



Denbighshire Internal Audit Services
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West Rhyl Coastal Defence Scheme (Phase 3)

April 2016



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Introduction

The West Rhyl Coastal Defence Phase 3 project is the final phase of a scheme that aims to reduce the risk of coastal flooding to properties within West Rhyl. The original plan was for three phases of the scheme to be implemented at the same time, but the Welsh Government (WG) only approved the first two phases in January 2011. During May 2012, Phase 3 was removed from the contractor's (Galliford Try Infrastructure) programme of works while discussions were held with WG to resolve issues with the design of Phase 3.

A contract notice for Phase 3 works was placed on the SelltoWales website on 13 May 2014, but tenders exceeded the original budget - the Project Manager explained that this tender included elements of work that were only to proceed if additional funding could be obtained. Phase 3 had been tendered as a stand-alone contract, but Procurement advised that this formed part of a programme of works (with Phases 1 and 2) and the total aggregate value of these works would have exceeded the Official Journal of the European Union (OJEU) threshold of £4.322m. Therefore, a second tendering exercise was undertaken in November/December 2014 using the OJEU compliant North and Mid Wales Trunk Road Agency's (NMWTRA) framework.

The costs for the flood defence element of Phase 3 are met through a WG grant under the Coastal Protection Act, with additional funding through the European Regional Development Fund (ERDF) and Council match-funding. The Council subsequently received WG approval for Phase 3 on 21 October 2014. Other elements of the scheme have been financed through a WG Cycleway grant, a Town Planning grant, and the Council has provided funding for street lighting and drainage repairs.

The Works Unit (formerly known as the Major Projects Group) was responsible for implementation of Phase 3 (although it only took over responsibility for this Phase from January 2014), but was not involved in Phases 1 and 2 of the Scheme (the engineer responsible has left the Council following a restructure of Highways and Environmental Services). The Flood Risk Manager was also involved in the project, having responsibility for liaising with WG for funding.

Scope of Review

The Council's previous S151 Officer requested our review to provide assurance that there are robust procurement arrangements in place within the project. The original plan was for this audit to be part of a wider procurement review where the Collaborative Procurement Service would carry out quality assurance checks of several projects where external funding has been provided. If schemes are not managed effectively, they could be subject to grant clawback, which could result in a significant budgetary pressure for the Council.

We developed a contract audit checklist with the involvement of the Collaborative Procurement Service that covered the following areas:

- Governance
- Pre-tendering
- Financing
- Tendering
- Management of the Contract

Our remit was therefore not to comment on the success of the West Rhyl Coastal Defence Phase 3 scheme. To date, this is the first project that we have reviewed using this checklist.

Audit Opinion

This has been a complex review, and we had to increase our project scope to get an understanding of the history of the West Rhyl Coastal Defence Project. There have been several changes that have to be taken into account, which include:

- WG wanting the Phase 3 element of the Scheme to be re-designed, so this was dropped from the original programme of works (as reported by the Strategic Highways Manager to the Strategic Investment Group in October 2014);
- a restructure of Highways & Environmental Services, resulting in key people involved in the original phases of the project leaving the Council. This also means that the Works Unit has inherited problems arising prior to it being responsible for the project; and
- the Strategic Highways Manager being absent during our review, resulting in us not being able to obtain some key documentation.

Working to tight timescales created additional pressure for the Works Unit team, and it is commendable that the flood defence element of the scheme was completed in less favourable weather conditions in order to claim WG grant funding. However, the tight timescales created a procurement risk in that this did not allow for effective procurement planning. The original tender was due to be awarded to Dawnus Construction in July 2014, but this was not done as the tender amounts exceeded what had been budgeted for the scheme. Additionally, there had been some debate as to whether the Phase 3 element of the scheme still formed a programme of works or could be considered as a standalone scheme. If this had not been clarified at this stage, the total cost of works would have exceeded OJEU thresholds. The Strategic Highways Manager suggested various procurement approaches to the Strategic Investment Group in November 2014 to ensure that the scheme was OJEU compliant. The Collaborative Procurement Service was also involved to ensure that the second tender was OJEU compliant and, if any materials were procured, these would be in line with Contract Procedure Rules (CPRs). Frequent reporting to the Strategic Investment Group shows that there was significant scrutiny and challenge of the project, to ensure that decision making was robust. However, the delivery time for procuring was reduced, particularly during the second tender, which was outside of the control of the project team.

Employees were procured for their professional expertise from Mott Macdonald. This was to assist with meeting the tight project deadlines and to provide technical expertise where it was not available in-house. However, a tender exemption should have been submitted if there were legitimate reasons not to tender, as the value of the work was approximately £42,000. This was only done retrospectively, after we had identified that CPRs had not been complied with.

While key project documentation was generally accessible to us and the project team helpful in assisting us where we had queries, there was not always a clear audit trail in place. For example, we were unable to obtain

written confirmation of WG's timescale to complete the flood defence work (instead this was done retrospectively at the conclusion of our review).

Because of the tighter timescales of the project, there was an increased risk of errors occurring; therefore, it was important to ensure that adequate quality assurance checks were in place. For example, an incorrect amount was detailed in tender documentation for the purchase of Dycel units, which resulted in the tender value being lower, which was identified by the project team after the contract had been let.





Additionally, the cost report for the Phase 3 element of the Scheme shows expenditure relating to 2012/13 and 2013/14, yet the WG grant offer letter stated that the funding is specifically for the period 2014/15 and 2015/16. Our concern was that if they related to Phases 1 and 2 of the programme of works, then they could be deemed ineligible and at risk of grant clawback. However, from an initial review, the project manager is confident that this expenditure relates to Phase 3, and this would be confirmed when the final audit accounts were submitted to WG.

The contractor, Dawnus started work on the project in January 2015, and contract documentation was submitted to Legal Services in March 2015. However, the contract documentation was lost, and this was only identified during our audit in August. A final contract was subsequently signed in October 2015. As identified in our previous Project Management review, this situation is not uncommon, with work starting without a formal written contract in place. Legal has confirmed that, while the best position for the Council is to have a formal written contract in place so there is no dispute over the actual terms agreed, in this case there was still a contractual commitment through issuing a purchase order to the contractor and having a signed tender.

Our review highlighted that there are some other corporate areas that need considering, particularly the role of Procurement, Legal and Finance in projects where there is a significant level of grant funding provided. It is important that they are involved at an early stage to ensure that they have adequate resources in place at key stages of the project, e.g. reviewing a legal contract, clearly defining their roles and responsibilities for the project, and the level of their involvement agreed subject to capacity. The Council also needs to ensure that there are robust arrangements in place to independently quality assure projects where there are potential procurement risks to confirm that services are complying with CPRs and OJEU thresholds. This would be particularly useful for projects that have grant funding and may be at risk of grant clawback.

Based on the areas reviewed, we are giving a low assurance rating because of the nature and, in some cases, corporate impact of the issues raised and the number of other lessons to be learned that we have identified.

Assurance Rating
(Based on areas reviewed)

	High Assurance	Risks and controls well managed
	Medium Assurance	Risks identified but are containable at service level
	Low Assurance	Risks identified that require meeting with Corporate Director/Lead Member
	No Assurance	Significant risks identified that require member / officer case conference

Action Plan

Audit Review of: West Rhyl Coastal Defence (Phase 3)

Date: April 2016

Corporate Risk/Issue Severity Key	
0	Critical - Significant CET and Cabinet intervention
1	Major - intervention by SLT and/or CET with Cabinet involvement
5	Moderate - Containable at service level. Senior management and SLT may need to be kept informed

Risk/Issue No.	Risk/Issue	Action	Who	When
1.	Despite the financial and reputational impacts, there is no project board in place to oversee the Phase 3 element of the Scheme. This has resulted in a lack of evidence being maintained on Verto to show the reporting to the project sponsor and any monitoring and challenge made by him.	All future schemes will comply with Verto. The size of the project board will depend on the risks within the project and must include a decision maker who has sufficient knowledge of procurement. Further documented guidance on Verto is needed (<i>this has already been raised as part of our Corporate Project Management review, and will be followed up separately by the Head of Internal Audit</i>).	Project Manager/ Corporate Programme Office Manager	To be complied with for future schemes
2.	The risk management element of the project would benefit from a review to ensure that risks are regularly reviewed and updated, and that risk reporting is accurate. If a construction risk register template is used, it needs to clearly show the impact if the risk occurred and the action in place to mitigate the risk.	Both the old project management guidance and Verto were used to develop the two risk registers. There is a need for us to maintain the two registers, but we will ensure that any inconsistencies do not occur.	Project Manager	To be complied with for future schemes
3.	The WG grant offer letter details that funding relates to expenditure for 2014/15 and 2015/16, yet there are costs detailed for 2012/13 and 2013/14 on the cost report.	We have incurred costs on the project during 2012/13 and 2013/14 but the vast majority of the invoices paid during this period specifically include reference to Phase 3 of the scheme. While the WG offer letter does state that the funding relates to the period 2014/15 and 2015/16, it	Senior Engineer-Flood Risk Management	April 2016

Risk/ Issue No.	Risk/Issue	Action	Who	When
		<p>should be noted that Phase 3 is the final element of a programme of works that commenced in 2009.</p> <p>However, this will be picked up when we submit the final audited accounts to WG, probably before the end of March 2016. Verbally, WG's view is that all eligible costs for the scheme will be paid, whichever phase they relate to. We will also raise this as a risk on Verto.</p>		
4.	<p>An assessment of a contractor (selection criteria) should not be carried out at award stage, which should only assess the actual tender bid (award criteria). During the NMWTRA tender, the contractors' previous projects were assessed as part of the award criteria.</p>	<p>The Council's CPRs have been updated (CPRs 2.1.3, 2.1.4 & 3.7.5) to ensure that framework agreements should be followed if there is any discrepancy with the CPRs, as long as it has been ensured that the framework is robust. The new CPRs have also been updated to reflect the use of industry standard national terms and conditions (CPR 3.5.1).</p> <p>Under the new Public Contract Regulations 2015, there is now further limited flexibility to take into account previously defined "selection criteria" as part of any future tender award criteria process. The Collaborative Procurement Service will be reviewing the evaluation criteria as part of its quality assurance process and a review of the templates within the Proactis system will be carried out by the end of Quarter 2 2016/17 to ensure that they align with the new CPRs.</p> <p>Guidance in relation to the selection and award criteria is covered in CPR 3.7.5 and also referred to in separate procurement guidance (Intermediate Value Procurement</p>	Strategic Procurement Manager/ Programme Manager (Facilities, Assets & Housing)	<p>Complete</p> <p>October 2016</p> <p>Complete</p>

Risk/ Issue No.	Risk/Issue	Action	Who	When
		<p>£25,001-OJEU) under Evaluation and Award.</p> <p>An assessment should be carried out to establish the number of officers in the Works Unit who have attended the corporate e-procurement training course, and any officers that have not received training should attend any future courses. There will also be workshops during April 2016 introducing the Procurement Strategy and the revised CPRs.</p>	Works Unit Manager	To Be Agreed
5.	<p>Employees were procured for their professional expertise from Mott Macdonald. However, a tender exemption was only submitted retrospectively, once we had identified the fact that CPRs had not been complied with and despite the value of the work being approximately £42,000. Despite there being a contract in place with Groundsolve, the current expenditure exceeds that of the contract value.</p>	<p>Where staff are being procured for their professional expertise, either quotes should be obtained or tendering should be carried out depending on the value of the goods or service required. Where this is not possible, the appropriate tender exemption approval will be obtained.</p> <p>For future projects, the procurement checklist will detail the delivery route for the procurement process.</p>	Project Manager	January 2016
6.	<p>There are weak arrangements in place corporately to ensure that a signed contract is in place before a contractor starts work, which could contravene the Council's CPRs. If this is not put in place promptly, the Council could be at risk of legal challenge, facing financial repercussions if any disputes arise (such as Legal costs), and cause significant project delays.</p> <p>Within this project, while there was no signed contract in place, Legal has confirmed that the written acceptance letter, together with the signed purchase order, cross-referenced against the signed tender submission does constitute a written contract. However the status of that contract is at a</p>	<p>A signed contract is now in place with the contractor. In future, the Project Manager should arrange the signing of the contract by the contractor and a document checklist in order for this to be supplied to Legal, at the very latest four weeks after the contract has commenced.</p> <p>The Project Team will ensure that contract documentation is passed to Legal directly (and not left in reception), and will obtain a signature to confirm that documents have been submitted to Legal.</p> <p>Corporately, the impetus is that there should be a signed contract in place</p>	<p>Project Manager</p> <p>Programme Manager (Facilities, Assets &</p>	<p>To be complied with for future schemes</p> <p>June 2016</p>

Risk/ Issue No.	Risk/Issue	Action	Who	When
	<p>lower level than a fully signed-up contract document would have provided.</p> <p>Processes are not robust, as there had been inadequate attempts to chase up Legal for the contract, which would have identified that the documentation had been lost.</p>	<p>before the contractor starts work. Within the Proactis e-sourcing solution, we are working with the supplier to ensure that there is a mechanism to collect data for the performance measure - % with an estimated amount over £25,000 with a signed or sealed contract in place within six weeks of the contract award. Monitoring can then be carried out on a monthly basis once this mechanism is in place.</p>	Housing)	
Other lessons to be learned				
a)	<p>Ensuring that there is a clear audit trail in place. Within this project we identified that there was no written confirmation from WG of the timescales for the coastal defence work to be completed.</p>	<p>The Flood Risk Manager explained that he will liaise with the WG about the implications of not having documented deadlines for grant funded projects.</p>	Senior Engineer-Flood Risk Management	April 2016
b)	<p>Putting in place adequate quality assurance measures to ensure that CPRs and relevant procurement legislation are complied with.</p>	<p>We are working with Proactis and Business Team (Facilities, Assets & Housing) to develop a “dashboard” of procurement indicators. We are also reviewing the Procurement Team structure, which is based on a business partner model, and is intended to bring closer co-operation and working between the services and Procurement team, and will help identify and address areas of non-compliance early on.</p>	Programme Manager (Facilities, Assets & Housing)	October 2016
c)	<p>While outside of the control of this project, having adequate timescales in place to allow for effective procurement planning and to ensure that the market is sufficiently tested.</p>	<p>Unfortunately there were tight timescales due to the need to obtain planning approval and also to suit the June 2015 requirements of WG. Within the new CPRs, which place more emphasis on the need for procurement planning, there is a procurement checklist that will need to be used to ensure that there is sufficient</p>	n/a	n/a

Risk/ Issue No.	Risk/Issue	Action	Who	When
		procurement planning (Procurement will approve checklists where the procurement is above £100,000).		
d)	Ensuring that key stakeholders, such as Finance, Legal and Procurement are aware of key projects at an early stage so they can build in resources to be available at key stages of the project, e.g. preparing the contract. It would also be useful for their role to be defined as part of the process so all project staff are clear on their level of input.	<p>Procurement report produced at scheme start-up presented to the board, which includes risks and how the scheme is to be delivered with roles, responsibilities, timeline and cost.</p> <p>Ensure that all necessary information is made available to the team from other sections to enable all paperwork to be filed in one place, e.g. the signed grant offer and signed acceptance letter.</p> <p>A requirement of the new CPRs (2.5 and 2.7), for projects where the expenditure is above £25,000, is the use of a commissioning form. The purpose of the form is to ensure that the procurement element of the project has been properly considered by the relevant service, and subsequently for the Collaborative Procurement service to assess whether the proposed route to market is compliant with the law and these CPRs.</p> <p>This form details how tendering will be carried out, the timescales for the project, a procurement checklist, financing and a risk assessment. It is mandatory for this form to be authorised by the Head of Service, the Section 151 Officer and the Monitoring Officer. For contracts above £1m, the form also needs to be signed by the relevant lead Cabinet member.</p> <p>We will also look to strengthen the process within the Strategic Investment</p>	Project Manager	To be complied with for future schemes

Risk/ Issue No.	Risk/Issue	Action	Who	When
		Group (SIG), e.g. asking specific questions about the project management to determine the robustness of the process. A revised terms of reference is currently being developed for SIG in order to align with a re-established Asset Management Group, which will also have terms of reference. We will ensure that these terms of reference pick up any project management issues.	Programme Manager (Facilities, Assets & Housing)	October 2016
e)	Ensuring that key members of staff involved in the tendering process are aware of the content of the Council's CPRs and the Public Contracts Regulation. If they need any clarity, they should seek advice from the Collaborative Procurement Service.	Members of staff are due to receive training on the Proactis e-sourcing solution. See action for risk/issue 4 with regards to other training.	Project Team	January 2016
f)	A requirement of CPRs (5.3) is to have a scheme of delegation to record officers approved to carry out tendering or entering into contracts. No scheme of delegation could be provided during our review.	The Strategic Procurement Manager advised us that this scheme of delegation is built into the Proactis e-sourcing solution. However, the new Constitution (not yet in place), will require every service to have a documented scheme of delegation. Therefore, having it contained within Proactis may not be sufficient, as the scheme would need to cover other elements such as decision making.	n/a	n/a

Review Outcomes & Risks Arising

Governance

There has been a significant amount of scrutiny of the Phase 3 element of the Scheme, both by Cabinet and particularly at the Strategic Investment Group (SIG). SIG had requested further information in relation to the procurement process and risks if the Phase 3 element of the Scheme proceeded. From our review of meeting minutes, it is evident that SIG members raised several legitimate questions in relation to the external funding and timescales of the project.

SIG also agreed at its meeting in November 2014 that the advance purchase of materials for the project would need the approval of both the Corporate Director: Economic and Community Ambition and the previous Head of Finance & Assets (although subsequently it was decided to procure these materials directly through the contractor).

Risk/Issue
1
Moderate

There is a documented project management structure detailing the Head of Highways & Environmental Services as project sponsor, but there is no formal project board in place. While the Works Unit Manager, Strategic Highways Manager and the project sponsor met regularly to discuss the project, there is a lack of evidence held on Verto to evidence the reporting to the project sponsor and any monitoring or challenge made by him.

We raised a similar issue in our review of the Ysgol Twm o'r Nant project, with the Corporate Programme Manager looking to have electronic guidance in place by the end of August 2015.

Following the conclusion of our review, the Corporate Programme Manager advised us that because of the high reputational and financial risks involved, a project board should have been formed and, in fact, all projects should have a board so they can resolve issues and agree changes to the project. He will prepare guidance to define a project and what is deemed business as usual following consultation with senior management.

There also appears to be some confusion here, with the Project Manager using an old project management methodology (used prior to Verto being put in place) where having a project board would have been optional in this case.

The corporate project management methodology has been followed in that there is a business case, the corporate project management system (Verto) has been kept relatively well updated with the progress of the project, and a risk assessment has been completed, identifying the key risks that could affect the project. There is also evidence that the project team met regularly where risks were discussed.

**Risk/Issue
2
Moderate**

A separate risk register to that kept on Verto is also maintained to detail specific construction risks, but there are some elements of overlap between the two registers where strategic risks are considered, and we identified that, occasionally, the same risk was scored differently on the two risk registers, which could cause confusion for the project team.

The construction risk register template would also benefit from a review to ensure that the action to manage the risk is clearly detailed and the impact of the risk is considered.

There is also a lack of evidence that the risks are being regularly reviewed, as the last update on both Verto and the construction risk register is March 2015.

Pre-Tendering

Through discussion, we identified that there is no documented procurement plan/ checklist in place. The latest version of the CPRs in December 2014 details that:

- 14.2 Before undertaking a procurement exercise, the Responsible Officer, shall ensure that:
- (a) All individual procurements projects over the value of £100,000 will require that a Procurement Plan checklist is completed by the Responsible Officer and sent to for approval to the Strategic Procurement Manager prior to undertaking any competitive market testing or negotiation.
 - (b) With respect to procurement projects between the values of £25,000 and £100,000 a Procurement Plan checklist must still be completed and retained on contract file for inspection. Other than for Projects outlined in CPR 14.2 (c), where approval is required by the relevant Head of Service listed below, no further approval will be required.
 - (c) With respect to the following specific procurement projects, additional approval to the above will be required as follows:
 - ICT procurement projects - additional approval to the above will be required from the Manager of Business Transformation & ICT or their designated Responsible Officer
 - Property and Works related procurement projects – additional approval will be required from the Property Manager – Strategic Assets or their designated Responsible Officer
 - Temporary staff Agencies (excluding Matrix) and Interim staff Agencies – additional approval will be required from Head of Human Resources & Occupational Development or their designated Responsible Officer

As the above is a new requirement that was not in the previous version of CPRs, we have not raised an issue in this report but are highlighting it so that it can be used for future projects. However, we consider that, due to the tight timescales of the Scheme, procurement planning was affected and this meant that the market was not adequately tested prior to the original tender process. For example, one of the reasons given by the Project Manager for the original tender bids being significantly higher than budgeted was that the

scheme had been poorly designed by consultants MWA (prior to the Works Unit taking over responsibility of the scheme), and had not taken into account the large increases in the cost of raw materials. Additionally, he said that costs had increased because of the large amount of coastal drainage repairs being undertaken due to the storms in December 2013.

Prior to the second tendering process through the NMWTRA framework, there was significant involvement of the Collaborative Procurement Service, particularly in developing a risk matrix for procuring key materials to be used in the project. This helped to ensure that the project was adequately planned, CPRs and OJEU were complied with, and the market tested, e.g. through publishing a Prior Information Notice (PIN), an early notification of the intent to award a contract/framework, for the supply of Dycel mattresses. However, eventually all materials except sheet piles were procured through the NMWTRA framework under a National Form of Contract. The Project Manager explained that, due to delays in decisions and procurement approvals, there was no longer an advantage in the Council ordering the materials itself. Therefore, the PIN was no longer required.

There was considerable discussion with WG over the design of Phase 3, as WG wanted to use a rock armour solution in front of the existing flood defences. The Council had carried out significant consultation with various services within the Council, members of the public, and the Rhyl Area Member Group who were reluctant to pursue this option due to its visual impact. Instead, a sloped revetment approach was proposed using Dycel mattresses.

We did not review the pre-qualification questionnaire (PQQ) stage, but established that there was evidence that relevant checks were carried out on contractors, including declaration of interests, and checks of financial, insurance, and health and safety.

Financing

The initial WG decision not to approve the Phase 3 element as part of the original programme of works clearly impacted the project in terms of timescales, as it was hoped that this work could be carried out in 2011/12. When the original tender was prepared via the SelltoWales website, it was planned for the contractor to start on site in September 2014; however, because of the involvement of the Collaborative Procurement Service in helping to ensure that the project used an OJEU compliant tender, and the need to obtain additional funding, work did not start on site until January 2015.

In order to be eligible for the ERDF grant, the coastal defence element of the project had to be completed by the end of June 2015. This resulted in timescales being even tighter, particularly where approvals had to be sought, creating an additional pressure on the project team. Work also had to start on site without all the funding for the project being in place (although the financing for the flood defence work was agreed). It also created a procurement risk, as it gave little time for the market to be tested and to ensure that CPRs and OJEU were complied with.

However, throughout our review, we were unable to evidence that the work needed to be completed by the end of June 2015, as this date is not referred to in WG's grant offer letter. The Strategic Highways Manager, who liaised with WG on the funding for the project, was absent during our review and may have had confirmation from WG via e-mail, but this could not be evidenced. In June 2015, WG contacted the Flood Risk Manager to enquire what stage the project was at, and he responded that the coastal defence element of the works was expected to be completed by 23 June, with all remaining works to be completed by the end of July 2015 subject to funding. In August 2015, the Senior Technical Accountant (Capital) contacted WG to confirm the funding deadline. Having a clearer audit trail would prevent any confusion or disputes over timescales.

The total cost of works (not including materials) for the Phase 3 element of the project has increased significantly from a budgeted figure of £2.6m in July 2014 (as reported to Cabinet). The Project Manager explained that the consultants MWA (who were in place prior to the Works Unit taking over the project) had underestimated the costs of materials when submitting their design to WG. Their design was based on a rock armour solution rather than the Dycel option that was used instead. The Lead Member for Public Realm lobbied WG for additional financial support in August 2014 to cover the additional costs. The bids received as part of the original tender were approximately £2.36m higher than the original estimate. Other contributory factors included the fact that two of the five contractors had pulled out of the tendering process due to their workload, and the cost of the raw materials had increased considerably.

Additionally, there was an increase in the bids received for the NMWTRA tender compared to the original tender (the successful contractor's bid increased by approximately £200,000). This was to take account of the increased risk of the project, as work had originally been planned to start on site in September 2014, but instead began in January 2015, with potentially less favourable weather conditions.

The cost report reviewed during our audit shows that total costs for the project to date (November 2015) were approximately £5.248m, and a forecast total cost of the scheme was £5.556m (the variance at that stage was £283,385 above the budget of £5.272m). There is an overspend on the WG element of the Scheme due to materials being left on site from Phase 1 and 2 so that they could be used for Phase 3, and subsequently they were found to be unusable. The Project Manager explained that the material was taken to a landfill site at a cost of £116,000, with WG having paid £65,000 to date and the rest to be claimed in the next financial quarter (as WG indicated at the start of the works that they would cover any additional overspend). At the conclusion of our review, the Council received a WG approval letter (March 2016) confirming that they have approved an additional sum of £300,990, with the total WG funding increasing to £3,675,118.

Risk/Issue
3
Moderate

The WG Grant Offer Letter (December 2014) details:

“1 (b) The Funding relates to the period 2014/15 to 2015/16”

However, the cost report we reviewed during our audit (November 2015) shows expenditure for consultants during 2012/13 (£21,497) and 2013/14 (£58,548). It is not clear how much of this expenditure is to do with the Phase 3 project or could be related to Phases 1 and 2, but particularly for the costs for MWA totalling £66,112.98.

As grant funding has been provided specifically for the purpose of delivering Phase 3, the Council is at risk of having to repay any expenditure that does not relate to this scheme.

At the conclusion of our review, the project manager was confident that this expenditure related to Phase 3, and this has now been confirmed when the final audit accounts were submitted to WG.

As not all of the finances were in place at the start of the work on site, the design of the Scheme was amended. All the flood defence work has been carried out, but there will be no car parks or landscaping. The Works Unit Manager confirmed that both SIG and Member Area Groups had been advised of the change in design.

Tendering

Within both the current (December 2014) and the previous version of the CPRs, it states that:

5.3 “Each Head of Service shall compile and maintain a scheme of delegation specific to their department, detailing the names and grades of officers approved for the purposes of obtaining quotations, tendering, entering into contracts and placing orders on the Council and the maximum/contract order value allocated to each officer for these purposes”

We were unable to obtain a documented scheme of delegation during our review, and were advised that the delivery of schemes and contracts is detailed in the job descriptions of the Works Unit employees. The Strategic Procurement Manager explained that this was a common problem within the Council, but with the implementation of the Proactis e-sourcing solution (by April 2016), this delegation will be built into the new system.

A contract notice for the original tender was placed on the SelltoWales website on 13 May 2014; however, the estimate of the contract value was detailed as £1.5m instead of £3.5m. As reported to SIG in November 2014, the implication of this error is that “contractors could have been ‘economically disadvantaged’ i.e. the contract value was lower than contracts they would normally tender for whatever reason”. However, the Works Unit explained that the £1.5m contract value was correct as it was originally intended for the Council to procure the key materials for the project themselves. This would have meant advertising each key material separately on the SelltoWales website and, due to the time constraints, it was decided to

procure these items through the contractor. However, the contract notice was never re-advertised to reflect this change (although the contract was not awarded at this stage).

The above highlights that the Works Unit was working to tight timescales, which can increase errors if there are inadequate quality assurance checks in place. An example of this is where additional Dycel units had to be ordered, as there was a design error and this was included in the tender documents. This resulted in the tender value being advertised at £42,723 lower than it should be and then a variation to the contract had to be made at a later stage.

There is a record maintained of the NMWTRA tender opening process and records that an independent person to the project and tender evaluation, the Lead Member for Public Realm, was present.

Senior Leadership Team (SLT), Cabinet and SIG approved the tender evaluation methodology for the NMWTRA tender, due to the value of the works being carried out and the high risks associated with the project. Three members of staff scored the bids, with DPE Consulting independently assessing them, making an assessment of both the quality and the price of the bids received.

Risk/Issue 4 Moderate	Assessment of the NMWTRA bids using the award criteria included reviewing the contractors' projects within the last five years. Assessment of the contractor should have been assessed at the PQQ stage using the selection criteria, and the award criteria should only assess the actual tender bid. The Project Manager advised us that this had been done because they needed someone with experience of marine work, and the pre-qualification questionnaire, which had not been completed by the Council, had not assessed this. The Strategic Procurement Manager advised us that in this instance, a pre-filtering stage should have been carried out prior to tender to establish this.
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Use of Consultants

Prior to the project starting, the Head of Highways & Environmental Services decided to reduce the service's use of consultants and use existing internal resources where their skill set was appropriate. The cost report reviewed during our audit shows that £181,361.24 had been paid to consultants for Phase 3 to 12 November 2015 (including MWA consultants where costs originated from Phase 1 and 2).

Risk/Issue
5
Moderate

Of the two consultants that had the highest expenditure, Mott Macdonald and Groundsolve, only Groundsolve is recorded on the Works Unit's contracts register, and current expenditure for Groundsolve (£36,205) has exceeded the amount tendered for (£20,000). The Works Unit explained that the estimated cost had increased due to problems with obtaining approval for the proposed design (carried out by consultants MWA prior to the Works Unit taking over the project) and also due to the need for structural design inputs. Having to go through a second tender also increased costs.

Mott Macdonald was not on the contracts register, as the work had not been tendered due to the lack of availability of marine engineers because of the nationwide flooding at the time. Staff were procured to provide professional expertise and were an added resource in assisting with the project deadlines. The Works Unit explained that Mott Macdonald is on the All Wales Consultancy Framework and its rates were checked against the Welsh Government Technical Professional Services framework. However, a tender exemption should have been submitted if there were legitimate reasons not to tender, due to the value of the work being approximately £42,000. This was only done retrospectively, after we had identified the fact that CPRs had not been complied with.

Contract Management

After the contract was awarded to Dawnus Construction in December 2014, the contractors started work on site in January 2015; however, discussions during our review (August 2015) identified that there was no signed contract in place with Dawnus. Unfortunately, this is not uncommon, as identified in our Project Management review last year, where we raised a risk/issue in relation to the weak contract arrangements in place within three projects. The Legal Services Manager stated at the time of our review that, "*The best position for the Council to be in is to have terms agreed and signed off in a formal contract, there is then no dispute over the actual terms that have been agreed, only then on what is the correct interpretation of those terms*". With this project, they had issued a purchase order and a signed tender detailing terms and conditions. The Legal Services Manager considered that, in this case, there was a contractual commitment in place as long as any comments or objections that have been made to the terms and conditions of the tender have been incorporated into the final contract.

She did however agree that processes need to be more robust corporately but this depends on the resources allocated to effectively manage the contract from the commencement date to completion. It is also worth noting that our recent Legal Services review raised a risk/issue relating to the

capacity of the only Contract Solicitor (now the Legal Services Manager) who can provide expertise in this area.

**Risk/Issue
6
Major**

Discussions with Legal Services identified that they had not received any contract documentation in relation to the project. The Works Unit supplied emails confirming that the documents had been left at County Hall reception (as the Contracts Solicitor was unavailable) in March 2015.

At the conclusion of our review, the contract was with the contractor, Dawnus' legal team but the above process is not robust as:

- Legal Services had not received early notification that it would be needed to review the contract and arrange for it to be signed so it could build in resources;
- the Works Unit had not received written confirmation from Legal Services that it had received the documentation and, despite an initial request for confirmation that the information had been received by them, no further reminders were sent; and
- Legal Services is unable to find the contract documentation (however, there are terms and conditions detailed within the tender and the purchase order for the works).

As we have identified a similar lack of control elsewhere, we consider that there needs to be corporate direction on how much risk (if any) the Council is willing to accept in these circumstances hence why we have raised this as a major risk/issue.

In line with CPRs, the Works Unit maintains a contracts register detailing the name of the contractor, and contract award value, and monitors payments made against the contract.

Various risk assessments and health and safety checks were carried out once the contractor started work on site. There was also evidence of regular communication between the Council and the contractor through having a weekly risk reduction meeting and a monthly project meeting.

Report Recipients

- Project Manager (Works Unit)
- Works Unit Manager
- Head of Highways & Environmental Services
- Manager (Corporate Programme Office)
- Strategic Procurement Manager
- Head of Facilities, Assets & Housing
- Programme Manager (Facilities, Assets & Housing)
- Head of Finance
- Head of Legal, HR and Democratic Services
- Corporate Director: Economy and Public Realm
- Lead Officer, Destination, Marketing & Communication
- Lead Member for Public Realm
- Chair - Performance Scrutiny Committee
- Lead Member for Finance, Corporate Plan & Performance
- Corporate Governance Committee
- Scrutiny Co-ordinator

Key Dates

Review commenced	June 2015
Review completed	August 2015
Reported to Corporate Governance Committee	27 April 2016
Proposed date for 1st follow up review	To be agreed by Committee