

Notice of Key Executive Decision

Subject Heading:	Waiver to direct award a contract for the replacement of the cremators at South Essex Crematorium
Cabinet Member:	Councillor Viddy Persaud – Cabinet Member for Public Protection and Safety
SLT Lead:	Barry Francis - Director of Neighbourhoods
Report Author and contact details:	Lee Macey – Crematorium and Cemeteries Operations Manager Telephone: 01708 434425 Email: Lee.Macey@havering.gov.uk Ian Saxby – Head of Technical Services Telephone: 01708 433529 Email: Ian.Saxby@onesource.co.uk
Policy context:	South Essex Crematorium carries out just over 3,000 cremations each year. If the Council wishes to continue to offer a cremation service within Havering and neighbouring boroughs, provision must be made for the replacement of the current cremators, which are reaching the end of their lifespan.
Financial summary:	This report seeks authorisation to award a contract up to the value of £1.4million contained within the overall budget of £1.5million. £1,250,000 of this as previously agreed by Cabinet as part of the Council's Medium Term Financial Strategy, with the shortfall of £250,000 being funded from the Bereavement Services Reserves
Reason decision is Key	Expenditure or saving (including anticipated income) of £500,000 or more.
Date notice given of intended decision:	January 2021
Relevant OSC:	Overview and Scrutiny Board
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This paper aims to seeks authorisation to:

- 1) Waive Contract Procedure Rule 9.1 which states that “except as otherwise provided, contracts must be awarded following the relevant competitive processes set out in CPR”. The applicable exception to a formal tender exercise is outlined in CPR 14.6.6 where it is in the best interests of the Council or the Borough for a provision in these Rules to be waived to enable a contract procurement to be rapidly progressed while still complying with European procurement rules.
- 2) Direct award a contract to Facultatieve Technologies Limited, at a maximum value of 1.4 million with an estimated completion date of August 2021.

AUTHORITY UNDER WHICH DECISION IS MADE

Constitution Part 3, Section 3.6.6 (a) – Cemeteries And Crematorium – to exercise the powers of the Council to operate and maintain the Council's cemeteries and Crematorium.

Paragraph 3.3 of the London Borough of Havering Constitution (Powers of Members of the Senior Leadership Team) '(Contract powers) authorising members of the SLT to award all contracts with a total contract value of between £500,000 and £5,000,000 other than contracts covered by Contract procedure Rule 16.3.

STATEMENT OF THE REASONS FOR THE DECISION

The South Essex Crematorium (SEC) provides a bereavement service and carries out over 3,000 authorised cremations per year, serving the local residents of Havering and the surrounding boroughs as a bereavement service carrying out authorised cremations.

SEC currently has four Evans Universal 300/2 cremators of which three are abated. Abatement means that they have filtration fitted which capture mercury and other pollutants before they are released into the atmosphere. These three abated units were Installed between December 1996 and July 2000. The lifespan of these cremators is approximately 25 years but is dependent on the amount of work the units have carried out, these units have been running for 20+ years in the 8th busiest crematorium in the UK currently carrying out 3000+ cremations annually so are now beginning to deteriorate.

The cremators were installed and are maintained by Facultatieve Technologies. They were installed between December 1996 and July 2000 and have proved to be very reliable, although they are now due for replacement. It is estimated that the cost of the replacement of the cremators is approximately £1.4million including the associated civils works.

Due to changes in emissions legislation, a Mercury abatement and filtration system was installed in 2013 at a cost of approximately £950,000. This was installed and is also maintained by Facultatieve Technologies. The abatement system is a single unit and is integrated with all three of the abated cremators. As this system is relatively new, it is planned to retain this element of the installation, as it's replacement would incur significant additional expenditure.

The three cremators were maintained and operated through the first two waves of the current COVID19 pandemic with reactive repairs and minimal downtime but replacement cremators are now required to ensure the robustness of SEC, both now and in any future pandemic

Key Executive Decision

scenarios. Therefore, a decision is required to place an order with Facultatieve Technologies (FT) to procure three replacement cremator units.

As outlined elsewhere, by placing a direct order with Facultatieve Technologies Limited, the existing abatement and filtration installation can be maintained, which will provide a saving of circa £900k. If an alternative manufacture were chosen, this would represent a significant increase in cost and an increased risk in continuity of service.

The new cremators supplied by Facultatieve Technologies Limited are designed to connect to and are fully compatible with the existing abatement and filtration system. Therefore, it is possible to replace the cremators sequentially. This will ensure a continuity of service during the transition period.

If an alternative option were considered, it would be necessary to replace the existing abatement and filtration installation. This would mean that the crematorium would need to be closed for a period of time whilst the required works were undertaken.

South Essex Crematorium is currently one of the busiest in the country and undertakes in excess of 3,000 cremations a year. The temporary closure of the crematorium would create a significant regional shortfall in cremation capacity and although temporary cremators could be brought in during this period, the cost of these is likely to be prohibitively expensive.

Therefore, there are significant financial savings combined with reduced risks associated in placing a direct order with Facultatieve Technologies Limited.

- a) The total cost of this project is estimated to be in the order of £1.25million and a breakdown is included within the financial section.
- b) Approval has been received at Checkpoint 1 to undertake the procurement of this project on a direct award basis.
- c) It is proposed to procure these works using a JCT 2016 Design and Build Contract, with the Council's Supplemental Amendments.
- d) It is proposed that an independent Quantity Surveying practice will be employed as part of the project team. The quantity surveyor will ensure that adequate benchmarking is undertaken in relation and civils works to ensure that value for money is being achieved.
- e) Provisional Programme key dates are as follows:

Production of detailed specification and pricing documents	February 2021
Release of specification and pricing documents	March 2021
Initial appointment of contractor	April 2021
Contractor Mobilisation	May 2021
Contract Completion	August 2021
- f) The project team will comprise staff from Technical Services, Bereavement Services and Procurement along with a number of externally appointed consultants including an independent quantity surveyor.
- g) TUPE does not apply.
- h) Project Risks
 - a. Failure of the existing cremator units (Chosen procurement method represents quickest route to market)
 - b. Ability to procure contract within timescale (Detailed programme in place)
 - c. Agreed contract sum may exceed financial allocation (Budget costings obtained)
 - d. Programme may be unachievable (Detailed programme to be monitored)

Key Executive Decision

- e. There is a risk that issues associated with COVID19 may impact on the current timescales
- f. There is a risk that a sudden spike in deaths may take place as a result of COVID19, which may mean that some of the assumptions relating to death rates are no longer the same.

OTHER OPTIONS CONSIDERED AND REJECTED

In arriving at this proposed procurement route, the following options were considered

1. **Do Nothing** – Rejected, as this will not allow the current cremators to be replaced and will not ensure the required ongoing cremation capacity.
2. **Alternative Technologies** - To replace the current gas fired cremators with Promession (freeze drying) and Resomation, aqua cremation or bio-cremation (chemical process). These technologies are in their infancy, so have been disregarded.
3. **Electric cremators** – There are a number of issues with this, including the capital cost of the cremators along with the fact that the cremation time is much longer (up to 4 hours as opposed to 80 a current average of minutes), which means that although this may be suitable for smaller scale crematoriums, in the case of the South Essex crematorium this would not be viable.
4. **Alternative providers of Gas Cremators** -
We have looked at a number of suppliers of Gas Cremators. Given that this is a specialist area, as you would expect the number of providers is quite limited.
 - a) **ATI Environmental Cremators** - Recently gone into administration. This is mainly due to the impact of recent changes in emissions legislation, which has narrowed the market.
 - b) **J G Shelton and Co LTD (UK)** - Recently gone into administration. This is mainly due to the impact of recent changes in emissions legislation, which has narrowed the market.
 - c) **Matthews Environmental Solutions (UK)** - Primarily a US based company. Unfortunately this company only provides single end cremators, which would not be suitable for this type of installation due to the costly civil works involved,
5. **Suitable frameworks for the supply of cremators** - To our knowledge, there is only one framework agreement available, which is the YPO Crematoria Solutions framework agreement. Unfortunately, this expired in June 2019. YPO are currently in the process of tendering a replacement framework agreement, which is likely to be in place by March/April 2021. Although this probably does not fit in with our current timescales.

The previous YPO framework had four companies listed. These were:

1. Facultatieve Technologies Limited
2. ATI Environmental UK Limited
3. IFZW
4. Matthews Environmental Solutions

Of the four companies listed, two have been ruled out. These are ATI Environmental UK Limited, who went into liquidation in March 2020 and Matthews Environmental Solutions, who are expensive and only provide single end cremators, which would not be suitable for this type of installation.

Therefore, this leaves only two possible providers. These are:

1. Facultatieve Technologies Limited
2. IFZW

Key Executive Decision

Facultatieve Technologies Limited

Have been a cremator manufacturer since 1952 and have installed and serviced all the cremators at South Essex Crematorium (SEC) since it opened in 1957. They have a proven history of reliability and robustness.

South Essex Crematorium has an exception agreement in place for servicing, maintenance of the cremators and abatement system. This is reviewed yearly, the contract value is £70,000.

There are currently 307 Crematoriums (2019 figures) in the United Kingdom, Facultatieve Technologies Limited currently have cremator installations at 185 of these sites and maintain/service another 95 sites. Facultatieve Technologies Limited have a nationwide installation and servicing around 91% of all crematoria throughout the UK. They are available in both single and double end configurations.

IFZW

Are a German manufacturer founded 1992, the operation primarily based in Germany, although they do have a UK office base in West Sussex, with a team of four resident UK engineers servicing the whole of the country. To date, there are not many UK installations. The cremators are heavily automated systems and are well-constructed and are considered to be the Rolls Royce cremators. They are available in both single and double end configurations.

Conclusion

The highly specialist and technical nature of the cremation and filtration equipment means there are very few suppliers able to carry out the required works and although there are two companies that could install the type of cremators required, there is the added complication that the new cremators will need to be fitted to the existing abatement and filtration system, supplied by Facultatieve Technologies Limited.

If another company other than Facultatieve Technologies Limited, were used to replace the existing cremators, this would mean that due to compatibility, servicing and warranty issues, the abatement and filtration installation would also need to be replaced. This would represent a significant increase in cost and an increased risk of continuity of service.

The new cremators supplied by Facultatieve Technologies Limited are designed to connect to and are fully compatible with the existing abatement and filtration system. Therefore, it is possible to replace the cremators sequentially. This will ensure a continuity of service during the transition period.

If an alternative option were considered, it would be necessary to replace the existing abatement and filtration installation. This would mean that the crematorium would need to be closed for a period of time whilst the required works were undertaken, and with the current COVID19 situation, this would not be in the best interest of either the Council or its residents.

Under the latest Procurement Guidance notes, a contracting authority may make a direct award (without a tender process) under Regulation 32(2)(b) PCRs where the works, goods or services needed to respond to COVID-19 can only be supplied by a particular supplier by reason of either (i) competition being absent for technical reasons, or (ii) the protection of exclusive rights, including intellectual property rights.

South Essex Crematorium is currently one of the busiest in the country and undertakes in excess of 3,000 cremations a year. The temporary closure of the crematorium would create a significant regional shortfall in cremation capacity and although temporary cremators could be brought in during this period, the cost of these is likely to be prohibitively expensive.

It should also be noted that due to both the current COVID19 pandemic and any subsequent pandemics or variants of this, that there is a great deal of uncertainty in relation to future required cremation capacity, especially in relation to any peaks of demand and when these are likely to occur. Therefore any reduction in cremation capacity would prove to be problematic, particular at present.

Reliability including servicing and repairs is a key consideration. Facultatieve Technologies Limited are a UK based company and are the market leader within the UK. They have a

Key Executive Decision

proven track record and reliability, servicing and aftersales provision. Facultatieve Technologies Limited are currently responsible for nationwide installation and servicing capacity for around 91% of all crematoria throughout the UK.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Lee Macey

Designation: Crematorium and Cemeteries Operations Manager

Signature:

Date:

Key Executive Decision

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The report seeks to approve the waiver to award direct award a contract to Facultatieve Technologies Limited.

Under The Cremation England and Wales Regulations 2008 the Council have a responsibility to ensure the maintenance of its crematorium. Part 2.4 of the act states that the cremation authority must ensure that a crematorium is maintained in good working order. Failure to comply with this legislation could result in South Essex Crematorium (LBH) failing to meet a legal statutory requirement.

The original value of the contract is 1.4 million. The Public Contract Regulations 2015 do not apply as it below the threshold for works which is £4,733,252. However, the procurement must comply the Council's Contract Procedure Rules (CPR).

Under CPR 9.1 it states that "contracts must be awarded following the relevant competitive processes set out in CPR".

Under CPR 14.2 authority to waive any provision contained in CPR will only be permissible if it does not infringe EU or National legislation and is subject to the Council's Scheme of Delegation.

In the CPR waivers may be approved if the "contract falls within one of the exceptions listed in 14.3; the Completion Financial Thresholds exceptions, is fully and property completed and signed by the relevant member of SLT; and the person awarding the contract demonstrate the contract represents the best value that can be obtained in the circumstances".

The direct award falls within exception rule 14.6.6 "Best Interests of the Council - where it is in the best interests of the Council or the Borough for a provision in these Rules to be waived to enable contract procurement to be rapidly progressed while still complying with European procurement rules". This has been set out in the body of the report.

The decision maker needs to be satisfied with the content of the report and whether the requirements of the waiver have been met before they proceed with the decision.

FINANCIAL IMPLICATIONS AND RISKS

The estimated costs and funding for this project is as set out below:

	£
Cost of Cremator Replacement	1,198,840
Civils Works	151,160
Client contingency	50,000
Professional fees and Surveys	£100,000
Total	£1,500,000

An agreed capital sum of £1,250,000 has already been set aside to fund this project, which was agreed on the 1st April 2020. Capital code: C35010 - Cremator replacement. The current shortfall of £250,000 will be covered out of the Bereavement Services Reserves.

Although there are no cashable savings noted, there is a considerable amount of income generation, as South Essex Crematorium carries out over 3,000 cremations each year. In 2018/19 a total of £2,460,626 was directly attributed to the Crematorium element, so over a period of 20 years, income generation is likely to be in excess of £50million.

Key Executive Decision

If LBH/SEC decided not replace the cremators then the income generated from the cremation aspect of the service alone would be dramatically reduced by £2.5 million per annum, this figure does not include any cost for post cremation income from memorials and witness committals leading on from the initial cremation service etc.

**HUMAN RESOURCES IMPLICATIONS AND RISKS
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

There are no specific Human Resources implications associated with this decision. Any additional support will be procured via external consultants on a one off project specific basis through the councils usual procurement procedures.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

There are no specific Equalities and Social Inclusion implications associated with this decision.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

There are no Health and Wellbeing implications associated with this decision.

BACKGROUND PAPERS

None

Key Executive Decision

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name: Councillor Viddy Persaud – Cabinet Member for Public Protection and Safety

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____