



# **Brighton Marina to River Adur FCERM Scheme**

## **Procurement Strategy**

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## 1. Introduction

- 1.1. This Procurement Strategy identifies the most effective route to market for both the Design and Construction contracts for the Brighton Marina to River Adur Flood and Coastal Risk Management Scheme (the project).
- 1.2. It sets out the procurement and contracting options considered, the pros and cons of each, and the recommended route for each contract. The project team has worked with partners, including the Eastern Solent Coastal Partnership, to learn lessons from similar projects being delivered by Risk Management Authorities (RMAs) in the local area and to ensure the procurement strategy is appropriate for the project and takes into consideration the projects drivers and constraints.

## 2. Assessment of key project drivers

- 2.1. Building on the project objectives, the project's key drivers presented in Table 22 of the OBC Commercial Case have been used as a baseline for assessment of procurement options. These are shown in Table 1.
- 2.2. Additional project drivers, with specific relevance to procurement have also been identified when preparing this strategy and are shown in Table 2.

*Table 1 Showing the Key Drivers presented in Table 22 of the Commercial Case of the OBC*

Key Driver	Description
Quality	Defences sensitive to setting and resilient to provide 50 year design life. Experienced suppliers with proven ability on similar schemes and ability to demonstrate added value through experience to date.
Buildability	Buildability is important due to tidally restricted working areas and heavy tourism and recreational traffic along most of the frontage and site security.
Cost certainty	To support working within fixed budget from contribution and Grant in Aid
Value for money	To achieve best value for public spend. Identify and focus on efficient delivery supporting DEFRA's target for efficiency savings.
Optimum Programme	Programme of work that optimises construction and prioritises the improvement works to areas of greatest need. Considers working restrictions of tourism on annual working window. Experienced practitioners informing the licencing and consenting process for the works will support the delivery of an optimum programme.

Table 2 Additional drivers for the project that could shape the procurement route

Additional Driver	Description	Effect on Procurement Route
Time to engage with supplier	The project is under pressure to ensure the development of the design and subsequent construction is delivered as quickly as possible.	A procurement route that has a short procurement lead-in time would assist the project's progress and reduce programme pressure.
	Existing defences have a limited residual life and provide sub-optimal performance, increasing the risk of flooding within the flood cell within the next 15 years.	Reducing procurement time and commencing project delivery quicker will ensure project benefits are realised at the earliest opportunity.
	The project is supported by a significant contribution from the Council which has a set time period that it is to be spent in.	
Management of Procurement Process	These commissions are key in providing resource to the project for effective delivery, only a small project team is available during the procurement phase.	Streamlined or standard procurement options are preferred to reduce resource requirement during this initial phase.
		Ensure the procurement route is not overly complex or onerous; assess framework options where possible and utilise when deemed to be advantageous.
Risk	Council prefer to ensure risk is placed on the party best placed to manage the risk and will seek to transfer risk where appropriate to suppliers.	A Contracting model that reduces risk exposure to the Council is important. However, this also needs to be balanced with best placed risk management to avoid unnecessary risk pricing.
Sustainability	It is important for the Council to have suppliers with a strong emphasis of sustainability and circular economy where possible.	These items need to be tested during the selection process and measured during the contract.

2.3. Assessment of the the project drivers shown in Table 1 and Table 2 concludes that finding a simple and efficient procurement route that will deliver both value for money and programme benefits will be key to a successful procurement strategy for this project.

### 3. Contracting Models

3.1. This section assesses the suitability of contracting models used to engage with suppliers. High level assessments of using a Design and Build (D&B) commission have been compared to using a traditional route resulting in separate design and construction commissions.

#### Design and Build

3.2. A D&B option would look to engage with a single Tier 1 contractor. The contractor would be responsible for delivering both the detailed design and construction elements of the project.

3.3. Traditionally a D&B arrangement would be let through a single stage commission using a fixed or target cost contract. Two stage contracting models are also available that would split the design and construction into two separate phases, but would still be delivered under a single commission. The NEC4 Engineering and Construction Contract allows for two stage contracting through incorporation of the X22 Early Contractor Involvement clause.

3.4. The benefit of a D&B arrangement is that the Contractor is responsible for both the design and construction elements of the project and will undertake the design management duties on behalf of the client. It is normal for the Contractor to commission a design consultant through a sub-contract arrangement but for less complex projects the Contractor may also have the capability to undertake some design work in-house.

3.5. The Contractor would be responsible for the day to day management of the design and construction stages, and be able to offer buildability, sequencing and supply chain advice throughout the design process.

3.6. Successful single stage D&B contracts require a certain level of design maturity to have been reached prior to procurement, in order to allow the contractor to accurately price both the design and construction phases. Where the design is less mature a two stage contract may be more appropriate, however the procurement and contract management arrangements for a two stage contract are more complex.

3.7. A D&B contract will require the clients requirements and outputs to be clearly defined at the time of procurement. Additional requirements or changed decisions post award will lead to significant cost and time change during the contract.

3.8. The value in a D&B model is often seen to be that much of the risk is transferred to the Contractor, however, this may misplace the effective management for the risk. As such, this route tends to incorporate a high risk allowance from the Contractor consequently increasing costs.

- 3.9. Design and Build contracting models can often result in a fee on fee scenario, with the Client incurring additional cost from the Contractor for management of the design consultant. This can be substantial if significant design work is required but may be preferable for client organisations with little in-house resource to manage the design process.
- 3.10. Bringing a Contractor into the design process too early can also hinder development of the design. Contractors are often driven to move projects to site quickly, which may frustrate the design process if strategic level development is required. It is important to consider the appropriate timing for Early Contractor Involvement (ECI) and Early Supplier Engagement (ESE) input into a project when the design is sufficiently mature to gain best value from this process.

### **Separate Design and Construction**

- 3.11. Separate contracts for the design and construction elements of a project would see the client engage with each supplier independently. The Designer would be responsible for the development of the design whilst the Contractor would be solely responsible for the project delivery on site.
- 3.12. ECI/ESE can also be brought to the project if required, either through appropriately timing the construction commission or through another independent commission alongside the design process.
- 3.13. The design consultant will be commissioned directly to the client which will give greater control and input to the design process than is afforded through a D&B arrangement and can contribute to ensuring the client's objectives and broader outcomes are fully satisfied.
- 3.14. Progressing the design through a separate commission ahead of procuring the construction work will allow design changes or additional client requirements to be incorporated without impact on the construction proposals. This will generally lead to reduced change management requirements to the project overall and increase cost certainty.
- 3.15. The construction contract will be tendered at the point the design is sufficiently mature to allow accurate planning, programming and pricing of the work. This will generally result in greater cost certainty.
- 3.16. Separate commissions will ensure the client does not incur the fee on fee charges that could arise in a D&B model, but will require the client to resource the management of both contracts.

## Recommendation

- 3.17. The project is not considered to require specialist operations or highly complex work, with the design solutions being well understood by industry design suppliers. It is therefore not considered essential for contractor involvement early in the design process.
- 3.18. The current design maturity for the project is not considered sufficient to achieve best value from a single stage D&B procurement process.
- 3.19. A two stage D&B contract, while a valid option given the design currently available, is a more complex contract model that would result in higher client resource requirements and management costs.
- 3.20. Procuring a separate design contract independently of the construction contract will provide a quicker route to market and subsequent appointment of a design supplier than would be achievable via a D&B route. The project programme requires prompt commencement of the design phase, while construction works are not yet required.
- 3.21. It is therefore recommended that this project follows a traditional contracting model in commissioning the design and construction as two separate contracts.

## 4. Assessment of procurement options for the Design Supplier

- 4.1. To enable to the appointment of a design consultant to deliver the design and consultancy support elements of the project, procurement options utilising bespoke tendering and the use of established frameworks have been reviewed and assessed.
- 4.2. The procurement routes for the Design stage considered in this strategy are as follows:
- **Bespoke procurement procedure**
    - Restricted Tender
    - Open Tender
    - Negotiated Tender
    - Competitive Dialogue
    - Innovation Partnership
  - **Crown Commercial Services Framework** – Project Management and Full Design team Services – Lot 5  
(<https://www.crowncommercial.gov.uk/agreements/RM3741:5/lot-suppliers>)
  - **Environment Agency** - Collaborative Delivery Framework (CDF)
  - **FCERM, Consultancy Framework, Southern England: 2016-2020**  
(<https://www.escp.org.uk/fcerm-framework>)
  - **Scape** - Built Environment Consultancy Services Framework  
(<https://www.scapegroup.co.uk/services/procure/frameworks/built-environment-consultancy-services/perfect-circle>)

### Bespoke Tenders

- 4.3. The design commission will be above OJEU Procurement thresholds of £189k for Services, therefore any bespoke tender undertaken will need to select a procedure under the Public Contract Regulations 2015 (“the Regulations”) and run in full accordance with OJEU processes.
- 4.4. There are five types of contract award options under the Regulations:
- Open procedure
  - Restricted procedure
  - Competitive dialogue
  - Competitive with negotiation
  - Innovation partnership
- 4.5. There are no restrictions in the Regulations regarding the use of the open and restricted procedures. However, competitive dialogue, competitive with negotiation and innovation partnership procedures can only be used in specified circumstances and when the requirement is significantly more

complex or innovative than normal. This is not considered relevant or appropriate for use to this project and as such have been discounted, therefore only the Open and Restricted procedures are considered in detail in this strategy.

## Open procedure

4.6. The open procedure is most suited to simple procurements where the requirement is straight forward. Although suppliers will have to demonstrate that they meet certain minimum requirements as set out within the tender, there is no pre-qualification stage and therefore any supplier can submit a tender return, which may be many. It is often most appropriate when cost is the main driver. The Pros and Cons are shown in Table 3.

*Table 3 Pros and Cons of a bespoke open tender*

Open Tender	
Pros	Cons
Most simple process to follow and understood well by suppliers	Can be time consuming to evaluate due to the number of tender returns, especially if quality elements are significant
Maximum opportunity for competition	Can be off-putting to suppliers, as they are up against an unknown number of other bidders, especially for complex and costly bid preparation
Generally, the fastest tender turnaround period for bespoke tenders	No opportunity to discuss/refine bids post tender submission
Can be good to seek new suppliers in the market who may not have the experience to meet more robust pre-qualification experience requirements	
Allows Client to set own contacting mechanism and clauses best suited to the scheme	

## Restricted procedure

4.7. The restricted procedure enables the pre-selection of suppliers based on experience, such as financial standing and technical or professional ability, to reduce the number of suppliers invited to submit full tender returns. This procedure is often advantageous when a large quantity of suppliers are expected to bid against the requirement or when the requirement is more complex. Although timescales are longer due to the inclusion of a supplier

selection stage, this can be off set to a certain degree by potentially having less tenders to evaluate. The Pros and Cons are presented in Table 4.

*Table 4 Pros and Cons of a Bespoke Restricted Tender*

<b>Restricted procedure</b>	
<b>Pros</b>	<b>Cons</b>
Simple process to follow and generally understood well by suppliers	Longer timescales than Open procedure
Most likely to have fewer tender returns to evaluate than Open procedure, which can save time	Can restrict access to new suppliers in the market or innovation, as pre-selection is based on past experience
Can be more appealing to suppliers, as the number of competitors is reduced and gives each a greater chance of success	Can seem onerous if pre-selection requirements are simple and don't warrant the extra submission
Ensures all suppliers submitting tenders can meet certain eligibility criteria for entering into contract	No opportunity to discuss/refine bids post tender submission
Achieves good value for money through competitive tension	
Allows client to set own contacting mechanism and clauses best suited to the scheme	

## Crown Commercial Services Framework

4.8. The Project Management and Full Design Team Services Framework, procured and managed by Crown Commercial Services (CCS), is accessible until May 2021 and provides broad, strategic advice on primarily property projects across a range of disciplines and functions. The framework contains a specific Civil and Structural Engineering Services and Environmental Services Lot (Lot 5), which has been the focus for the assessment of this framework. The suppliers within this Lot are:

- Atkins Limited
- Building Design Partnership Limited
- CH2M HILL INTERNATIONAL NUCLEAR SERVICES LTD
- Mott MacDonald Limited
- PELL FRISCHMANN CONSULTANTS LIMITED
- Pick Everard
- WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS UK LIMITED
- WSP UK LIMITED
- WYG Engineering Limited

The assessed Pros and Cons of this option are shown below in Table 5.

*Table 5 Pro and Cons of the CCS framework – Lot 5*

### Crown Commercial Services Framework – Project Management and Full Design team Services – Lot 5

Pro	Cons
Ready to access framework with 11 suppliers	Mini competition will take longer to run as opposed to a single supplier / direct award option
NEC or JCT contract models available – Authorities choice	Broad range of suppliers to cover vast scope, many of which are not detailed design specialists or well known for their marine and coastal design capabilities
Mini competition will give good competitive tension between suppliers	Framework does not specifically consider coastal design work
Free to access for Local Authorities	Framework expires May 2021 with no further option for extension – timeframes could result in a significant legacy contract.

## Environment Agency- Collaborative Delivery Framework – Lot 1

4.9. The Collaborative Delivery Framework (CDF) was established by the Environment Agency (EA) in April 2019 to deliver its flood and coastal erosion risk management (FCERM) capital programme across England up to 2023. The CDF is accessible free of charge to Risk Management Authorities (RMAs) and may be extended for a further four-year period to 2027 after 2023. This Next Generation Supplier Arrangement (NGSA) replaces the Water and Environment Management (WEM) framework which expired in July 2019.

4.10. The nationwide framework is divided into six Integrated Delivery Team (IDT) Hubs, as demonstrated in the image below, and contains two single supplier Lots within each regional hub, which are:

- Lot 1 – Professional Services
- Lot 2 – Programme Delivery

4.11. Whilst the two Lots together could provide both contracts needed to deliver the entirety of the scheme from cradle to grave, there are no conditions mandating this must be the case. Whilst there may be merit in taking this approach due to the collaborative approach between the partners, each Lot can be accessed independently.

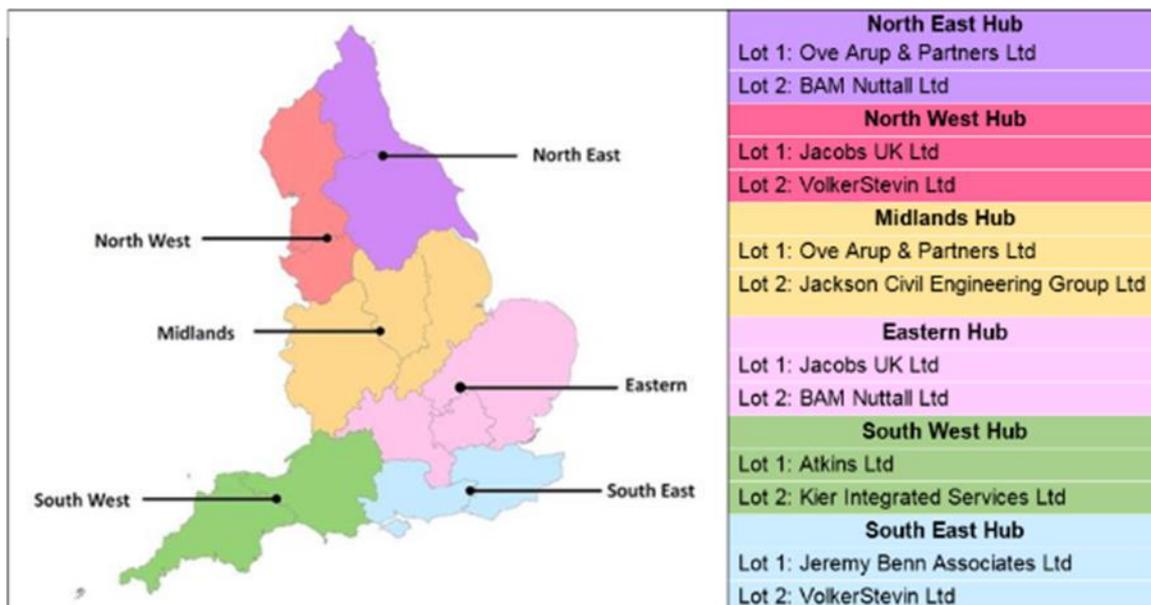


Figure 1: Environment Agency capital delivery hub and supplier geographies

4.12. As stated in the Figure 1, the Lot 1 delivery partner for the South East, which covers Brighton and Hove, is Jeremy Benn Associates Ltd (JBA). JBA work across the following key service streams, providing services to clients in core sectors including Government and Regulatory, Energy, Sustainable Development, Third Sector, Transport and Infrastructure and Utilities:

- Engineering
- Environmental Management

- Flood and Water Management
- Research and Development
- Software Development
- Training

4.13. This single supplier option relies on positive collaborating behaviours in its operating model. The mechanism for agreeing initial contract prices is Client led, through use of framework cost data and industry benchmarking, which may be unfamiliar for many Local Authorities. This process will be reliant on robust cost and commercial management, which may require additional specialist resource.

The Pros and Cons of the EA CDF are shown in Table 6

## Environment Agency - Collaborative Delivery Framework – Lot 1

### Pro

Single supplier removes need for a procurement exercise to be undertaken and therefore theoretically should be the fastest route to market

Framework is specific for the coastal and flooding sectors therefore delivery partners are known to have sufficient relevant skills and experience

Agreed framework rates to assist securing value for money

Aims to be delivered collaboratively, which provides better working relationships often resulting in better project outcomes

No access fee for RMAS and Local Authorities

No commitment to use CDF Lot 2 contractor but can be accessed, which may provide benefits

Collaborative approach will help shape design scope and provide strong relationship between parties

### Cons

Negotiated cost for works could be protracted and would likely increase time to agree costs. Agreed costs can be +15% / -10% of baseline which may not provide cost certainty

Client set baseline approach is reliant on robust cost and commercial management and is a relatively unfamiliar approach to cost setting. This would likely take time to understand the process and/or require additional cost consultancy support, which in turn may trigger the need for another procurement exercise to source that expertise.

Will require a well-formed design scope to ensure firm prices and low likelihood for change

Single supplier option does not allow for competitive tension when cost setting and unless managed robustly could be seen as not securing value for money

Tightly controlled contract clauses by the EA leaves little flexibility to adapt or personalise contract management approach

## FCERM Consultancy Framework

4.14. The FCERM, Consultancy Framework, Southern England: 2016-2020 (PSF) is hosted by Portsmouth City Council. The PSF is a pre-qualified framework of suppliers who have been tested for coastal defence and public realm specialisms. However, this framework is only available to a restricted number of Local Authorities who bought into the framework at its conception. BHCC are not on the access list, although project partner Adur and Worthing Council is a participating authority. If this was to be let through the PSF BHCC could not be the contracting authority.

The Pros and Cons of the framework are shown in Table 7.

*Table 7 Pros and Cons of the FCERM Consultancy Framework*

<b>FCERM, Consultancy Framework, Southern England: 2016-2020</b>	
<b>Pro</b>	<b>Cons</b>
Access to a range of coastal specific design supplier, with proven experience of similar projects and local to the South East	Mini-competition will increase procurement programme compared to a single supplier access
Mini-competition allows for further competitive tension.	BHCC are not part of this framework so Worthing DC would have to become the contracting authority changing proposed project governance/management structure.
Framework has a broad range of NEC3 contracting options which allow greater freedom than seen on other frameworks. For example, the NEC3 option G allows for flexibility to the Scope and subsequent change, which the EA CDF does not.	Framework expires in July 2020 and is due for a short extension until 2021. Timescales could lead to significant legacy contract.
Traditional cost formation	

## **SCAPE – Built Environment Consultancy Services Framework**

- 4.15. The SCAPE group is a publicly owned procurement group set up by six local authorities. SCAPE run and manage a suite of five infrastructure focused single supplier frameworks of which the Built Environment Consultancy Service (BECS) was assessed as being potentially suitable for the design development of this project.
- 4.16. The framework is designed to offer a comprehensive suite of design and construction consultancy framework services and is delivered by Perfect Circle, a joint venture formed by Pick Everard, Gleeds and AECOM, supported by local supply chain partners. AECOM have coastal and maritime capabilities.
- 4.17. The framework was established October 2016 for a four-year duration but has recently been extended to 4 January 2021.
- 4.18. After signing a free of charge Access Agreement, clients can engage with Perfect Circle on a Pre-Procurement Engagement exercise to meet and discuss details of the proposed commission in advance of a Delivery Agreement without any charge. This engagement assists in the development of a fee proposal, which is developed on a basis of pre-agreed framework percentage and hourly rates. At the point a Delivery Agreement is signed a fee of 3% of the commission value is payable to Scape by the consultant. Pros and cons are shown in Table 8

### Scope - Built Environment Consultancy Services Framework

#### Pro

Single supplier framework should allow quick access to the supplier without need for procurement exercise

Procurement tested to include coastal works

Agreed framework rates and free of charge pre-procurement engagement allows for simple process to agree work scope and price, which should enable quick access to design work commencing and demonstrate value for money

Although not a marine & coastal specific framework, AECOM are known to have coastal & port design experience

#### Cons

Although paid via the consultant, a framework access fee of 3% of the commission value is due and the cost will be passed to the client through the contract.

Will require a well-formed design scope to ensure firm prices and low likelihood for change

Modified Contractual models

Framework expires Jan 2021, which could cause tight timescales and significant legacy contract.

### Recommendation

- 4.19. The benefits of accessing a single supplier through the EA CDF meet key project drivers. Although a new method of agreeing commission costs will be experienced, the speed of market access to a specialist coastal consultant is seen a strong positive for the project. The collaboration delivered through the EA CDF is a strong benefit to the project and will support the Council as the project develops. The EA CDF is strongly aligned with EA process and governance arrangements that will be required on this project and sits alongside a number of other NGSAs framework arrangements that could be used for other requirements on this project.

## 5. Assessment of procurement options for Construction Supplier

5.1. Procurement options have been considered to appoint a contractor separately to the designer for the construction aspect of the project only. Alongside an assessment of bespoke tendering options, there are several pre-existing frameworks available for marine civil and infrastructure work of this nature, a selection of the most appropriate have been reviewed.

5.2. The procurement routes considered for Construction are as follows:

- **Bespoke procurement procedure**
  - Restricted Tender
  - Open Tender
  - Negotiated Tender
  - Competitive Dialogue
  - Innovation Partnership
- **Crown Commercial Services** – Construction Works and Associated Services Framework – Lot 8  
(<https://www.crowncommercial.gov.uk/agreements/RM6088:8/lot-suppliers>)
- **Environment Agency** - Collaborative Delivery Framework – Lot 2
- **Environment Agency** – Marine and Coastal Framework – Lot 1
- **Hampshire County Council Gen4 Framework**  
(<https://www.hants.gov.uk/business/property/services/construction-frameworks>)
- **Scape** – National Construction Framework  
(<https://www.scapegroup.co.uk/south-east>)

### Bespoke tender

5.3. The EU threshold for Works is £4.7m. The Scheme construction value is over this threshold and therefore a full OJEU process will need to be followed.

5.4. The pros and cons of the five bespoke tender options have been reviewed in Section 4 above and are equally applicable to the appointment of a construction contractor and are therefore not repeated here.

## CCS – Construction Works and Associated Services Framework – Lot 8

- 5.5. The seven-year framework enables public sector organisations to access all types of building and civil engineering works free of charge until October 2026.
- 5.6. The flexible contract structure is designed to include advanced, innovative contract arrangements, allowing customers to procure programmes of work as self-managed sub-alliances.
- 5.7. The framework is arranged in 11 lots, of which the national accessible Maritime Lot (Lot 8) was considered as having the potential to deliver the construction element of the project and is the basis of this assessment. The suppliers included in this Lot are:
- Balfour Beatty Construction Limited
  - Costain Limited
  - Graham
  - Kier Construction Limited
  - McLaughlin & Harvey Limited
  - Volkerstevin Limited
- 5.8. The framework is designed to broadly support the implementation of government policies and strategies:
- building information modelling (BIM)
  - life cycle cost
  - prompt payment
  - project bank accounts
  - early contractor involvement
  - social value
- 5.9. It also aligns suppliers and customers in achieving agreed success measures for each lot. Advanced alliance facilities are included to increase the potential for consistency, efficiency, improved value and lessons learned by integrating or connecting:
- a programme of work comprising more than one project to be awarded to one or more suppliers
  - the design, capital and operational phases of any one or more projects, to be awarded to one or more suppliers

The Pros and Cons are shown in Table 9.

Table 9 Pros and Cons of CCS - Lot 8

**Crown Commercial Services – Construction Works and Associated Services – Lot 8**

<b>Pro</b>	<b>Cons</b>
Broad range of quality construction suppliers	Limited number of suppliers are coastal specialists, which may result in low interest
Quick access to 6 suppliers via mini competition, allowing for a good level of competition	Framework has not been tested for coastal but aimed more at maritime (ports, quays, harbours etc), meaning that mini competition will need to be robust in assessing experience and capabilities and less focused on details/added value
NEC4 and JCT contracts available, which can be amended to suit specific project	Mini-competition slower route than single supplier framework
Expires Oct 2026	Suppliers are more general and less coastal specific which may increase risk to Client in Coastal application
Free of charge to access	Inferred maximum project values of up to £50m

## **Hampshire County Council - GEN4: Southern Construction Framework (SCF)**

- 5.10. The SCF is the fourth generation framework Hampshire County Council has procured for the South of England for construction, and succeeds not only previous generations of the framework but also the South East and London Framework (SEaL), Construction Framework South West (CSFW), Improvement and Efficiency South East (iESE) and South East Centre of Excellence Construction Framework (SECE).
- 5.11. The SCF looks to support projects or programmes for new build work, extensions, improvements, renovations, repairs and associated site infrastructure works for a full range of building types including education, health, sport and leisure, offices, emergency services, fire and police.
- 5.12. Lot 2 covers the south east for projects over £4m with no upper limit. Public sector organisations in southern England and London that are named on the framework can access it. Contractors are selected via a two-part mini competition. The Contractors on the framework are:
- GallifordTry
  - ISG
  - Kier
  - Mace
  - Midas
  - Morgan Sindall
  - Wates
  - Willmott Dixon

The Pros and Cons are shown in Table 10

Table 10 Pros and Cons of the HCC GEN4 SCF

## Hampshire County Council - GEN4: Southern Construction Framework (SCF)

### Pro

Broad range of quality construction suppliers

Mini competition increases competitive tension

### Cons

Very Limited suppliers are coastal specialists

Framework has not been tested for coastal

Nature of specific coastal works may result in low supplier uptake

Suppliers are more general and less coastal specific which may increase risk to Client in Coastal application

Two-stage mini competition is time consuming than single stage

## Environment Agency - Collaborative Delivery Framework (CDF) – Lot 2

5.13. The Environment Agency’s Collaborative Delivery Framework (CDF) Lot 2, is the sister Lot to Lot 1 that was assessed for the appointment of a consultant to deliver the design element of the scheme under section 4. The principles of the CDF remain the same as previously described and are not repeated here.

5.14. The Lot 2 Construction supplier for the South East is VolkerStevin Ltd. VolkerStevin are an experienced contractor who provide complex engineering solutions across a wide range of sectors, including:

- Marine
- Defence
- Flood risk management
- Water and utilities
- Energy
- Remediation and regeneration

The Pros and Cons of the MCF are shown in Table 11

*Table 11 Pros and Cons of EA CDF Lot 2*

<b>Environment Agency - Collaborative Delivery Framework (CDF) – Lot 2</b>	
<b>Pro</b>	<b>Cons</b>
Single supplier removes need for a procurement exercise to be undertaken and therefore theoretically should be the fastest route to market	Negotiated cost for works could be protracted and would likely increase time to agree costs. Agreed costs can be +15% / -10% of baseline which may not provide cost certainty
Framework specific for the coastal and flooding sectors therefore delivery partners are known to have sufficient relevant skills and experience	Client set baseline approach is reliant on robust cost and commercial management and is a relatively unfamiliar approach to cost setting. This would likely take time to understand the process and/or require additional cost consultancy support, which in turn may trigger the need for another procurement exercise to source that expertise.
Agreed framework rates to assist securing value for money	Will require a well-formed design scope to ensure firm prices and low likelihood for change

Aims to be delivered collaboratively, which provides better working relationships often resulting in better project outcomes

Collaboration could add time to delivery programme and increase cost

No access fee for RMAs and Local Authorities

Framework modifies the NEC4 contract and is tightly controlled by the EA leaving little flexibility to adapt or personalise contract management approach

Does not mandate use of CDF Lot 1 supplier to have provided the design

Single supplier option does not allow for competitive tension when cost setting and unless managed robustly could be seen as not securing value for money

Collaborative approach will help shape design scope and provide strong relationship between parties

## **Environment Agency – Marine and Coastal Framework (MCF) – Lot 1**

5.15. The Marine and Coastal Framework (MCF) is a specialist national multi-supplier framework for the delivery of coastal and marine construction work. Formalised by the Environment Agency in June 2019, the framework forms part of the Next Generation Supplier Arrangement (NGSA) strategy that replace the Water and Environment Management (WEM) framework, which expired in July 2019. The framework expires in 2023 with no provision to extend.

5.16. Lot 1 of the framework is for projects with a total value of between £5m and £50m. The selected suppliers are:

- BAM New Wave Solutions Joint Venture
- Van Oord
- VBA Joint Venture (Volkerstevin, Boskalis Westminster and Atkins)

5.17. The framework is primarily to provide for construction works only but if tested during mini-competition, users of the framework can award on a design & build if required on a full or partial basis. The framework can also be accessed for Early Supplier Engagement purposes to enable contractor insight during the design phase of the scheme.

5.18. This framework will allow quick access to the leading construction suppliers in the coastal defence sector. As the MCF is a multi-supplier framework, a mini-competition procedure will be required to award a contract. Direct award is permitted under this framework but for emergency works only.

5.19. Unlike the client target price setting under the EA CDF, costs of the works are tendered for in a traditional manner.

5.20. This framework is free to use for Risk Management Authorities (RMAs) and can provide additional support from EA local teams if required.

The pros and cons of the MCF are shown in Table 12.

Table 12 Pros and Cons of the EA MCF

<b>Environment Agency – Marine and Coastal Framework (MCF) – Lot 1</b>	
<b>Pro</b>	<b>Cons</b>
Coastal construction specific framework with three highly qualified coastal suppliers available, allowing mini competition to focus on delivery rather than supplier suitability	Mini competition may be a slower route to market than single supplier framework.
Mini competition will suit construction stage and provides competitive tension to support attaining value for money	Expiry 2023 with no room for extension could cause pressured timescales or contracting mechanism
No access fee to RMAs and Local Authorities	Framework modifies the NEC4 contract and is tightly controlled by the EA leaving little flexibility to adapt or personalise contract management approach
Faster route to market compared to bespoke OJEU Restricted Tender	
Standard framework structure and call-off procedures – well understood and unlikely to require additional consultancy support to set pricing and award contract	

## SCAPE – Civil Engineering Framework (CEF)

- 5.21. Further to the detail of the SCAPE BECS presented in Section 4, the Civil Engineering Framework (CEF) is a national single supplier framework designed to deliver a variety of project types, from single commissions to programmes of work across England, Northern Ireland and Wales. It was awarded in 2019 and expires January 2023.
- 5.22. Delivered by Balfour Beatty Ltd, an international infrastructure group with more than 100 years of experience in complex infrastructure projects, works under the CEF are valued from £50,000 to £100m and above.
- 5.23. The framework covers a wide scope and enables civil engineering and infrastructure works in sectors such as environmental, transportation, leisure, recycling and waste, defence, ports, harbours and marine, flood defence and coastal protection, energy, education, commercial and other public sector assets.

The Pros and Cons are shown in Table 13

Table 13 Pros and Cons of CEF

<b>Scape – National Construction Framework</b>	
<b>Pro</b>	<b>Cons</b>
Single supplier framework removes need for a procurement exercise to be undertaken and therefore theoretically should be the fastest route to market	Access fee required
Framework tested for coastal and marine works	Framework modifies the NEC4 contract
Expires Jan 2023	Supplier has been selected across a wide-ranging scope and may not be the most suitable coastal contractor on the market
Agreed framework rates to assist securing value for money	Single supplier option does not allow for competitive tension and unless managed robustly could be seen as not securing value for money

## Recommendation

- 5.24. The EA's MCF is the leading option. The MCF does not require an access fee and has three pre-qualified coastal construction specialists. All three suppliers have Early Contractor Involvement (ECI) experience and would be able to support the design development once it reaches the appropriate level of maturity.
- 5.25. The mini competition required between the three suppliers will provide the client with competitive pricing for the works. However, the framework is flexible to allow a direct award if emergency works are required due to failing structures. The MCF does not require the designer to be on the EA's frameworks but benefits are visible if the CDF route for design was utilised.

## 6. Procurement Plan

### Design

6.1. The recommended procurement route to secure design services for the project is to engage with the Lot 1 supplier of the Environment Agency Collaborative Delivery Framework. The CDF has a clear route to engaging with the Lot 1 supplier once the Client has signed the framework access agreement:

- Develop the Scope for the project. The CDF has a standard scope that can be developed in collaboration with stakeholders or the Client can draft their own.
- Ensure risk allocation and any assumptions agreed within the procurement strategy are clearly articulated.
- Use the CDF Contract Template to provide the information needed by Client and Contractor/Consultant including Activity Schedule which is aligned to the Scope
- The contract must reflect previous approved Business Case, Project Sponsor and Senior User needs and approved procurement strategy
- Contract paper copy with a full set of “wet” signatures shall be used for contract award.
- The Contract Date is the date of signature of the Contract by the last party (i.e. EA signature date). Start dates cannot be before contract signature dates.
- Contract documents are formally issued to the Lot 1 supplier who in turn accepts or declines.

6.2. A high-level programme describing the route to engagement is set out in Table 14

Table 14 High level programme for route to supplier via the CDF

	<b>Action</b>	<b>Estimated timescales (calendar days/weeks)</b>	<b>Notes</b>
1	Brighton governance approval to go down this route	1 week	<i>Starting point. Can be signed at PM level but BHCC legal dept may want to review and could extend time period</i>
2	Brighton to sign & return access agreement	1 day	
3	EA issue of framework documentation to Brighton	1 day	
4	Contact made with EA for introduction to right people at JBA	1 day	
5	Liaise directly with JBA	N/A	
6	Scope development	2-4 weeks	<i>Assumes existing Scope is developed, but longer end of scale may be required if not</i>
7	Agreement with JBA of what is in and out of Scope of standard CDF arrangement for design works	2-4 weeks?	<i>Negotiations over commercial terms can be sensitive and an estimate for this period is given</i>
8	Possible Brighton governance needed to make this offer (like when getting approval to accept a contractor's offer and move into contract award)	2 weeks	<i>Estimate based on previous experience</i>
9	Client set price offered to consultant – consultant to decline or agree with signed contract	2 weeks	
10	Contract award - Brighton to sign and return contract to JBA	1 week	
11	Mobilisation	1-2 weeks, if not immediate	<i>Start date as agreed between parties</i>
12	Design contract commencement	N/A	

## Construction

- 6.3. To use the MCF framework the Council signs the access agreements. The MCF user pack gives detail on how tenders should be undertaken using the framework. It is anticipated given the construction stage costs, that Lot 1 (major marine and coastal works) will be used. It is envisaged that primary construction works only will be utilised, but there is possibility of extending this to include Early Supplier Engagement (ESE) once the design is in a suitable stage.
- 6.4. The MCF stipulates is that works are to be tendered through mini competition. All suppliers will be invited to tender. The MCF does not use an expression of interest (EOI) stage, and so suppliers must confirm or decline the invitation to tender within one week of issue. All suppliers will be issued the standard MCF tender pack via Brighton and Hove City Council's standard procurement system or The EA's Bravo system as appropriate. The tender pack will include:
- Instruction to Tenders
  - NEC4 ECC contract data part one and two
  - Scope
  - Pre-Construction Information
  - Site Information
  - Project Proposal proforma
  - Evaluation model
- 6.5. The MCF requires the tender period to be a minimum of 4 weeks as although a longer tender period will be required for more complex construction requirements, and here a 6-week tender period is recommended. A high-level programme describing the route to engagement is set out in Table 15

Table 15 High level programme showing the route to engagement through the MCF

	<b>Action</b>	<b>Estimated timescales (calendar days/weeks)</b>	<b>Notes</b>
1	Early engagement with suppliers on framework to warn them it's coming	As early as possible – no specific timescales and not mandatory	<i>Courtesy call to suppliers with dates for release will result in a smoother tender period</i>
2	Mini-competition documentation completed by Brighton	2 weeks	
3	Mini-competition documentation disseminated to all suppliers on framework and time allowed for bid completion	6 weeks	
5	Evaluation of tenders	2-3 weeks	<i>Depends on availability of staff</i>
6	Interviews, if applicable	1 week	<i>May not be applicable to MCF but can be a good indicator for staff quality. Delete if unappropriated</i>
7	Brighton governance for award recommendation	2-4 weeks	<i>BHCC to advise on internal governance</i>
8	Award decision notified to suppliers and feedback to unsuccessful suppliers	1 days	
9	Voluntary standstill period	10 days	<i>Not mandatory, but good practice</i>
11	Contract award and signing	2 Weeks	
12	Mobilisation	As agreed with contractor	
13	Start of contract	As agreed with contractor	

6.6. During the tender period request of and answers to clarification questions from suppliers will be made in a timely manner. Final submissions will then be evaluated using the stated model, which will state criteria and weightings for the most economically advantageous tender (MEAT).

6.7. Initially the MCF starting point is that the evaluation model for the project be a 50/50 cost / quality split, although the Client does withhold the right to revise this ahead of the tender being issued. Figure 2 shows an example of criteria that could be used in the quality requirements:

Criteria	Sub Weight		Sub-criteria
<b>Quality Return 1: Methodology</b>	20%	8	QR 1.1 - Site set-up and Logistics
		8	QR 1.2 - Reinforced Concrete Evaluation Criteria - Wall Construction
		4	QR 1.3 - Landscaping
<b>Please see the ITT for a breakdown of the Evaluation Criteria</b>			
Criteria	Sub Weight		Sub-criteria
<b>Quality Return 2: Programme of Works</b>	10%	10	QR 2.1 - Programme of Works
<b>Please see the ITT for a breakdown of the Evaluation Criteria</b>			
Criteria	Sub Weight		Sub-criteria
<b>Quality Return 3: Resourcing</b>	20%	7	QR 3.1 - Key Staff
		7	QR 3.2 - Subcontracting and supply chain
		6	QR 3.3 - Social Value Inclusion
<b>Please see the ITT for a breakdown of the Evaluation Criteria</b>			

Figure 2 Example of quality criteria for assessing construction bids, assuming 50% quality weighting

6.8. Once the preferred supplier has been selected and notified, the form of agreement must be signed by both parties. Unsuccessful bidders will be contracted in writing to provide feedback on their submissions.

## 7. Contract Selection

7.1. The project will utilise the NEC4 suite of contracts for the delivery of all primary works and service commissions. Wherever possible primary suppliers will be encouraged to use the NEC4 contract suit in their sub-contract engagements to promote fair and equitable commercial terms throughout the supply chain.

### Design Consultancy Services

7.2. Design consultancy services will be delivered under the NEC4 Professional Services Contract (PSC), the main option and secondary option clauses recommended are set out in the Table 16.

Table 16 recommended Main and Secondary options clauses for NEC4 PSC

Clause	Selection	Rational
<b>Core Clauses</b>	All apply unamended	Core clauses apply to all contracts unless amended through 'Z' clauses. No amendments are proposed for this commission.
<b>Main Option Clause</b>	<b>C</b> – Target Contract with Activity Schedule	CDF allows Option A, C and E contracts to be let.  Under Option C the financial risk is shared between client and contractor through pain/gain share.  Option C reduces the contract risk pricing compared to Option A and provides more cost certainty to client than Option E.
	<b>W2</b> – Dispute Resolution	W2 must be the selected dispute resolution option in the UK where the Housing Grants, Construction and Regeneration Act 1996 applies.
<b>Secondary Option Clauses</b>	<b>X2</b> – Changes in the law	Current market uncertainty from Brexit and Coronavirus will yield higher risk pricing from suppliers unless X2 is selected so the Client take the risk of changes to the law impacting the services.
	<b>X5</b> – Sectional Completion	The services are multifaceted and sectional delivery of design work will allow phased packaging of consenting and construction work.

	<b>X7 – Delay Damages</b>	Provides the Client with financial cover for additional Client costs incurred in managing the project if the supplier is delayed in delivery due to a matter that is their risk.
	<b>X8 - Undertakings to the Client or others</b>	Where some of the services may be sub-contracted, the Client can seek collateral warranties with the supply chain.
	<b>X9 – Transfer of rights</b>	Provides the Client with ownership of the rights for material prepared under the contract.
	<b>X10 – Information Modelling</b>	Introduces contract mechanisms for the management of information systems and information modelling such as the projects BIM requirements.
	<b>X11 – Termination by the Client</b>	Provides the Client with ability to terminate the contract for any reason, subject to prescribed fee.
	<b>X18 – Limitation of liability</b>	Allows suppliers liability for stated matters to be limited by value in the contract. Without X18 supplier's liability is unlimited and many suppliers will either be unable to enter into contract on this basis or include significant risk pricing.
	<b>X20 – Key Performance Indicators</b>	Allows performance targets and optional incentivisation to be set within the contract.
	<b>Y(UK)2 – The Housing Grants, Construction and Regeneration Act 1996</b>	Y(UK)2 must be selected where the Housing Grants, Construction and Regeneration Act 1996 applies.

7.3. The additional clauses shown in Table 17 are incorporated in the Collaborative Delivery Framework, at this stage of project development it is anticipated that all clauses listed below, excluding those struck through, will be incorporated into the contract. This will be reviewed prior to commencement of the procurement process to align with project specific requirements and risk profile.

Table 17 Additional clauses incorporated for the NEC4 PSC

<b>Z Clauses</b>					
<b>Z1 Disputes</b>					
Delete existing clause W2.1					
<b>Z2 Prevention</b>					
<p>The text of clause 18 Prevention is deleted.  Delete the text of clause 60.1(12) and replaced by:  The <i>service</i> is affected by any of the following events</p> <ul style="list-style-type: none"> <li>• War, civil war, rebellion, revolution, insurrection, military or usurped power;</li> <li>• Strikes, riots and civil commotion not confined to the employees of the <i>Consultant</i> and sub consultants,</li> <li>• Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel,</li> <li>• Radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device,</li> <li>• Natural disaster,</li> <li>• Fire and explosion,</li> <li>• Impact by aircraft or other aerial device or thing dropped from them.</li> </ul>					
<b>Z3 Disallowed Costs</b>					
<p>Add the following in second bullet of 11.2 (18) add:  (including compensation events with the Subcontractor, i.e. payment for work that should not have been undertaken).  Add the following additional bullets after 'and the cost of ' :</p> <ul style="list-style-type: none"> <li>• Mistakes or delays caused by the <i>Consultant's</i> failure to follow standards in Scopes/quality plans</li> <li>• Reorganisation of the <i>Consultant's</i> project team</li> <li>• Additional costs or delays incurred due to <i>Consultant's</i> failure to comply with published and known guidance or document formats</li> <li>• Exceeding the Scope without prior instruction that leads to abortive cost</li> <li>• Re-working of documents due to inadequate QA prior to submission, i.e. grammatical, factual arithmetical or design errors</li> <li>• Production or preparation of self-promotional material</li> <li>• Excessive charges for project management time on a commission for secondments or full time appointments (greater than 5% of commission value)</li> <li>• Any hours exceeding 8 per day unless with prior written agreement of the <i>Service Manager</i></li> <li>• Any hours for travel beyond the location of the nearest consultant office to the project unless previously agreed with the <i>Service Manager</i></li> <li>• Attendance of additional individuals to meetings/ workshops etc who have not been previously invited by the <i>Service Manager</i></li> <li>• Costs associated with the attendance at additional meetings after programmed Completion, if delay is due to <i>Consultant</i> performance</li> </ul>					

- Costs associated with rectifications that are due to *Consultant* error or omission
- Costs associated with the identification of opportunities to improve our processes and procedures for project delivery through the *Consultant's* involvement
- Was incurred due to a breach of safety requirements, or due additional work to comply with safety requirements
- Was incurred as a result of the *Client* issuing a Yellow or Red Card to prepare a Performance Improvement Plan
- Was incurred as a resulting of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit

**Z4 Share on termination**

Delete existing clause 93.3 and 93.4 and replace with:  
 93.3 In the event of termination in respect of a contract relating to services there is no *Consultant's* share'

**Z5 Secondments**

When appointing *Consultants* on a secondment basis only:

Add clause 19

19.1 The *Client* will from the *starting date* to the *completion date* indemnify the *Consultant* against any and all liabilities, proceedings, costs, losses, claims and demands whatsoever arising directly or indirectly out of the activities of the *Consultant* in providing the services save where such claims, in the reasonable opinion of the *Client*, arise from or are contributed to by:

19.1.1 Misrepresentation or negligence by or on behalf of the *Consultant*;

or

19.1.2 The *Consultant* has acted contrary to the *Service Manager's* reasonable instructions or wholly outside the scope of the *Consultant's* duties as defined by the *Service Manager*.

**Z6 The Schedule of Cost Components**

The Schedule of Cost Components are as detailed in the Framework Schedule 9.

**Z7 Aggregated Contractor's share**

Delete existing clauses 54 and 93.3 and replace with:

54.1 The *Service Manager* assess the *Consultant's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Service Provided to Date.

The difference is divided into increments falling within each of the *share ranges*. The limits of a share range are the Aggregated Price for Service Provided to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Consultant's* share equals the sum of the products of the increment within each share range and the corresponding *Consultant's share percentage*.

54.2 If the Aggregated Price for Service Provided to Date is less than the Aggregated Total of the Prices, the *Consultant* is paid its share of the saving. If the Aggregated Price for Service Provided to Date is greater than the Aggregated Total of the Prices, the *Consultant* pays its share of the excess.

54.3 If, prior to the Completion Date, the Price for Service Provided to Date exceeds 110% of the total of the Prices, the amount in excess of 110% of the total of the Prices is retained from the *Consultant*.

54.4 The *Service Manager* makes a preliminary assessment of the *Consultant's* share at Completion of the Whole of the *service* using forecasts of the final Aggregated Price for Service Provided to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the *services*.

54.5 The *Service Manager* makes a final assessment of the *Consultant's* share, using the final Aggregated Price for Service Provided to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.

93.3 If there is a termination except if Z4 applies, the *Service Manager* assesses the *Consultant's* share after certifying termination. The assessment uses as the Aggregated Price for Service Provided to Date the sum of

- the total of
  - the Defined Cost which the *Consultant* has paid and
  - which it is committed to pay for work done before termination
- and
- the total of
  - the Defined Cost which the *Consultant* or *Contractor* has paid and
  - which it is committed to pay

in the *partner contract* before the date the termination certificate is issued under this contract. The assessment uses as the Aggregated Total of the Prices the sum of

- the total of
  - the lump sum price for each activity which has been completed and
  - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed
- and
- the total of
  - the lump sum price for each activity which has been completed and
  - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed

in the *partner contract* before the date the termination certificate is issued under this contract.

Add:

11.2(25) The Aggregated Total of the Prices is sum of

- the total of the Prices and
- the total of the Prices in the partner contract

11.2(26 ) The Aggregated Price for Service Provided to Date is the sum of

- the Price for Service Provided to Date and
- the Price for Service Provided to Date or the Price for Work Done to Date in the partner contract.

### Z23 Linked contracts

Issues requiring redesign or rework on this contract due to a fault or error of the *Consultant* will neither be an allowable cost under this contract or any subsequent contract, nor will it be a Compensation event under this contract or any subsequent contract under this project or programme.

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### Z24 Requirement for Invoice

Add the following sentence to the end of clause 51.1:

The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service Manager's* certificate.

Delete existing clause 51.2 and replace with:

51.2 Each certified payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

If a certified payment is late, or if a payment is late because the *Service Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made

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### Z25 Risks and insurance

The *Consultant* is required to submit insurances annually as Clause Z4 of the Framework Agreement

## Construction Work

7.4. The construction work will be delivered under the NEC4 Engineering and Construction Contract (ECC), the main option and secondary option clauses recommended for use are set out in the Table 18. These clauses are in accordance with the Marine and Coastal Framework.

Table 18 Main and Secondary option clauses recommended for use in the NEC4 ECC

Clause	Selection	Rational
<b>Core Clauses</b>	All apply	Core clauses apply to all contracts unless amended through 'Z' clauses.
<b>Main Option Clause</b>	<b>C</b> – Target Contract with Activity Schedule	MCF allows Option A, C and E contracts to be let.  Under Option C the financial risk is shared between client and contractor through pain/gain share.  Option C reduces the contract risk pricing compared to Option A and provides more cost certainty to client than Option E.
	<b>W2</b> – Dispute Resolution	W2 must be the selected dispute resolution option in the UK where the Housing Grants, Construction and Regeneration Act 1996 applies.
<b>Secondary Option Clauses</b>	<b>X2</b> – Changes in the law	Current market uncertainty from Brexit and Coronavirus will yield higher risk pricing from suppliers unless X2 is selected so the Client take the risk of changes to the law impacting the works.
	<b>X5</b> – Sectional Completion	The works are multifaceted and sectional completion will allow contractual control on programme and completion dates for individual sections of the work.

	<b>X7 – Delay Damages</b>	Provides the Client with financial cover for additional Client costs incurred in managing the project if the supplier is delayed in delivery due to a matter that is their risk.
	<b>X8 - Undertakings to the Client or others</b>	Where some of the works may be sub-contracted, the Client can seek collateral warranties with the supply chain.
	<b>X9 – Transfer of rights</b>	Provides the Client with ownership of the rights for material prepared under the contract.
	<b>X10 – Information Modelling</b>	Introduces contract mechanisms for the management of information systems and information modelling such as the projects BIM requirements.
	<b>X11 – Termination by the Client</b>	Provides the Client with ability to terminate the contract for any reason, subject to prescribed fee.
	<b>X15 – The Contractors Design</b>	Specific elements or specialist parts of the works may be passed to the Contractor to design. This clause provides clarity on the Contractors responsibilities and liabilities for design work they undertake.
	<b>X16 – Retention</b>	Used to retain a small percentage of payment from the supplier until the end of the defects period as a performance guarantee to the client.
	<b>X18 – Limitation of liability</b>	Allows suppliers liability for stated matters to be limited by value in the contract. Without X18 supplier's liability is unlimited and many suppliers will either be unable to enter into contract on this basis or include significant risk pricing.

	<b>X20 – Key Performance Indicators</b>	Allows performance targets and optional incentivisation to be set within the contract.
	<b>Y(UK)2 – The Housing Grants, Construction and Regeneration Act 1996</b>	Y(UK)2 must be selected where the Housing Grants, Construction and Regeneration Act 1996 applies.

7.5. The additional clauses shown in Table 19 are incorporated in the Marine and Coastal Framework, at this stage of project development it is anticipated that all clauses listed below, excluding those struck through, will be incorporated into the contract. This will be reviewed prior to commencement of the procurement process to align with project specific requirements and risk profile.

Table 19 Additional clauses incorporated in to the MCF for the use in the NEC4 ECC

<b>Z Clauses</b>					
<b>Z1 Correctness of Site Information and other documents</b>					
Z1.1 Site Information about the ground, subsoil, ducts, cables, pipes and structures is provided in good faith by the <i>Client</i> but is not warranted correct. Clause 60.3 does not apply to such site information and the <i>Contractor</i> is responsible for checking the correctness of any such Site Information they rely on for the purpose of pricing for or providing the works.					
Z1.2 Information regarding construction methods or processes referred to in pre contract health and safety plans are provided in good faith by the <i>Client</i> but are not warranted correct (except for the purpose of promoting high standards of health and safety) and the <i>Contractor</i> is responsible for checking the correctness of any such information he relies on for the purpose of pricing for, or providing the <i>works</i> .					
<b>Z 2A: Risk transfer: Physical conditions within the Site</b>					
Clause 60.1 (12) is deleted from this contract					
<b>Z 2B: Water levels: Contractor's risk</b>					
Clause 60.1 (12) second bullet point is amended to: "are not weather conditions or floods and"					
<b>Z3 Prevention: No change to prices</b>					

Delete first sentence of clause 62.2 and replace with:  
 "Quotations for compensation events except for the compensation event described in 60.1(19) comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. Quotations for the compensation event described in 60.1(19) comprise any delay to the Completion Date and Key Dates assessed by the *Contractor*.  
 Delete 'The' At start of clause 63.1 and replace with:  
 "For the compensation event described in 60.1(19) the Prices are not changed. For other compensation events the....."

**Z 4 The Schedule of Cost Components**

Delete the Schedule of Cost Components and Short Schedule of Cost Components replace with the Schedule of Cost Components as detailed in the Framework Schedule 9.

**Z 6 Payment for Work Done to Date**

Delete existing clause 11.2 (31) and replace with:  
 "11.2 (31) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee, not exceeding the forecast provided under clause 20.4 and accepted by the *Client*."

**Z7 Aggregated Contractor's share**

Delete existing clauses 54 and 93.3:  
 54.7 The *Project Manager* assess the *Contractor's* share of the difference between the Aggregated Total of the Prices and the Aggregated Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Aggregated Price for Work Done to Date divided by the Aggregated Total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.  
 54.8 If the Aggregated Price for Work Done to Date is less than the Aggregated Total of the Prices, the *Contractor* is paid its share of the saving. If the Aggregated Price for Work Done to Date is greater than the Aggregated Total of the Prices, the *Contractor* pays its share of the excess.  
 54.9 If, prior to the Completion Date, the Aggregated Price for Work Done to Date exceeds 110% of the Aggregated Total of the Prices, the amount in excess of 110% of the Aggregated Total of the Prices is retained from the *Contractor*.  
 54.10 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the Whole of the works using forecasts of the final Aggregated Price for Work Done to Date and the final Aggregated Total of Prices. This share is included in the amount due following Completion of the whole of the *works*.  
 54.11 The *Project Manager* makes a final assessment of the *Contractor's* share, using the final Aggregated Price for Work Done to Date and the final Aggregated Total of the Prices. This share is included in the final amount due.  
 93.3 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Aggregated Price for Work Done to Date the sum of  
 • the total of  
 o the Defined Cost which the *Contractor* has paid and  
 o which it is committed to pay for work done before termination  
 and  
 • the total of  
 o the Defined Cost which the *Consultant* has paid and  
 o which it is committed to pay  
 in the *partner contract* before the date the termination certificate is issued under this contract.  
 The assessment uses as the Aggregated Total of the Prices the sum of  
 • the total of  
 – the lump sum price for each activity which has been completed and

– a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed  
and

- the total of

– the lump sum price for each activity which has been completed and  
– a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed  
in the *partner contract* before the date the termination certificate is issued under this contract.

Add:

11.2(37 ) The Aggregated Total of the Prices is sum of

- the total of the Prices and
- the total of the Prices in the partner contract

11.2(38 ) The Aggregated Price for Work Done to Date is the sum of

- the Price for Work Done to Date and
- the Price for Service Provided to Date in the *partner contract*.

### **Z10 Payments to subcontractors, sub consultants and suppliers**

#### **Subcontractors**

The *Contractor* will use the NEC4 contract on all subcontracts for works. Payment to subcontractors will be 28 days from the assessment date.

If the *Contractor* does not achieve payments within these time scales then the *Client* reserves the right to delay payments to the *Contractor* in respect of subcontracted work, services and supplies.

Failure to pay subcontractors and suppliers within contracted times scales will also adversely affect the *Contractor's* opportunities to work on framework contracts.

### **Z11Y(UK) 3 The Contracts (Rights of Third Parties) Act 1999**

The design consultant employed by the *Contractor* is required to fulfil the obligations of the warrantor under the primary contract for design works that they complete. This includes: Transfer of rights clause Z11 Professional indemnity insurance cover to same cover as that specified for the *Contractor* Z11.1 The *Client* ('the third Party') may in its own right enforce the provisions of this clause, subject to and in accordance with the provisions of the Contracts (Right of Third Parties) Act 1999 and the following provisions: Z11.1.1 the Parties may not rescind or vary any provision(s) of this agreement, including this clause, at any time without the consent of the third party; and Z11.1.2 each third Party's rights against Party A under this agreement shall be subject to the same conditions, limitations and exclusions as apply to Party B's rights against Party A under this agreement. Z11.2 Except as provided in clause Z1.1, this agreement does not create any right enforceable by any person who is not a Party to it (Other Party') under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a other Party which exists or is available apart from that Act.

### **Z16 Disallowed Costs**

Add the following bullet to clause 11.2 (26) Disallowed costs

- was incurred due to a breach of safety requirements, or due additional work to comply with safety requirements.
- was incurred as a result of the Client issuing a Yellow or Red Card to prepare a Performance Improvement Plan
- was incurred as a result of rectifying a non-compliance with the Framework Agreement and/or any call off contracts following an audit.

<b>Z18 Payment of pain/gainshare</b>					
Delete existing clause 54.3 and replace with: 54.3 The <i>Project Manager</i> makes regular assessments of the <i>Contractor's</i> share until the Completion Date using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due in the following assessment. The <i>Project Manager</i> shall be entitled to take the <i>Contractor's</i> share percentage into account when assessing amounts in clause 50 and clause 51 due for payment at each assessment date thereafter. The <i>Project Manager</i> shall not pay any amount greater than the amount due when the forecast reaches the top <i>share range</i> in the Contract Data Part 1 (120% of the total of the Prices).					
Delete existing clause 54.4 and replace with: 54.4 If clause 54.3 does not occur during the <i>works</i> , the <i>Project Manager</i> makes a preliminary assessment of the <i>Contractor's</i> share at Completion of the Whole of the <i>works</i> using forecasts of the final Price for Work Done to Date and the final total of Prices. This share is included in the amount due following Completion of the whole of the <i>works</i> .					
Insert the following new clause 54.5: 54.5 If clause 54.3 does not occur during the <i>works</i> , the <i>Project Manager</i> makes a final assessment of the <i>Contractor's</i> share, using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.					
<b>Z19 Linked contracts</b>					
Delays and additional cost on this contract resulting from the <i>Contractor's</i> fault or error on a previous contract on this project or programme will be a Disallowable cost under this contract and not be a Compensation event under this contract.					
<b>Z20 Defect Dates for Sections</b>					
Where a section of the <i>works</i> is defined and is located in a separate area of the Site, the time to the <i>defects date</i> for that section is the defined period after the Completion of that <i>section</i> and is defined in the Contract Data.					
<b>Z21 Requirement for Invoice</b>					
Add the following sentence to the end of clause 51.1: The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the <i>Project Manager's</i> certificate. Delete existing clause 51.2 and insert the following: 51.2 Each certified payment is made by the later of <ul style="list-style-type: none"> <li>• one week after the paying Party receives an invoice from the other Party and</li> <li>• three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.</li> </ul> If a certified payment is late, or if a payment is late because the <i>Project Manager</i> has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made					
<b>Z22 Resolving Disputes</b>					
Delete W2.1					

<b>Z23 Risks and insurance</b>					
Replace clause 84.1 with the following Insurance certificates are to be submitted to the <i>Client</i> on an annual basis.					
<b>Z24 Acceptance of nourishment works</b>					
Delete existing clause 35.1 and replace with: "The <i>Client</i> takes over a part of the nourished beach when the Supervisor issues an acceptance certificate. Any change in the accepted beach profile due to natural causes following the issue of the acceptance certificate is not a Defect."					
<b>Z25 Weather risk</b>					
Clause 60.1 (13) is deleted.					
<b>Z26 Breakdown of dredgers and other marine equipment</b>					
Breakdowns of dredgers and other marine equipment are not compensation events. Breakdowns of dredgers and other marine equipment are included in Defined Cost as follows:					
<ul style="list-style-type: none"> <li>• First 24 hours at Idle Rate.</li> <li>• Second 24 hours at half of Idle Rate.</li> <li>• After 48 hours there is no charge for the dredger or other marine equipment.</li> <li>• After 48 hours fixed site establishment costs and the <i>Contractor's</i> Project Manager's time costs only are included.</li> <li>• If the dredger or other marine equipment immediately leaves the site for repair following the breakdown, then there is no charge for the offsite period.</li> </ul>					
<b>Z27 Fisheries Liaison Officer</b>					
The responsibility for the employment and management of the Fisheries Liaison Officer (FLO) shall lie with the Contractor. Agreement to third party compensation payments can only be made by the Environment Agency's Estates Department.					
<b>Z28 Fee</b>					
No Fee is to be added to the following items: Crown Estate Fee Material Licence Holder Fee Approval costs (e.g. fees for Planning Applications and FEPA licences) Taxes (including Aggregate Taxes)					
<b>Z29 <del>Payment of annual pain and gain shares</del></b>					
<del>The pain and gain share will be determined and paid on an annual basis following the sectional completion date and assessment of the final account for each section. The payment will be in line with the process as set out in the Deed of Agreement.</del>					

**Z30 Change in Quantity of Material**

The *Client* is not bound to undertake any or all of the sections xxx and may cancel one or more of these sections of the works.

The *Contractor* is to keep the *Project Manager* informed of the forecast of any potential Defined Costs associated with the cancellation of any or all of these sections of Works. In the event of the using this clause, payment will only be able to be recovered on the basis of the Defined Cost which has been incurred and those cancellation costs which have been notified by the *Contractor* in his accepted forecast.

The *Client* will advise the *Contractor* of whether a section is to be removed at the Price Setting Meeting of calendar year of that particular campaign.

If the quantity of beach material fall below 200,000m<sup>3</sup> or above 500,000m<sup>3</sup> for a campaign, the *Project Manager* will reassess the rate for that years target.

**Z31 Changes to fuel prices and exchange rate**

A change in Price due to change in fuel price and exchange rates will be those printed in the Financial Times on the *starting date*.

**Contract Management**

- 7.6. The accountability for commercial and contract management on the project will sit with BHCC as the lead authority for the project. BHCC has internal resource with experience of managing the NEC forms of contract that will be used on the project, this internal resource can be supplemented where required with experienced resource from existing BHCC partners or third-party consultancy support.

