

Report of Chief Parks and Countryside Officer

Report to Director of Environment and Housing

5th July 2013

Subject: Mercury Abatement Trading

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): city wide	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The City Council has a legal obligation to abate 50% of mercury emissions across the three crematoria before the 31st December 2012.
2. Cremations account for 83% of funerals in Leeds and whilst Rawdon Crematorium is now 100% fully mercury abated, the Council has identified a short of 791 cremations that still need to be abated until approval is obtained to replace the cremators at Cottingley Crematorium.
Given the number of cremations that need to be abated and taking into consideration the time frame and specialised nature of this work it is recommended to enter into a trading agreement with a third party provider so that the Council may fulfil its legal obligations associated with mercury abatement.

Recommendations

To note the contents of the report and for the Director of Environment and Housing to give approval under Contracts Procedure Rules to waiver CPR12 Between £10K and £100K - Intermediate Value Procurement (Quotations) in order to enter into a trading agreement with Calderdale Borough Council until such time as the City Council has completed its own mercury abatement replacement programme some time late December 2014 or January 2015.

1.0 Purpose of this report

- 1.1 The purpose of the report is to:-

- i) To seek authorisation to enter into a trading agreement with a third party provider to assist the City Council to meet its legal obligation in relation to mercury emissions from cremations carried out across the city.
- ii) To advise of an annual expenditure circa £30k to be met from the environmental levy charge from cremations until the Council has completed its mercury abatement programme in December 2014.

2.0 Background information

- 2.1 In 2000, legislation was introduced to amend Regulation 37 of the Pollution Prevention (England and Wales) Regulations 2000, SI 1973. Specifically, PG5/2(04) requires that at least 50% of mercury emissions from crematoria should be abated before the 31st December 2012.
- 2.2 In August 2010, a report went to Executive Board which set out the Council's preferred approach how it was going to meet the legislative requirements to abate mercury emissions. Executive Board gave approval that any decision on installing equipment for mercury abatement is closely linked to decisions on the replacement of the existing cremators, which are nearing the end of their service lives.
- 2.3 Approval was given to replace all three cremators at Rawdon Crematorium including the installation of mercury infiltration and heat exchange equipment.
- 2.4 Cremations account for 83% of funerals in Leeds and whilst Rawdon Crematorium is now 100% fully mercury abated and could possibly meet the target with modification to working practices, these modifications would require bereaved relatives and funeral corteges having to travel through the city centre.
- 2.5 It is also acknowledged that not all families may wish to go to Rawdon and until approval is given to replace the cremators at Cottingley, the Council has identified a shortfall of 791 cremations that still need to be abated.¹
- 2.6 The Federation of Burial and Cremation Authorities has prepared a burden sharing scheme (the Crematoria Abatement of Mercury Emissions Organisation, or CAMEO) under which a mercury levy on cremations would be transferred from operators with a shortfall of abatement capacity and shared among operators with surplus. In addition, DEFRA has issued guidance that crematorium operators can trade spare capacity and shortage of capacity directly with one other authority.
- 2.7 The Council charges an environmental levy surcharge in the pricing schedule to cover the cost and pay for the mercury abatement associated works.
- 2.8 In order for the Council to meet its target, it must now either trade with CAMEO or another such trading partner until such time as approval is given for mercury abatement work to begin at Cottingley.

3.0 Main issues

3.1. Reason for Contracts Procedure Rules Waiver / Invocation

3.1.1 CAMEO have announced their trading figure of £48.27 per cremation. By trading independently with a Local Authority namely Calderdale Borough Council who are offering abated cremations for sale at £35 each, Leeds would make a predicted saving of £10,496 as detailed below:

- 5074 cremations per year $1746 \times 2 = 3492$ abated by Rawdon, leaves 1582 of which 50% would require abating, total cremations required to abate based on the above annual total of cremations would be 791 cremations.
- 791 @ £48.27 each would cost the Authority £38,181 with CAMEO
- 791 @ £35 each would cost the Authority £27,685 with Halifax
- Total saving £10,496

3.1.3 This saving would then contribute towards the next phase of mercury abatement and improvement works.

3.2 Consequences if the proposed action is not approved

3.2.1 Failure to have arrangements in place with Claderdale Borough Council would mean that the Council would have to trade with CAMEO which would incur paying higher rates or trade with a number of different Authorities, which would incur different rates and increase administration costs, if the Council had several agreements with a number of different Authorities.

3.2.2 Failure to have any arrangements in place puts the Council at reputational risk of not being able to meet the legislative requirements and being fined.

3.3 Advertising

3.3.1 Whilst other Authorities may also be willing to trade with the Council they have stated that they would find it difficult to meet the Council's shortfall due to the large number of cremations carried out across the City. Officer's are also mindful of the timescales involved and Calderdale Borough Council are willing to trade with the City Council and are able to meet the Council's shortfall. A copy of a draft trading agreement is also attached to this report and can be viewed as Appendix A.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The Environmental Health Officer (Regulator) has been consulted and is in agreement that either of the above options would be within guidance of PG5/2(12) and our operators permit issued by the EHO.

4.1.2 Officer's have also contacted adjacent authorities and Calderdale Borough Council were the only authority who were willing to enter into a trading agreement and who were able to meet the Council's identified shortfall.

4.1.2. Whilst other Authorities could enter in a trading agreement with the Council, they have confirmed that they would not be able to meet all of the 791 cremations that the Council needs to abate. Therefore, rather than having to set up a number of trading agreements, it is better value to enter into one trading agreement rather than several.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 As this report relates to a trading agreement associated with specialised machinery, there are no equality or diversity issues to be addressed as part of this proposal to enter into a trading agreement to abate mercury emissions.

4.3 Council Policies and City Priorities

4.3.1 The mercury abatement work contributes towards the following strategic outcomes:

- **Environment** – reduced ecological footprint through responding to environmental and climate change and influencing others;
- **Environment** – cleaner, greener and more attractive city through effective environmental management and changed behaviors.

4.4 Resources and Value for Money

4.4.1 Entering into one trading agreement as opposed to several is a more efficient way of using resources. Calderdale Borough Council have confirmed that they can meet the Council's short fall and as their trading levy is lower than the nationally recognised scheme CAMEO, they have demonstrated a potential saving for the Council of £10k.

4.4.2 CAMEO has provided a bench mark within this specialised area of work. Taking into consideration the deadline associated with mercury abatement, it would not represent best value going out for a more competitive quote via a tender process. Therefore, the information outlined by Calderdale Borough Council remains competitive and represents best value and would enable the Council to meet its legal obligations.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The City Council has a legal obligation to abate mercury emissions by 50%.

4.5.2 This report is not subject to Call In. There are no grounds for treating the contents of this report as confidential with the Council's Access to Information Rules. However, the information contained within the trading agreement could be regarded as containing commercially sensitive data by a third party provider. As such, the details contained within this report together with the trading agreement would not be released to the general public.

- 4.5.2 When deciding whether to make the delegated decision to approve a waiver of Contract Procedure Rules the Chief Officer shall take into account the legal obligations for appropriate advertising. In approving this waiver without subjecting the contract to competition, there is a risk of challenge to the Council from other potential authorities that have not been given the chance to tender for this opportunity. It is suggested, due to the matters set out at section 4.1 and 4.4 above, that the risk of challenge is low in this instance.
- 4.5.3 Although there is no overriding legal obstacle preventing the waiver of CPR 12, the above comments should be noted. In making their final decision, the Chief Officer should be satisfied that the course of action chosen represents best value for money.
- 4.5.4 Advice was sought from the Legal team as to the content of the third party agreement from Calderdale. The Legal Team has suggested that some clauses are amended and negotiations are taking place with Calderdale.

4.6 Risk Management

- 4.6.1 Failure to meet the legislative requirement associated with mercury abatement across the Council's crematoria puts the Council at reputational risk and being fined for being in breach of the legislation.

5 Conclusions

- 5.1 This report seeks approval to waive Contract Procedure Rule 12 in respect of the entering into a trading agreement with a third party provider so that the Council may fulfil its legal obligation with regards to mercury abatement.

6 Recommendations

- 6.1 To note the contents of the report and for the Director of Environment and Housing to give approval under Contracts Procedure Rules to waiver CPR12 Between £10K and £100K - Intermediate Value Procurement (Quotations) in order to enter into a trading agreement with Calderdale Borough Council until such time as the City Council has completed its own mercury abatement replacement programme.

7 Background documents

none