

CABINET

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GATEWAY 3 PROCUREMENT TENDER PROCESS REVIEW AND CONTRACT AWARD: IMPROVEMENTS TO MEDWAY CREMATORIUM STAGE 2

Portfolio Holder: Councillor Tom Mason, Corporate Services

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Summary

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

This is based upon the recently undertaken procurement process to engage contractors to enlarge and improve chapel and car parking facilities, and to assist with the building works associated with the installation of cremators and mercury abatement equipment at the Medway Crematorium, Bluebell Hill Village.

This is a procurement of construction works, which will be delivered on the basis of a Joint Contracts Tribunal 2011 Design and Build Contract (JCT).

A specialist supplier of cremators was awarded a contract in April 2011, through a similar Gateway 3 process approved by Cabinet on 19 April 2011. The approved Procurement Gateway 3 is available upon request. The two contractors will work in partnership with the principal contractor taking responsibility for the management and performance of the previously contracted cremator supplier.

The Cabinet approved the commencement and delivery of this procurement requirement at Procurement Gateway 1 on 8 June 2010. The approved Procurement Gateway 1 Report relating to this Gateway 3 report is available upon request.

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 23 February 2012 and Strategic Procurement Board on 14 March 2012.

1. Budget and Policy Framework

1.1 Contract Award Decision

1.1.1 The decision to award a contract to the supplier as highlighted within 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 Procurement Gateway 1 Report.

1.2 Funding/Engagement From External Sources

1.2.1 The external funding associated with this report is via prudential borrowing.

1.3 Urgency Report

1.3.1 The installation of cremators must be completed by 31 December 2012 and the timetable currently allows for this deadline.

2. Background

2.1 Permission Required From the Cabinet

2.1.1 This Procurement Gateway 3 Report seeks permission from the Cabinet to award a contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix.

2.1.2 This project is for the provision of new cremators, mercury abatement equipment, better car parking facilities and the enlargement of two chapels. A contract was awarded last year for the supply of new cremators and abatement equipment (Cabinet 19 April 2011: Gateway 3 Decision Number 62/2011). This early procurement of abatement equipment enabled the supplier to work with the Council to develop the build solutions to ensure delivery within the statutory timescales. This report deals with the next stage of the project and seeks approval to award a works contract for associated building works relating to the installation of cremators and improvements to the two chapels and car parking.

2.1.3 Following approval of the first stage of the project at Gateway 3 measured building surveys, topographical, drainage, arboreal, electrical and structural surveys have been undertaken. These surveys were used as the basis for the architectural drawings and the planning application. Those surveys identified additional works that could not have been known at the time of writing the feasibility report. These items include replacement of under floor heating; roof screening; structural steelwork; relocation of welfare facilities; decoration and repairs and a complete electrical rewire.

- 2.1.4 Tonbridge and Malling Borough Council approved the planning application on the 11 November 2011, given the Medway Crematorium falls within that Local Authority's boundary.
- 2.1.5 Following the receipt of planning permission Invitations To Tender (ITT) were issued to 6 companies (only 5 responded), selected from the Kent County Council list of Design and Build Contractors in October 2011 and following on from tender evaluations a revised ITT was issued to 5 (only 4 responded) of those original contractors in January 2011.

2.2 Contract Details

2.2.1 Procurement type

The proposed award of the contract to the supplier as highlighted within 2.5.1 of the Exempt Appendix relates to:

A Works/Construction procurement requirement

2.2.2 Contract duration

The contract duration for this procurement requirement is for 1 year 9 months and there are no provisions within the contract to extend. The contract is proposed to commence on 1 May 2012 and conclude on 30 October 2013.

2.2.3 Contract value

The total contract value associated with this contract is set out within the Exempt Appendix. However a contract has already been awarded as part of the previous Gateway 3 associated with this project. Even if these two contract values were aggregated the value would remain below the EU threshold for works.

2.3 Procurement Tendering Process

- 2.3.1 In line with Medway Council's Contract Procedure Rules this procurement requirement was subjected to an ITT where contractors were identified from the KCC framework and in accordance with the framework rules.
- 2.3.2 An ITT document was issued to five companies of a comparable stature, using the Council's ITT document / Industry standard Works / Construction contract documents on 28 October 2011 with 2 Tender Addendums being issued subsequently with a 2 week extension for submission.
- 2.3.3 This was due to the associated total contract value of this contract being below the EU threshold of £3,927,260.00 for Works (threshold level at the date of the issue of the ITT - since 1 January 2012 the threshold is £4,348,350.00) and was approved at Gateway 1.

- 2.3.4 The decision as to how it was determined that all companies invited to tender were of a comparable stature was based upon the fact that the contractors were all selected from the KCC list of Design and Build contractors, a number of which were nominated and others were auto selected from the list through rotation of the list. The process was carried out inline with the KCC list rules. 6 contractors were invited to participate, one of which declined.
- 2.3.5 The deadline for return of tenders was 12:00 on 9 December 2012. 5 tenders were received by the prescribed time and date within the ITT document.
- 2.3.6 After a compliance check against the instructions sent out in the ITT document, there were 5 compliant tenders and 0 non-compliant tenders received, recorded and opened by Mr F Witwit from the Property Building and Design Team on 9 December 2011 AT 12:00 NOON.
- 2.3.7 The evaluation criteria set within the ITT document was Most Economically Advantageous Tender (MEAT) based upon a composite mixture of quality and price with 50 % for quality and 50 % for price equating to 100% in total.
- 2.3.8 After a compliance check against the instructions set out in the ITT document, 5 compliant submissions were evaluated. However the tender submissions did not demonstrate the level of quality and expertise expected and following advice from the procurement team, a second ITT was prepared and the quality and price mixture adjusted to 70% and 30%. The 5 tenderers were invited to submit revised tenders.
- 2.3.9 The deadline for return of tenders was 12:00 on 27 January 2012. The Exempt Appendix highlights that 4 tenders were received by the prescribed time and date within the ITT document. The fifth tenderer had elected not to submit a second 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

The option of not awarding any contract and cancelling the procurement process has been considered:

There is no justification for not awarding this contract as it provides best value and has been delivered in accordance with the original advertisements and associated procurement documentation and

therefore this option has been discounted. There is still the obligation to deal with mercury, and the cessation of this procurement would jeopardise the ability to meet the legal timetable.

3.1.2 Award contract to the contractor as highlighted within the Exempt Appendix.

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 contractor submitted the most economically advantageous tender.
- The legal requirements are met.
- The contact sum is a fixed price.
- The contractor specialises in design and build works and has demonstrated their experience with complex projects.

Disadvantages

- The contractor did not submit the cheapest tender, however, this was not the advertised evaluation criteria.

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 the Cabinet including justification for this recommendation.

The recommended preferred option is the most viable option for contract award because the proposed contract award meets the requirements as set out in Section 2 'Business Case' within the Gateway 1 Report in the following ways:

There is no legal requirement to extend the chapels but there is a need to provide the appropriate facilities for service users. The most significant problems with Medway Crematorium are currently chapel size and parking congestion. The service operates, to some extent, in a competitive environment with other Crematoria and failure to improve facilities to meet demand could have an impact upon revenue levels long term. The chapels have had little improvement work carried out for at least twenty years and these improvements would help marketability. Further, the provision of excellent and sympathetic services is a key

target and enhancing the facilities at the crematorium will play a significant part in achieving that goal.

The income from the crematorium plays a vital role in supporting Medway Bereavement and Registration Service, which remains self-funding.

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
Project delivered on time	Monitoring against timetable	Project team	Monthly monitoring during programme	The preferred contractor has experience of delivering within stipulated timescales and budget.
Compliance with Building regulations	Regular inspection	External specialist provider	During the works at predefined stages in accordance with the Building Regulations	Selection of contractor with good track record
Emissions meets standards	Monitoring against PG5	External independent contractor to MCERTS standard	Upon completion of installation of cremators	Enabling works
Project delivered within budget	Regular budget monitoring	Senior accountant; Betteridge and Milsom	Monthly	Design and build contractor with tender sum agreed.

4.1.2 Procurement Project Management

This procurement project will be taken through the remainder of the Gateway Procurement Process through the utilisation of the following project resources and skills.

1. Project Management Team comprising the client; a Senior Accountant from Business Support Department; a Project Manager from Property, Buildings and Design; a representative from Betteridge and Milsom the Employer's Agents and CDM co-ordinators (Construction Design and Management) for this project.
2. The successful contractors and Crawford Europe Ltd will also provide project management.

Financial monitoring will complete financial monitoring progress reports quarterly and at key milestones. Reporting to Members will be through the capital monitoring reports to Cabinet.

4.1.3 Post Contract Award Contract Management

The contract management of this recommended procurement contract award will be resourced post award through the following contract management strategy.

Betteridge and Milsom have set out a timetable based upon their experience of contract management and informed from the site surveys undertaken; information supplied from the contractors involved with the project. Progress will be monitored against this timetable.

During the works the project management team will meet no less than monthly and more frequently if and when required. The client will be on site whilst the work is being carried out during the working week with some call out facilities, should the need arise, during any weekend work.

The works will also be monitored by SM Partnership who are the chosen Building Control partners for the project. South Thames Gateway Building Control Partnership were asked to participate with this project but due to Medway Crematorium falling outside of their permitted boundary they were unable to offer the full building control service. As this is a complex project, a fragmented service would not have been appropriate and therefore it was decided that an alternative provider of building control services be sought.

The principal contractors will also take responsibility for project management and a system with financial penalties will be in place for any overrun.

Financial monitoring will complete financial monitoring progress reports quarterly and at key milestones. Reporting to Members will be through the capital monitoring reports to Cabinet.

It is also proposed to set up a project management board that will ideally have member representation for the duration of the project who will meet no less than monthly and whose purpose will be to have an oversight of the project and timescales and to scrutinise any expenditure and contract variations over and above the contract.

4.1.4 Other Issues

Bats have, very recently, been found in the chapel roof spaces, and this will require a further survey and an application for a European Protected Species Mitigation (EPSM) licence. Due to the evaluation and approval process, a licence cannot be issued until early September. This will delay the building works associated with the chapels, but not the cremators. The revised ITT allowed for a revised building programme, which takes this delay into account.

There are no other known 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 Works 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	■	Equalities	
Contractual delivery	■	Sustainability / Environmental	■
Service delivery	■	Legal	■
Reputation / political	■	Financial	■
Health & Safety	■	Other/ICT*	■

This is a major project on a site of special sensitivity for service users, stakeholders and local businesses.

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

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
a) Procurement process	Failure to follow legal / OJEU process	D	I	Liaison with legal services and procurement. LA procurement process. Procurement Board and Cabinet dates taken into account.
b) Contractual delivery	Contractors unable to fulfil delivery timescales.	D	II	Engagement with suppliers to ensure design qualities, functionality and delivery. Default clauses are part

				of the contract. Contract monitoring and regular meetings.
c) Service delivery	Risk of works affecting day to day operation of crematorium resulting in disruption to funerals; dirt and mess	D	I	Evaluation matrix included supplier's capacity to minimise disruption. Project management team and regular liaison. Detailed Specification with key milestones and performance indicators.
d) Reputation / political	Cancelled or disrupted funerals	D	II	Close adherence to works programmes and consultation with stakeholders and other crematoria. Local publicity/communication strategy. Ensure contract is awarded in line with process.
e) Health & Safety	Injury to mourners, visitors and staff and contractors	D	III	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	I	Project to reduce emissions to environment should = net gain. Independent monitoring prior to final sign off.
h) Legal	Project not completed by Dec 2012 (cremator works only)	D	III	Project management; liaison with regulator.
i) Financial	Cost of works exceed budget. Operating costs increase. Fall in income	D	II	Project management; Detailed investigations prior to commencement. Design and Build.
j) Other / ICT	Connection of equipment to networks	D	II	Early engagement with ICT team.

5.2 Other Information

A detailed Project Risk Register has been prepared and this is available upon request. This register will be reviewed throughout the project.

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 element of the procurement project no internal stakeholder consultation was required nor undertaken before the commencement of the procurement project in order to direct the specification.

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

As part of this procurement project, consultation with Strategic Procurement and the Monitoring Officer was undertaken during the procurement process in order to aid the evaluation process.

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

As part of this procurement project no internal stakeholder consultation will neither be required nor undertaken post procurement/tender award in order to aid the contract management process.

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 no external stakeholder consultation was required nor undertaken before the commencement of the procurement project in order to direct the specification.

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

As part of this procurement project, the following legal external stakeholder consultation was required and was undertaken before the commencement of the procurement project in order to direct the specification. Tonbridge and Malling Borough Council were required to approve an application made under the Town and Country Planning Act 1990 and Town and Country Planning (Development management Procedure) (England) Order 2010 and permission was granted on 11 November 2011.

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

As part of this procurement project, the following legal external stakeholder consultation will be required and will be undertaken post procurement/tender award in order to aid the contract management process.

Tonbridge and Malling Borough Council have approved the design and planning consent has been awarded. The two chapels will need to be both built to full comply with the consent and to ensure full satisfaction of the conditions

Building Control approvals and sign offs will be done via an approved independent Building Control consultant.

The Environmental Health Department at Tonbridge and Malling Council – the Regulator - will be required to issue a (revised) Permit for the operation of the crematorium.

7 Strategic Procurement Board

- 7.1 The Strategic Procurement Board considered this report on 14 March 2012 and supported the recommendations set out in paragraph 9 of this report.

8 Financial, legal, procurement and ICT 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 Detailed finance and whole-life costing information is contained within Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix.
- 8.1.3 The total budget now required for this project requires a £969,437 increase to the already approved sum in the capital programme. Overall, this will be funded by a combination of earmarked reserves and prudential borrowing as detailed in the exempt appendix.

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 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.

8.3 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 The value of the proposed project is below the EU procurement threshold for works, which is currently set at £4,348,350, and as a result the procurement of this project will primarily be subject to the Council's Contract Rules.
- 8.3.3 It is, however, established case law that the award procedures for contracts below EU threshold values must also comply with the general principles derived from the Treaty on the Functioning of the European Union, in particular the principle of equal treatment and the consequent obligation of transparency, at least where the contract to be awarded may be of interest to undertakings located in the wider market-place. This means that below EU threshold value contracts should still be given a sufficient degree of advertising necessary in order to alert likely potential suppliers of the opportunity to bid. It should also be borne in mind that competition is the main mechanism by which the Council can ensure legal compliance, a likely improvement in quality and innovation of service provision and value for money.
- 8.3.4 It would appear that the recommendations set out at paragraph 9 is appropriate given the fact that the client department is satisfied that the procurement activity has been undertaken in compliance with the requirements of the Council to treat all economic operators equally and conduct this procurement activity in a non-discriminatory and transparent manner as per underlying EU treaty principles for below threshold Works contracts.
- 8.3.5 Overall, this project should deliver best value and is compliant with both the Contract Procedure Rules and EU Procurement Regulations.

8.4 ICT Implications

- 8.4.1 This procurement requirement and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9 'Recommendations', has the following ICT implications which the Cabinet must consider.
- 8.4.2 Existing network/internet links are to be relocated and upgraded where necessary. Due to the lack of network resource within the ICT team, there is a risk that resources required from ICT to provide networking advice and support may not be available as required which could cause delays for the ICT element of the work.

9. Recommendations

- 9.1 The Cabinet is requested to approve the procurement contract award to the contractor as outlined within paragraph 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix.

9.2 The Cabinet is asked to recommend to Full Council an addition of £969,437 to the existing Capital Programme as set out in paragraph 8.1.3 of the report.

10. Suggested reasons for decision(s)

10.1 The provision of abatement equipment is required through legislation. The current cremators are coming to the end of their economic life and the chapel accommodation is too small for service users. There is also insufficient car parking space for current demand and additional car parking would be required as a condition of enlarging the chapels.

10.2 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 ITT 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.

Lead officer contact

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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 Options Appraisal: Mercury Abatement and Improvements to Medway Crematorium	http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=4878	Cabinet 08/06/2010
Gateway 3 Contract Award: Mercury Abatement and Improvements to Medway Crematorium	http://democracy.medway.gov.uk/mgConvert2PDF.aspx?ID=7456&nobdr=2	Cabinet 19/4/2011
Tender Documents ' <i>Medway Crematorium, Chatham, Kent</i> ' ref CMACE/FW/2011	Currently held by Betteridge & Milsom 26 Dover Street, London, W1S 4LY	
Tender submissions, various.		
Tender Report for Medway Crematorium, prepared by Betteridge & Milsom	V:\Mercury\Medway Crematorium Chatham - Tender Report 01 02 12.pdf	December 2011