



To: Executive Cllr Bick
Report by: Bob Hadfield
Relevant scrutiny committee: Community Services Scrutiny Committee
Wards affected: All
1 July 2010

Mercury Abatement Project Key Decision

1. Executive summary

1.1 Current position

- 1.1.1 Due to the historical use of mercury within dental filling amalgam, the level of Mercury pollution arising from crematoria operations is rapidly increasing nationally. Mercury emitted in this manner can travel many hundreds of miles in the atmosphere ultimately entering the food chain, particularly so in marine environments.
- 1.1.2 By 2012 all councils are required either to reduce mercury emissions from crematoria by 50%, or to pay into a national penalty scheme of abatement credits, which would operate like carbon offsetting. In 2005 a decision was taken for the crematorium run by the Council to seek to reduce mercury omissions, and therefore to install plant that would achieve this. Part of the rationale for this decision was based on the future requirements to replace the cremators within a similar timeframe.
- 1.1.3 Procurement of the manufacture and installation of the mercury abatement plant is being made via a public tender undertaken by the Essex procurement hub and via a company called Facultatieve Technologies (FT). FT were the only firm able to demonstrate during the tender process, fully installed and working equipment already in use.
- 1.1.4 To progress the tender further, permission is being sought, ultimately via full Council, to allow pre-payments to the manufacture prior to receiving the goods in accordance with the terms set out in the framework agreement. This is a non-negotiable requirement from the manufacturer, who require part payments upfront to cover their cash flow needs. The Council's constitution does not allow for this, hence special permission would be sought.
- 1.1.5 Pre-payment would be used as working capital, and could not therefore be protected by, for example, holding the sum in an Escrow account (a client account).

2. Recommendations

- 2.1 That the Executive Councillor seek permission via Full Council to allow a constitutional waiver in that, officers be allowed make advance contractual payments as outlined in this report at 3.7.1, so as to ensure that the project procurement process may proceed and the project completed within required timescales.

3. Background

3.1 Mercury Abatement Requirements

- 3.1.1 This project originally arose from guidance published by DEFRA in 2005 (Defra (PG 5/2(04)) which set out a requirement to reduce mercury emissions from all crematoria by 50% by the year 2012. A decision to abate mercury emissions fully at the Cambridge site was taken by the Council via the then Environmental Services Scrutiny Committee on 8th November 2005, subject to a full financial and technical review being undertaken. Member authority was subsequently obtained to let a contract through the Essex Procurement Framework at Community Services Committee (Record of decision 08C79 13th Nov 2008)
- 3.1.2 Establishing the procurement framework has been more complex and time consuming than anticipated which means that only now can the project start-up processes commence together with associated planning. The project represents a major investment. Total financial provision has been made of £2m, to cover all eventualities, which includes the incurring of an unavoidable VAT liability of around £200k for the Council as a whole, in addition to the VAT payable on the crematorium equipment and works
- 3.1.3 A contributing levy per cremation was established some years ago thereby allowing financial provision for the subsequent installation of mercury abatement equipment, or alternatively the purchase of abatement credits through national arrangements established for that purpose.
- 3.1.4 As part of the project the opportunity is being taken to formulate works in such a way that maximise its contribution to the Council's MTOs. For example, by enabling a heat recovery system for the crematorium complex as a whole to be added, if funds are available. Due to the major nature of these works some refurbishment works will also be undertaken to the crematorium chapels, again subject to available resources.

3.2 Framework Agreement

- 3.2.1 The Procurement Agency for Essex is a public sector organisation established by the Essex Chief Executive Organisation in 2004. The organisation was established to service major procurement exercises on behalf of the public sector. The use of the Agency has been approved by the Council's corporate Procurement Advisor.
- 3.2.2 Only one firm, Facultatieve Technologies (FT), has been appointed within the framework. FT were the only firm to meet the requirements of the procurement process. In particular, a requirement to be able to demonstrate a fully working

abatement equipment already in use. Some other organisations failed simply on financial assessment grounds.

3.2.3 This Council's existing crematorium cremation equipment was manufactured and installed by this company

3.2.4 The way the framework operates is for clients to obtain a tender via the framework, from which process Essex obtains a fee of 1.5% from the contractor to fund their procurement processes. Any tender sought in this way is valid for a fairly short duration of 13 weeks. Timing of the tender is therefore very important.

3.2.5 We are in active pre-tender discussion with FT regarding our specific requirements. We have employed an architect who specialises in this area to produce a detailed feasibility study and performance specification which has already been conveyed to FT. We have also employed an 'Employers Agent', with specialist understanding of the industry, to represent the Council's interests for the duration of the works.

3.3 Project Management

3.3.1 A project board has been established including the Corporate Procurement Advisor and representatives from Finance, Audit, Legal and Technical Services. Because this is a major procurement Prince 2 principles will be adopted for the project, in that, the board will direct the project, via controlled stage approvals.

3.4 Advance payments

3.4.1 We will not have a final tender price for the equipment costs from FT until the tender is progressed. Overall project costs including building works are forecast as being approximately £1.5m (excluding VAT). The payment regime required for the project requires up front payments prior to and on completion of manufacture of the abatement plant. This is common practice for large mechanical and electrical industry projects. FT will not proceed to manufacture without such payment and will not vary this requirement.

3.5 Contract stage payments are required as follows:

30% - Down payment (an advance payment for manufacture)

30% - Cremators and mercury abatement plant ready for despatch

10% - Equipment delivered to site

20% - Completion of mechanical and electrical installation, plant ready to cremate through abatement plant – beneficial use

5% - Delivery of operating and maintenance manuals for installation

5% - Completion of environmental performance tests/handover

3.6 Contractor checks

3.6.1 Because of the significant levels of pre-payment involved the failure of the supplier could result in either significant increased costs for the Council and/or major financial loss. Financial checks have been carried out on Facultatieve Technologies by the Finance Department, which shows them to be financially sound, have a high credit rating, and a healthy order book.

Facultatieve has a strong history of successful project delivery in the UK. Some examples of related recent completed projects are provided in the appendices.

3.6.2 If pre-payment is approved, the following timescale will apply:

Tender - August 2010

Order - 1st April 2011

Manufacture April 2011– August 2011

Commencement of works on site - July 2011

Practical completion – Nov 2011 Release retention - April 2012

3.7 The payment regime

3.7.1 The Council is required to pay two pre-delivery stage payments, the first when the order is placed and the second upon completion of manufacture. Payments such as these are standard industry practice in projects of this size and complexity. The advance payments will total approximately £600,000 plus VAT. Further state payments will be made when the goods are delivered and as work on site proceeds.

3.7.2 Protection for the Council comes from FT's track record (See 3.6.1) its credit score and clauses in the contract (or other bespoke legal obligations) put on FT that require them to use the advance payments made to the Council to purchase plant.

Further assurance in the form of performance bonds and a parent company guarantee will be obtained as follows:

1. A parent company guarantee will be provided for performance of the project for up to 30% of the contract value of the mercury abatement equipment and associated equipment. This is to be provided at no cost as part of the tender.
2. On demand bank bonds will be obtained in two stages in respect of the advance payments and/or materials held off site. These bonds will cost approximately £6,500 and are anticipated to operate as follows:
 - a) First bond for deposit (approx £300,000) extinguished when goods are on site
 - b) Second bond for goods ready for despatch (approx £300,000) extinguished when goods on site.

The terms and conditions relating to the above bonds will require the approval of the Council's legal department prior to any contractual agreement being entered into.

3.8 Constitution

3.8.1 The financial regulations do not currently cater for pre-payments where goods and/or services have not been received.

3.9 Legal advice

3.9.1 In view of the above legal advice has therefore been taken as to how to gain authorisation for pre-payments. The Head of Legal has advised that the Director of Community Services in conjunction with the Executive Councillor could make a

decision to allow advance payment. This is not recommended however, because of the size and complexity of the project. Although likelihood of default is considered low, advance payment will undoubtedly result in some risk for the Council, and if default did occur the impact would be high. It is proposed therefore to take the decision to full Council.

3.9.2 Advice has also been sought on the following issues with the responses set out below:-

- i. Is full Council able to provide the Executive Councillor and the Director of Community Services a waiver of the Council's constitutional provision forbidding advance payments, as set out in 2.1 and 3.41 of the Report?
Answer: Yes full Council has the power to do this.
- ii. Is it permissible to use FT by way of call off under the Essex hub framework agreement? Answer: Yes.

4. Background papers

These background papers were used in the preparation of this report:

None.

5. Appendices

None

6. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

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