

CABINET

19 APRIL 2011

GATEWAY 3 PROCUREMENT TENDER PROCESS REVIEW AND CONTRACT AWARD REPORT: MERCURY ABATEMENT AND IMPROVEMENTS TO MEDWAY CREMATORIUM – CREMATOR WORKS

Portfolio Holder:	Councillor Janice Bamber, Customer First and Corporate Services
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Summary

This report seeks permission from the Cabinet to approve the award of a contract to the supplier as highlighted in paragraph 2.5.1 of the Exempt Appendix.

This is based upon the recently undertaken procurement process for the design, supply and installation of cremators at Medway Crematorium.

The design element of the contract will be appointed directly with Medway Council. The successful tenderer shall also supply and install the cremators and associated services as a named sub-contractor under a main contract which will be the subject of a separate procurement exercise (The main contract will also include other improvement works to the crematorium that are outside the scope of a specialist cremator provider).

Cabinet approved the Gateway 1 Options Appraisal report on 8 June 2010.

This Procurement Gateway 3 report has been approved for submission to the Cabinet after review and discussion at Business Support Directorate Management Team meeting on 17 March 2011 and Strategic Procurement Board on 30 March 2011.

This project is subject to service sensitivities which are due to the nature and location of the undertaking. The crematorium operates in a sensitive environment, which is often subject to public and media scrutiny. Failure to deliver the project within the timescales as set out previously could expose the local authority to risk.

1. Budget and Policy Framework

1.1 Contract Award Decision

1.1 The decision to award a contract to the supplier as highlighted within paragraph 2.5.1 of the Exempt Appendix for this procurement requirement is within the Council's policy and budget framework and ties in with all the identified Core Values, Strategic Priorities, Strategic Council Obligations and Departmental/Directorate service plans as highlighted within the Cabinet Procurement Gateway 1 report.

2. Background

2.1 **Procurement Proposals**

- 2.1.1 On 8 June 2010 Cabinet approved the proposal to provide new cremators, mercury abatement up to the level of 100% and to provide additional car parking space together with larger chapel accommodation at Medway Council's Crematorium which is situated at Robin Hood Lane, Chatham, Kent.
- 2.1.2 It was proposed to achieve this proposal through two separate procurement exercises. The first was to be under a contract with a specialist cremator contractor for the design, supply, installation and maintenance of the cremators the design element. The design element would, inter alias, take into account the space limitations at the site and would require the specialist cremator contractor to price both the cost of the new cremators and their installation together with both the cost of the mercury abatement equipment and its installation. This contract would also require this contractor to be 'tied' to a main building contractor. The main building contract would also include the other improvement works to the cremator provider. The second procurement exercise would be with regard to the appointment of the main building contractor.
- 2.1.3 Statutory guidance issued under the Environmental Protection Act 1990 requires the abatement of mercury emissions or particulates from crematoriums as from 31 December 2012. It is therefore essential for the project's timetable to deliver the proposal in sufficient time before this date for the installation of the new cremators and the mercury abatement equipment to be fully commissioned and tested. It was considered that it would be difficult to draft a specification for the maintenance of equipment that was of an unknown quantity and that it would be more practical to separately contract for the maintenance of the cremators and related equipment after the contract for the design and installation element had been awarded. Further, it was also considered that an attempt to draft a comprehensive and detailed maintenance specification would be likely to take a great deal of additional time and it would not be possible to accommodate this in a procurement timetable to deliver the project by a specified date.
- 2.1.4 It was therefore decided that a separate procurement would be carried out to let the maintenance contract after the design element contract

had been awarded. This particular procurement was therefore only concerned with the design, supply and later installation of the cremators and the related abatement equipment.

2.2 Permission Required From the Cabinet

2.2.1 This Procurement Gateway 3 report seeks approval from the Cabinet for the award of a contract to the supplier as highlighted within paragraph 2.5.1 of the Exempt Appendix to provide a design for new abatement and cremator equipment and then the supply and installation of same, as a sub-contractor, which will be under a principal contractor to be procured under a separate contract at a later stage.

2.3 Contract Details

2.3.1 Procurement type

The proposed recommendation to award the contract to the supplier as highlighted within paragraph 2.5.1 of the Exempt Appendix relates to a Services contract.

2.3.2 Contract duration

The proposed contract duration for this procurement requirement is $2\frac{1}{4}$ years. The contract is proposed to commence on 20/05/2011 and conclude on 28/08/2013, where the design portion is to fall inline with the schedule or works proposed by the design team.

2.3.3 Contract value

The total contract value associated with this contract is based upon the sum of £1,742,828.00 as identified in the capital programme.

2.4 Procurement Tendering Process

- 2.4.1 In line with Medway Council's Contract Procedure Rules this procurement requirement was subjected to a formal tender process in line with the EU Procurement Open process, whereby an OJEU notice was placed within the Official Journal of the European Union (OJEU) on 17 December 2010.
- 2.4.2 It was decided to follow a formal EU Open tender process as the marketplace is small and the potential interest to Medway Council's advertised requirements would be minimal. Therefore, the procuring client department was confident and happy to use the Open procedure to invite tenders and to evaluate all tenders received in response to the OJEU notice. The estimated value of this contract was considered to be in excess of the OJEU threshold for Services/Supplies. Variant bids were not permitted in relation to this Invitation to Tender.
- 2.4.3 Subsequently, 5 companies returned the Invitation To Tender documentation within the prescribed deadline for completed submissions of 15:00 on 18 February 2011 as prescribed by the Invitation To Tender document.

2.5 Tender Evaluation

The procurement for the new cremators and the related mercury abatement equipment was subject to the Open procedure under the Public Contracts Regulations 2006 (as amended).

2.5.1 Process

The Council had set up a panel to appraise the returned tender submissions. This panel consisted of (i) a Design Team member, (ii) a Project Team member and (iii) Employer Representative. The panel members read and scored the tenders independently of each other prior to discussing and agreeing a common score in accordance with the scoring framework set out below. The total points following the evaluation of the tender submissions in accordance with the Council's evaluation methodology set out in paragraph 2.5.2 below were then divided by the Cost (excluding any optional costs). The tender submission with the lowest score after this calculation represents the Most Economically Advantageous Tender. The Cost element of the tenders were evaluated in accordance with the Total Contract Sum as set out in SECTION NO 3 CONTRACT SUM ANALYSIS of the Invitation to Tender (ITT) and, where applicable Alternative 2 of the Code for Single Stage Tendering (as set out in Appendix G of the ITT) was used.

Details of the conclusions reached by the Council's team in respect of the tender submissions are set below in paragraphs 2.5.5 and 2.5.6.

2.5.2 'Technical' Criteria

The 'Technical' scoring criteria were:-

Section	Matter	
2.5.1	Information Required	
2.5.1.1	Organisation Profile	Info Only
	Q 1.1.13 will be Pass/Fail	
2.5.1.2	Financial Information	3
2.5.1.3	Health and Safety Information	3
2.5.1.4	Quality Assurances	3
2.5.1.5	Insurance	Pass/Fail
2.5.1.6	Environmental Issues	2
2.5.1.7	Equal Opportunities	5
2.5.2	Specific Proposals	
2.5.2.1	System Proposals	-
	Equipment Proposals	10
	Lifespan of Equipment	8
	Maintenance Implications	5
	Replacement Parts	5
	Fuel Consumption etc.	4
	Additional Abatement	1
2.5.2.2	Timescale	10
2.5.2.3	Additional Works and Extensions	10
	(effect on existing site)	
2.5.3	Technical Ability	
2.5.3.1	Relevant Experience	4

2.5.3.2	Employee Numbers	2
2.5.3.3	Key Staff	2
2.5.3.4	Abatement Compliance	5
2.5.3.5	Set Up Proposals	5
2.5.3.6	Operational Proposals	8
2.5.3.7	Shutdown Response	5
2.5.3.8	Plant Logistics	2
2.5.3.9	Urgent Repair Response	5
2.5.3.10	Referees	2
	Total Points	109

In terms of the evaluation of the 'Technical' criteria, Tenderer's responses were assessed to determine the degree to which the specified criteria had been met and were awarded a score out of 5 as defined in the table below.

Score	Definition
5	Excellent - Exceeds the requirement, exceptional demonstration by the organisation of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the services. Response identifies factors that will offer potential added value, with evidence to support the response.
4	Good - Satisfies the requirement with minor additional benefits. Above average demonstration by the organisation of the relevant ability, understanding, experience, skills, resource & quality measures required to provide the services. Response identifies factors that will offer potential added value, with evidence to support the response.
3	Acceptable - Satisfies the requirement. Demonstration by the organisation of the relevant ability, understanding, experience, skills, resource & quality measures required to provide the services, with evidence to support the response.
2	Minor Reservations - Satisfies the requirement with minor reservations. Some minor reservations of the organisation's relevant ability, understanding, experience, skills, resource & quality measures required to provide the services, with little or no evidence to support the response.
1	Serious Reservations - Satisfies the requirement with major reservations. Considerable reservations of the organisation's relevant ability, understanding, experience, skills, resource & quality measures required to provide the services, with little or no evidence to support the response.
0	Unacceptable - Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the organisation has the ability, understanding, experience, skills, resource & quality measures required to provide the services, with little or no evidence to support the response.

This figure was then divided by the Cost (excluding any optional costs). The resulting figure was then be used to assess the Most Economically Advantageous Tender.

For example:-

Tender A's tender sum is \pounds 500,000, the qualitative score evaluated is 450. Therefore \pounds 500,000 / 450 = 1,111.11

Tender B's tender sum is \pounds 550,000, the qualitative score evaluated is 520. Therefore \pounds 550,000 / 520 = 1,057.69

Therefore Tenderer B would be awarded the contract.

The figures above are for illustrative purposes only.

2.5.3 Cost Criteria

Cost was evaluated on the basis of each Tenderer's Total Contract Sum as set out in SECTION NO 3 CONTRACT SUM ANALYSIS of the Invitation to Tender (ITT).

2.5.4 Tender Submissions

The detailed 'Technical' evaluation scoring together with the Tenderers' submissions in respect of Costs (Contract Sum Analysis) are set out in the Exempt Appendix.

Overview

2.5.5 'Technical' Evaluation of Tenders'

	Tenderer 1	Tenderer 2	Tenderer 3	Tenderer 4	Tenderer 5
'Technical' Scores	399	357	356	193	356

2.5.6 Cost (Total Contract Sum)

	Tenderer 1	Tenderer 2	Tenderer 3	Tenderer 4	Tenderer 5
Cost (Total					
Contract Sum)	£1,011,985	£918,000	£920,973	798,875	£1,493,320

2.6 Preferred Tender

The Council will make its decision based on the most economically advantageous tender (MEAT) which has been derived from dividing the Cost (Total Contract Sum) with the 'Technical' score to give an overall winning tender.

The Council has evaluated the tenders received from 5 Tenderers as against the evaluation criteria which is set out in paragraphs 2.5.2 and 2.5.3. After dividing the Cost (Total Contract Sum) by the 'Technical' Scores for each tender, the final scores are as follows:

	Tenderer 1	Tenderer 2	Tenderer 3	Tenderer 4	Tenderer 5
Cost (Total Contract					
Sum)	£1,011,985	£918,000	£920,973	£798,875	£1,493,320
'Technical'					
Score	399	357	356	193	356
TOTAL SCORE (Cost divided by 'Technical Score')	2536.303	2571.429	2587.003	4139.249	4194.719

The tender from Tenderer 1 is the most economically advantageous tender.

3. Options

In arriving at the preferred option as identified within Section 4.1 'Preferred Option', the following options have been considered with their respective advantages and disadvantages.

3.1 Options Resultant From Procurement Tender Process

This procurement tendering process has resulted in the following procurement contract award options:

3.1.1 Do not award any contract and cancel procurement process

All of the tenders have satisfied the compliance checks and the initial view is that the cost of this part of the proposal will be within budget. It is considered that there are no reasons to abandon this procurement process and it is therefore recommended that this option be discounted.

3.1.2 Award contract to the contractor (as highlighted within the Exempt Appendix) with the highest MEAT score following the evaluation of the tenders in accordance with the published evaluation criteria.

The option of awarding the contract to the contractor as highlighted within the Exempt Appendix has been considered and below are the advantages and disadvantages of this option

Advantages – The Public Contracts Regulations 2006 (as amended) require the decision to award the contract to be on the basis of the award criteria set out in the Invitation to Tender. Such a decision would be in compliance with both the Regulations and the published award criteria in the ITT and would not be open to successful challenge.

Disadvantages – There are none

3.1.3 Other alternative options

No alternative options have been identified.

4. Advice and analysis

4.1 **Preferred option**

Further to an extensive review of procurement contract award options as highlighted within Section 3 'Options' above, the following preferred procurement award option is recommended to Cabinet including justification for this recommendation.

The recommended MEAT option, i.e. the preferred option, meets the requirements as set out in Section 2 'Business Case' within the Gateway 1 Options Appraisal Report in the following ways:

The preferred option is the one that involves the replacement of all existing cremators with new, modern units. This ensures maximum compatibility; provides cremators that have an extended lifespan; ensures that the requirements of the Environmental Protection Act are fully met; reduces risk and operating costs, at least in the short term.

4.1.1 Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important at Gateway 1 to the delivery of this procurement requirement have been appraised in the table below to demonstrate how the recommended procurement contract award will deliver said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award option deliver outputs/outcomes
1. Delivery of abatement equipment within the statutory timeframe (31 st December 2012)	Completion of project by due date	Project Board (Plus information exchange with regulator)	Continual monitoring throughout the delivery and installation phases.	Procurement of suppliers with known track record/references. Evaluation matrix.
2. Equipment complies with PG5 (4)	Independent testing of emissions	Bereavement Services and external regulator	Upon completion of installation, but prior to any final payments and retentions.	Procurement of suppliers with known track record/references.

4.1.2 Procurement Project Management

Betteridge and Milsom Ltd have been engaged to manage the project from post feasibility study to project completion and they will be dealing with the post contract award contract management. Betteridge and Milsom have access to a number of other consultants including the Alan Baxter Partnership LLP, PCS Consulting Services Ltd and the Clay Architecture Ltd. The Bereavement Services Manager, a Project Manager from the Council's Building & Design Service and a Senior Accountant from the Business Support Department supplements this team.

Building and Design Services have procured all the relevant participants in the project management from the Kent County Council framework and have ensured that all necessary processes have been complied with in accordance with the Council's Contract Procedure Rules.

This element of the procurement process is to secure, at an early stage, both the supply and installation of cremation and abatement equipment, and the skills of specialist cremator suppliers to assist in the design stage of the project thereby reducing the risks of failure.

4.1.3 Post Contract Award Contract Management

Post contract award, the same arrangements as identified in 4.1.2 above will continue.

4.1.4 Other Issues

There are no other issues that could potentially impact the recommended procurement contract award.

4.1.5 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it was identified at Gateway 1 that TUPE does not apply to this recommended procurement contract award as this is a Services related procurement with no Services related implications.

5. Risk Management

5.1 Risk Categorisation

The following risk categories have been identified as having a linkage to this recommended procurement contract award:

Procurement process	\bowtie	Equalities	
Contractual delivery	\square	Sustainability / Environmental	\boxtimes
Service delivery	\boxtimes	Legal	\boxtimes
Reputation / political	\boxtimes	Financial	\square
Health & Safety	\square	Other	

For each of the risks identified above, further information has been provided below

Risk Categories	Outline Description	Risk Impact A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Likelihood I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
a) Procurement process	Failure to follow legal / OJEU process	A	111	Liaison with legal services and procurement
b) Contractual delivery	Contractors unable to fulfil delivery timescales. Equipment does not deliver expected outcomes	В	II	Early engagement with suppliers to ensure design qualities, functionality and delivery
c) Service delivery	Risk of works affecting day to day operation of crematorium resulting in disruption to funerals; dirt and mess	A	II	Evaluation matrix included suppliers capacity to minimise disruption.
d) Reputation / political	Cancelled or disrupted funerals	В	I	Close adherence to works programmes and consultation with stakeholders and other crematoria.
e) Health & Safety	Injury to mourners, visitors and staff	С	Ι	Evaluation criteria, submission of method statements, H&S pre- construction pack, CDM Coordinator
f) Equalities	N/A	N/A	N/A	N/A
g) Sustainability / Environmental	Equipment does not deliver expected outcome	E	IV	Project to reduce emissions to environment should = net gain. Independent monitoring prior to final sign off.
h) Legal	Project not completed by Dec 2012	A	IV	Early procurement and design process to minimise overrun. Engagement with Regulator.
i) Financial	Cost of works exceed budget. Operating costs increase. Fall in income	В	IV	Early commitment from suppliers to deliver within budget. Selection criteria. Consideration within budget build for 2012

j) Other	N/A	N/A	N/A	N/A

6 Consultation-

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 Before commencement of the procurement process in order to direct the specification

As part of this procurement project, consultation took place with Finance, Legal and Building and Design Services.

6.1.2 During the procurement process in order to aid the evaluation process

As part of this procurement project, consultation took place with Finance, Building and Design Services and Procurement.

6.1.3 Post procurement/tender award in order to aid the contract management process

As set out in section 4.1.2 above.

6.2 External Stakeholder Consultation

6.2.1 Before commencement of the procurement process in order to direct the specification.

As part of this procurement project, consultation has taken place with Tonbridge and Malling Council's Environmental Health and Planning Departments along with South Thames Gateway Building Control.

6.2.2 During the procurement process in order to aid the evaluation Process.

As part of this procurement project no external stakeholder consultation was required nor undertaken during the procurement process in order to aid the evaluation process.

6.2.3 Post procurement/tender award in order to aid the contract management process

As part of this procurement project, continued consultation will be required with Tonbridge and Malling Council's Environmental Health and Planning Departments along with South Thames Gateway Building Control.

7. Strategic Procurement Board – 30 March 2011

7.1 The Strategic Procurement Board considered this report on 30 March 2011 and recommended approval to Cabinet.

8. Financial, Procurement and Legal Implications

8.1 Financial Implications

- 8.1.1 This recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following financial implications which the Cabinet must consider:
- 8.1.2 This report is seeking to select a supplier who will:
 - a) contract directly with Medway Council for the design element of the project and
 - b) supply and install the cremators and associated services, on a sub-contract basis, to the successful tenderer for the main works contract.
- 8.1.3 The total provision for the works in the approved capital programme is £1.757m, to be funded from a combination of set aside reserves and prudential borrowing.
- 8.1.4 Detailed finance and whole-life costing information is contained within Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix at the end of this report.
- 8.1.5 The tender sums reported in paragraph 2.6 relate to a) and b) above. Ongoing maintenance costs are not included in the tendered sums: these will be tendered separately in accordance with the chosen technological solution. The inclusion of servicing and ongoing maintenance was not included in the tender because this was an open (OJEU) procurement process which, by definition, meant we were open to all and any type of technology that was available being offered to us. Because there was no prescription of the technology to be used, the council could not have easily set out a service and maintenance specification that would have satisfied the open procurement process.
- 8.1.6 The tenderers were asked to describe how efficient and effective their proposals would be so that an assessment could be made, within the scoring matrix, of the likely future long-term maintenance implications.

8.2 Legal Implications

- 8.2.1 This recommended procurement contract award per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following legal implications which the Cabinet must consider:
- 8.2.2 The legal requirement is (if any award is to be made) to award the contract in accordance with the evaluation criteria published in the Invitation to Tender which in this case was to award the contract to the most economically advantageous tender. On the basis of the scoring of the said evaluation criteria, applying the evaluation methodology, the recommendations in the report are consistent with that legal requirement.

- 8.2.3 As soon as possible after any decisions are made to award the contract to the most economically advantageous tender as set out within this report, the Public Contracts Regulations 2006 (as amended) require the Council to inform all those tenderers who were involved in the procurement process of its decision in relation to the award of the contract. The Council must allow a mandatory standstill period of at least 10 clear days between the date on which the tenderer is informed of the decision and the date on which the Council enters into the contract. The notice must include a full statement of reasons including:
 - The award criteria (should indicate weightings);
 - The tenderer's score;
 - The winning tenderer's score;
 - The name of the winning tenderer;
 - The characteristics and advantages of the successful tender;
 - A detailed breakdown of the scoring for the successful tenderer and for individual unsuccessful tenderers, and;
 - The date when the standstill period is expected to end.
- 8.2.4 The said Regulations make it explicit that the Council cannot enter into the contract if it has not met its mandatory standstill obligations or if the award has been challenged. If a legal challenge is brought by a tenderer within the 10 day period, then the Council must await the outcome of the application to the High Court before concluding the contract.

8.3 **Procurement Implications**

- 8.3.1 This recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following procurement implications which the Cabinet must consider:
- 8.3.2 This procurement was undertaken via a EU compliant procedure and in line with the councils Contract Procedure Rules with guidance provided from the Strategic Procurement Team. The evaluation of the submitted tenders were completed in line with advertised evaluation criteria as specified within the OJEU notice and corresponding Invitation To Tender documentation. The process undertaken was fair and transparent and in accordance with the Treaty Principles of the EU procurement regulations.
- 8.3.3 In relation to the ITT evaluation criteria as stipulated within the ITT documentation and within this Gateway 3 report, the evaluation process has lended itself towards MEAT Most Economically Advantageous Tender in respects to quality and price. The normal best practice when undertaking MEAT evaluation is the proportionate percentage assignment of quality and price over a maximum 100%. However, the EU Procurement Regulations (Reg 30 (1) a) affords local authorities to structure MEAT on the basis of their own viewpoint and judgement provided that EU principles and proportionate quality weightings are clearly communicated to the supply market (via the ITT/OJEU notice) and thereafter utilised as the consistent basis for evaluation.

- 8.3.4 Strategic Procurement, having reviewed high level the ITT documentation and the results as per this Gateway 3 report is satisfied that the communication of this is consistent with the requirements of the EU regulations. However, the evaluation team must ensure that the qualitative weightings used are consistent and applicable and do afford at an operational level, the ability to evaluate all tenderers on fair, transparent and 'like for like' basis.
- 8.3.5 Overall, this project should deliver best value and is compliant with both the Contract Procedure Rules and EU Procurement Regulations.

9. Recommendation

9.1 The Cabinet is requested to approve the procurement contract award, for Mercury Abatement and Improvements to Medway Crematorium – Cremator Works, to the contractor as outlined within paragraph 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix, as the most economically advantageous tender subject to satisfactory financial assurances.

10. Suggested reasons for decision(s)

10.1 The recommendations contained within Section 9 'Recommendations' above are provided on the basis that the contractor satisfied the compliance checks and its proposal indicated that the scheme would be within budget. The criteria as set out in the Invitation to Tender were met and the Public Contracts Regulations 2006 (as amended) require the decision to award the contract be on the basis of the most economically advantageous tender.

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Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Gateway 1 Report (including the	Electronic	21st April 2010
documents referenced in the	(pdf format)	(Procurement Board)
Background papers to that document)		8 June 2010 (Cabinet)
Tender Specification	Electronic (pdf format)	December 2010
Tender submissions from all suppliers	Building &	Various
	Design	
	Services	