income streams from maximising the benefits that a project of this scale will bring to the seafront and local economy. Existing income from seafront assets should also be reviewed as these will increase in value as a result of the works and this income could be ring fenced to offset the current and future capital contribution. A recent update that supports this proposed approach is Cabinet's approval to the Beach Hut Strategy which seeks to foster a self-supporting financial model.

### **Risk**

Coastal defence failure is included in the Council's Risk Register which recognises the risk that is associated with being a coastal authority such as reduced provision or maintenance of or a collapse of sea defences could have a severe environmental impact and cause damage to local property and infrastructure.

The Register highlights the following specific issues in the event of sea defence failure:

- Preventative / reactive improvements are not undertaken
- Problems stored for later years
- Breach of defences with subsequent flooding
- Threat to property and possibly life
- Complaints from public / litigation
- Adverse publicity
- Local economy adversely affected

Detailed consideration has been given to assessing the project risks using government prescribed methodology and this has been very closely scrutinised during consideration of the PAR by the Environment Agency's Large Project Review Group.

This review has considered Strategic Level Risks, Design Risks, Construction Risks, Materials Risks, Unexploded Ordnance, Disturbance, Environmental Risks and Financial Risks. The detailed Project Risk Register is set out in Appendix 1.

In respect of project cost risk, the risk analysis has concluded a confidence level of 95% which results in a risk contingency for the project of £6 million, which has been included in the projected project funding of £36million.

In respect of the project delivery risks these are considered and updated on a regular basis by the project team. To date the risks identified have been or are being managed with the aim reducing as far as possible the level of risk.

The risk register is also referred to and forms part of Clause 11(10) the NEC professional services contract entered into between Mott McDonald and the Council, both parties acting together in accordance with the terms and conditions of the contract and in a spirit of mutual trust and co-operation. Managing risk via the risk register is therefore a part of the contractual arrangement and is reviewed at each project progress meeting.

It is worth highlighting that the most significant risk and the one that is outside our control is adverse weather conditions which could cause delays in delivering the project. In terms of addressing this risk, the suitable method of working, careful planning and timing of works forms the basis of actions in place or proposed.

It is also proposed that the management of risk is included as part of the tender process and associated evaluation, with work planned with our external auditors on how this can effectively be addressed where possible via the contract arrangements set out further on in this report.

## **LEGAL**

The Council has permissive powers to carry out these works under the provisions of the Coast Protection Act 1949. The Council has a duty to exercise its powers reasonably having regard to all the relevant circumstances.

The proposed procurement route is via a Government led framework agreement. By using this framework the Council can adequately demonstrate that it has fulfilled any obligations set out in the Public Contracts Regulations 2006.

Any contracts in place or proposed for the various strands of procurement will follow standard NEC forms of contract. Further details around such arrangements are set out in the relevant sections below.

## **OTHER IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

Consideration has been given to the implications of the project, both in terms of during delivery and on completion via an Equality Impact Assessment with some key outcomes set out as follows:

**Crime and Disorder** – No direct implications

**Equality and Diversity** – No direct implications

**Health Inequalities** – No direct implications

**Area or Ward affected** – St. James, Pier, St. Paul's, St. Bartholomews and Haven

**Consultation/Public Engagement** – Public consultation and engagement has been undertaken for the Essex & South Suffolk Shoreline Management Plan, the Clacton & Holland Coastal Management Plan and the Clacton and Holland on Sea Coast Defence Project Appraisal Report and Detailed Design.

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

The report to Cabinet 14 March 2012 detailed the very serious coastal erosion problems on the sea front at Clacton & Holland-on-Sea and provided a summary of the work previously carried out as well as the work required to address these problems.

Due to the lack of DEFRA funding in 2005, following the first Clacton & Holland Coastal Strategy, Tendring District Council commissioned a review with the intention to produce a revised programme of coastal protection works. This report followed the second Essex Shoreline Management Plan and developed its recommendations to 'hold the line' whilst identifying outline technical solutions.

The Government funding arrangements for coastal protection works altered in April 2012 such that only a proportion of any costs will be met centrally by government leaving the Coastal Authorities to source the remainder.

The new Clacton & Holland Coastal Management Plan (Clacton Coastal Strategy) recommends a series of works along the whole frontage from the Martello Inn (Zone A) to Holland Haven (Zone C) with a programme spread over fifty years and a cost of up to £50 million. However much of this work and expenditure is in the latter stages of the programme and a realistic view suggests that, within the next ten to fifteen years, only Holland-on-Sea and part of the Clacton frontage to the East of the Pier require works urgently at a cost of approximately £25m. The Council's proposals for coastal protection work include a commitment to reinstating the beach at Holland-on-Sea.

In April 2012, Mott MacDonald Ltd were appointed to prepare the Project Appraisal Report (PAR) for the Clacton and Holland frontage.

In February 2013, £512,000 funding for growth through flood alleviation awarded to the Clacton and Holland Coastal Defences included in the programme of acceleration and growth with target of starting construction works in early 2015. Officers are working closely with the Environment Agency to ensure the project continues to move forward with pace. As a consequence, the Council was able to appoint Mott MacDonald Ltd as Design Consultants in April 2013, working in advance of the decision on the PAR.

To provide confidence with the options identified and to reduce the project risk, topographical, geotechnical surveys and computer modelling of the coastal processes have been commissioned to identify the most appropriate technical/cost effective solutions

Following public consultation and surveys the preferred option was identified as fishtail rock groynes along the entire 5km frontage with sand/shingle beach recharge.

The PAR was submitted to the Environment Agency on 17 May 2013 and presented to their Large Project Review Group (LPRG) on 10th July 2013. The technical approval of the PAR was announced by the Environment Agency on 10 September 2013 with a Flood Defence Grant in Aid value of £27.519 million awarded.

## **PROJECT GOVERNANCE AND EXTERNAL AUDIT INVOLVEMENT**

Project Board has been set up based on a model provided by and with guidance from the Environment Agency for this type of scheme. Details of both the Project Board and Project Team with terms of reference, roles and responsibilities are provided in Appendix 2. The membership reflects the current arrangements and it is recommended that the Portfolio Holder for Environment and Coast Protection becomes a member of the Project Board and that the successful Consultant for Lot 3 becomes a member of the Project Board and project team on their appointment. The project team's work is based on the contractual arrangements with the respective third parties.

A Project Team established for the PAR, is continuing to meet as the project has progressed into the design phase. This team has been enhanced and is drawing on input from Finance, Legal and Planning together with external support from an experienced coastal engineer who is assisting to drive the project through the design and procurement stage. The coastal engineer is a chartered civil engineer and specialises in flood, coastal defence, drainage and infrastructure. He has extensive experience in engineering and financial appraisal, design and project management of coastal defence assets and has been involved in similar projects elsewhere in the country.

The external coastal engineer's role has and will continue to include assessment of the preferred procurement processes such as the EA's Water and Environment Management framework (WEM). Additional details around the WEM framework and the coastal engineer's recommendations including the preferred procurement route are set out later on in this report.

Member involvement to date has included consultations with the relevant portfolio holders, including regular project updates to Members along with presentations and site visits as part of developing the project.

The project has also been discussed with the Ernst and Young (the Council's External Auditors but in an advisory capacity) who are now developing a scope to assist the Council in successfully delivering the project from a procurement and contract perspective and how value for money can be secured.

## **PUBLIC ENGAGEMENT AND CONSULTATION**

Public and Stakeholder engagement in respect of the detailed design took place on 21st and 22nd October in the Essex Hall attended by Officers involved with the project and design consultants Mott MacDonald. Further consultation has also been undertaken and will continue as part of specific activities such as the various licence applications.

Information boards have been erected at five locations along the frontage and are being updated as the scheme design progresses and moves towards the construction phase. Similar information is being published on our Web Site

To date there has been very favourable feedback and interest from the public.

As the project moves towards the construction phase it is proposed to provide a dedicated facility as part of the contractor's site compound where the public can visit and speak to a Communications Officer about the project. As part of developing the project it is also proposed to engage with specific stakeholders such as beach hut users and seafront traders.

Consideration is being given to the installation of Web Cams to enable progress of the

works to be viewed remotely by any interested party via our Web site.

In addition to the above a communication strategy will be produced in partnership with the works contractor once appointed along with funding providers.

## **PROJECT UPDATE AND KEY MILESTONES**

This section sets out the key activities undertaken to date and the next key steps planned.

For completeness and transparency it is also appropriate to set out the decisions that have been made, including those under the delegated powers that were agreed by Cabinet at its meeting on 14 June 2013 (minute 24 refers) as follows:

Preliminary and Detailed Design Consultant (NEC Professional Services Contract Option A)	Contract Award / Exemption from Procurement Rules
Topographical Survey	Contract Award via Competitive Quotes
Ground investigation Ph1	Contract Award via Competitive Quotes
Ground investigation Ph2	Contract Award via Competitive Quotes
Bathymetric Survey	Contract Award via Competitive Quotes
Physical Modelling	Contract Award - Specialist single UK supplier

A summary of activities undertaken to date include:

### **Completed**

- Topographical survey
- Ground investigations
- Bathymetric surveys
- UXO study (unexploded ordnance)
- Preliminary design
- Wave data obtained
- Coast Protection Act Notice issued
- Numerical modelling
- Screening with Statutory consultees
- Planning Application submitted
- Application submitted for Marine Licence (Marine Management Organisation)
- Application submitted for Environmental Permit (EA)
- Public Engagement design events held

### **In Progress**

- Physical modelling
- Detailed design including the use of 3D software for the groynes
- Development of procurement and contract arrangements and documentation with further details set out in the next section



## **THE PROPOSED CHOICE OF CONTRACT & PROCUREMENT PROCESS**

Through the PAR process the Council has been encouraged by the EA to carefully consider the use of the Environment Agency's Water and Environment Framework (WEM) as the procurement for both the works and contract management.

The WEM framework has subsequently been robustly reviewed by Council Officers and the external coastal engineer in partnership with the EA with the key findings as follows:

### **The WEM Framework**

Formalised by the EA in 2013, the WEM Framework is a commercial agreement between the EA, consultants and contractors ('suppliers') with agreed terms for the award of individual contracts to deliver projects for Flood and Coastal Risk Management (FCRM) (A framework is a contract between an employer and a supplier that is designed to allow the employer to invite tenders from suppliers to carry out work on an 'as instructed' or call-off basis over a set term).

The WEM Framework was awarded by the EA in compliance with the EU Public Procurement regulations, following publication of a Contract Notice in the Official Journal of the European Union (OJEU). The use of the WEM Framework is, however, not restricted to the EA as it is designed to be used by other authorities, such as Tendring District Council, in delivering their associated projects.

The framework has been set up in four 'lots' for different types of work, Lots 3 and 4 being relevant for this Scheme

### ***Lot 3 Engineering and related services***

Examples include:

- Strategy, project appraisal and feasibility studies
- Design, supervision and contract management
- Specialist engineering such as design of flood gates.
- Research and development

In respect of the Council's requirements under this area it would be to ensure the Council has the right level of Project Management and Supervision in place. The role of the Project Manager is to manage the contract on behalf of the Council to deliver the objectives for the completed project. The role of the Supervisor is to check that the works are constructed in accordance with the contract. It is similar to that of a Resident Engineer who may be assisted by an inspector or clerk of works.

There is a specific requirement that the Employer appoints a Project Manager and a Supervisor.

### ***Lot 4 Asset delivery***

Examples include:

- Construction works
- Coastal works such as; beach nourishment, dredging, coastal structures
- Design and build

Incentivisation is the cornerstone of the WEM Framework through robust project management, key business drivers and project outturns.

## **WEM Framework Procedure**

The WEM Framework has a prescribed procedure for the procurement of the services of contractors and consultants drawn from the lists of suppliers who are party to the Framework agreement. The WEM User Guide (Appendix 3) explains how to procure consultancy and construction work through the Framework. The Framework is populated by suppliers already assessed, by the Environment Agency, to be competent and have the skills, experience and resources needed to successfully complete the scheme.

Central to the tender process is the concept that the suppliers cannot increase the rates and fee percentages agreed within the Framework. The suppliers do, however, have the ability to reduce rates and fees as part of the competitive tender process.

The Council will need to appraise tenders using the WEM Framework Tender Evaluation Model. This model states both criteria and criteria weighting. The model includes the provision for quality sub-criteria to be defined by the Council.

In terms of the final evaluation criteria to be used, it is proposed that these will be developed in consultation with Ernst and Young to maximise opportunities where possible to address the principles such as the management of financial risk and commercial management.

The evaluation criteria that will be used will be finalised in consultation with the Portfolio Holders for Environment and Coast Protection and Finance and Asset Management with a recommendation set out earlier on in the report.

The EA has confirmed that it will continue to provide high level advice on all aspects of the Framework for the duration of the scheme at no cost to the Council. Additional support on specific contract matters can be provided by the EA procurement specialists on a time charge basis.

The WEM framework agreement is based on call-offs using the NEC3 suite of contracts has been agreed between the Environment Agency and suppliers that defines the terms under which the framework will operate.

### **Contract Documentation - New Engineering Contract Third Edition (NEC3)**

The Construction Clients' Board (formerly Public Sector Clients' Forum) recommends that public sector organisations use NEC3 contracts when procuring construction works. Standardising use of this comprehensive suite of contracts helps deliver efficiencies across the public sector and promotes behaviours in line with the principles of Achieving Excellence in Construction.

Individual call-off contracts are awarded through specially prepared versions of the NEC3 Professional Services Contract (PSC) and NEC3 Engineering and Construction Contract (ECC).

The NEC3 form of contract consists of core clauses with the main options of

- A Priced contract with activity schedule
- C Target cost contract with activity schedule
- E Cost reimbursable contract

The letters A, C and E are designated within NEC3 contracts. The WEM Framework does not use the other NEC3 main options of B, D and F.

### **Which Option is Right for the Coast Protection Project?**

### **Contract Management and Supervision (LOT3)**

Option A for the Professional Services Contract (PSC) is a Priced Contract with Activity Schedule and is the preferred option for this Scheme.

Under this Contract the Consultant is paid a lump sum for the services. An activity schedule is a list of the activities which the Council expects the consultant to carry out in providing the Services. When it has been prepared and priced by the Consultant, the lump sum for each activity is the price paid by the Council for that activity. The total of these prices is the Consultants lump sum for providing the whole of the services.

Option C (PSC) is a target cost contract in which the financial risks are shared between the employer and the Contractor and is not considered appropriate for this type of scheme. Option E is a type of cost reimbursable contract in which the financial risk is largely borne by the employer and again is not considered appropriate for this scheme.

### **Works (LOT 4)**

Option C for the Engineering and Construction Contract (ECC) is a target contract and is the preferred option for this Scheme.

Option C is a target cost contract in which the financial risk is shared between the employer and the supplier in an agreed proportion. Cost saving, gain, is shared between the Employer and Supplier at the end of the contract where the actual cost is less than the target cost. If the actual cost is greater than the target cost, the contract overspend, the pain, is also shared. The share of gain or pain is determined by a formula defined in the WEM Framework agreement.

The supplier (the contractor in the case of Lot 4), tenders a target price in the form of prices using an activity schedule. The target price includes the supplier's estimate of the actual cost plus other costs, overheads and profit to be covered by its fee. The supplier also tenders its fee in terms of a fee percentage to be applied to the actual cost. (The supplier cannot tender a fee greater than that agreed in the WEM Framework).

During the course of the contract, the supplier is paid its actual costs plus the tendered fee. In the NEC3 this is defined as the Price for Work Done to Date (PWDD) including adjustments for the effects of compensation events.

At the end of the contract, the supplier is paid, or pays, its share of the difference between the final total of the prices and the final PWDD according to the formula stated in the contract. If the final PWDD is greater than the final total of the prices, the supplier pays its share of the difference.

The WEM Framework formula is as follows:

Share Range (Expressed as a percentage of the final total of the prices)	Supplier's Share Percentage	Employer's Share Percentage
Less than 85%	0%	100%
From 85% to 115%	50%	50%
Greater than 115%	100%	0%

This type of contract seeks to reward delivery and penalise failure and the Employer's liability will be limited as set out above.

Option A (ECC) is a priced contract where all the activities are known at the outset and Option E (ECC) is suitable where the definition of the work is inadequate even as a basis for a target price and yet an early start to construction is required. Both of these circumstances do not exist for this Scheme and therefore have been considered inappropriate in this instance.

### **Contract Flexibility**

NEC3 also provides for a number of standard secondary option clauses (NEC3 Options X and Y) which may be used by the Employer. Secondary PSC and ECC options have been agreed at WEM Framework level. Some secondary options are mandatory and some are optional but their use is prescribed at Framework level. Included in the mandatory list of secondary options are additional conditions of contract (NEC3 Option Z).

The subject of many of these additional conditions of contract will be familiar to the Council as they cover topics commonly found in a local authority's contract or finance rules and regulations. The additional conditions of contract have been reviewed by an External Consultant and nothing has been found that can be considered as prejudicial to the Council's interests as the Employer in the contract although the project team will keep under review the need for additional clauses before the tender documentation is finalised.

As the Framework has been agreed between the Environment Agency and the selected suppliers, there is no scope for the addition of any "local" core clauses or secondary options so the form of contract cannot be changed without a change to the Framework agreement. If there are any specific requirements unique to the scheme, they can be included in the Works Information (the NEC3 terminology for specification).

Although the WEM Framework has been set up by the EA, the LOT3 and LOT4 contracts will be between Tendring District Council and the supplier. The EA will not be a signatory to the contract nor will it be involved in the management of the contract. The Environment Agency will, however, continue to support the Council in the use of the WEM Framework at the Council's request.

### **Additional Advice**

#### **Environment Agency Procurement Specialist Briefing**

On 11 September 2013, the external coastal engineer met an EA procurement specialist in Leeds for the purposes of developing further an understanding of the WEM Framework for use by the Council. The EA has also agreed to give to the Council the rates and fees that form part of the agreement. As these are commercially sensitive, it is likely that the Council will be asked to enter into a confidentiality agreement.

Many of the suppliers on the Framework are joint ventures using specially created companies for the delivery of their respective obligations under the terms of the Framework. The Council's contract with the supplier will be with a specially created company and not one of the partners in the joint venture. At the briefing, the Environment Agency advised strongly that parent company guarantees be obtained from the partners to the joint venture. Provision for parent company guarantees are included in the secondary options of the NEC3 contract forms.

### **SUMMARY**

On balance and taking all of the above into account, it is felt that value for money and successful outcomes can be delivered by using the WEM framework and associated NEC Contract documentation with key considerations as follows:

- The EA have confirmed that the Council has use of the framework which is EU compliant and has identified a number the best suppliers in flood and coastal risk management.
- The WEM framework identifies a number of suppliers under each LOT therefore providing competition.
- Given the scale of the works involved, the mix of suppliers identified under the WEM framework would likely have been similar if the Council went out to the market independently, so the WEM will deliver a time saving without increasing any additional exposure to procurement risk.
- Although the WEM framework and associated NEC contract documentation sets out a number of standard terms and clauses there is sufficient flexibility to develop tender evaluation criteria in consultation with our External Auditors.
- There are no disadvantages to the Council using the WEM framework than if it chose an alternative procurement route.
- Support will be provided to the Council by the EA throughout the process.

### **NEXT STEPS**

There are a number of activities required to secure a 'start on site' position during 2014/15 with a summary as follows:

- Develop tender evaluation criteria and contract documentation in consultation with our External Auditors, external coastal engineer and relevant Portfolio Holders
- Tenders issued, received back and evaluated in accordance with criteria
- Finalise scheme budget
- Detailed design finalised
- Planning permission gained
- Relevant licenses secured such as those from the MMO and EA
- Works contractor appointed
- Contract Management and Supervision consultant appointed
- Communication and public engagement strategy finalised
- Identify spending and grant receipt profiles and ensure the Council's treasury management activities reflect the necessary works programme and associated cashflows.
- An update to Cabinet will be provided at the next appropriate stage of the procurement process with a 'start on site' date planned in 2014/15.

### **BACKGROUND PAPERS FOR THE DECISION**

Project Appraisal Report (PAR)  
WEM Framework

### **APPENDICES**

Appendix 1 Risk Register  
Appendix 2 Project Board and Project Team Terms of Reference and Membership  
Appendix 3 WEM Framework User Guide