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Award

Oxford North Highway Works

Oxfordshire County Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2021/S 000-004478

Procurement identifier (OCID): ocds-h6vhtk-0298d2

Published 5 March 2021, 3:08pm

Section I: Contracting authority/entity

I.1) Name and addresses

Oxfordshire County Council

County Hall

Oxford

OX1 1ND

Contact

Ms Amy Keylock

Email

Amy.Keylock@Oxfordshire.gov.uk

Telephone

+44 7392318916

Country

United Kingdom

NUTS code

UKJ14 - Oxfordshire

Internet address(es)

Main address

<http://www.oxfordshire.gov.uk>

Buyer's address

<http://www.oxfordshire.gov.uk>

I.4) Type of the contracting authority

Regional or local authority

I.5) Main activity

General public services

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Oxford North Highway Works

Reference number

DN529968

II.1.2) Main CPV code

- 45233120 - Road construction works
 - AA01 - Metal

II.1.3) Type of contract

Works

II.1.4) Short description

The proposed agreements will be entered into under Section 278 Highways Act 1980 together with a separate planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990 relating to proposed development at Oxford North (“the Development”) The agreements will contain commitments made by the developer (the “Developer”, named as the contractor/concessionaire in section V.2.3) which are linked to the progress of the Development for the design and execution by the Developer of a series of improvements to the highway infrastructure to facilitate and mitigate the impact of the Development.

II.1.6) Information about lots

This contract is divided into lots: No

II.1.7) Total value of the procurement (excluding VAT)

Value excluding VAT: £10,800,000

II.2) Description

II.2.3) Place of performance

NUTS codes

- UKJ14 - Oxfordshire

II.2.4) Description of the procurement

The proposed agreements will be entered into under Section 278 Highways Act 1980 together with a separate planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990 relating to proposed development at Oxford North (“the Development”) The agreements will contain commitments linked to the progress of the Development for the design and execution of a series of improvements to the highway infrastructure to facilitate and mitigate the impact of the Development.

II.2.11) Information about options

Options: No

II.2.13) Information about European Union Funds

The procurement is related to a project and/or programme financed by European Union funds: No

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Award of a contract without prior publication of a call for competition in the cases listed below

- The procurement falls outside the scope of application of the regulations

Explanation:

There is a proposed agreement ("the section 278 agreement") which will cover a single set of works required through the planning process for the Development. It is considered that they will not constitute public works for the following reasons:

1. The Section 278 agreement is required to be entered into together with a separate planning obligation pursuant to Section 106 Town and Country Planning Act 1990 and for the same purpose that is to render the Development acceptable in planning terms. The core rationale for this requirement (and the other Section 106 planning obligations) is that they are necessary to enable the grant of planning permission and they are considered to be in compliance with Regulations 122 Community Infrastructure Levy Regulations 2010.

Thus, the essential objective of the Section 278 Agreements is for a planning purpose in accordance with the statutory planning regime. It was endorsed in *Faraday Development Ltd v West Berkshire Council and St Modwen Developments Ltd* (“the Faraday Case”) following the principle established in *Helmut Muller GmbH v Bundesanstalt für Immobilienaufgaben- Helmut Muller*) that an agreement was not a public works contract where the contracting authority’s primary objective was of a planning nature under the statutory regime.

2. An essential ingredient of a public works contract is that it is for pecuniary interest – see Regulation 2 of the Public Contract Regulations 2015. The Advocate General’s opinion in *European Commission v Kingdom of Spain* seeks to provide a definitive statement of the meaning of “pecuniary interest” concluding that it implies that the contracting authority needs to use its own funds either directly or indirectly. No direct financing will be provided by the contracting authority in respect of the Section 278 agreement. Indirect financing occurs when the contracting authority suffers economic detriment as a result of the method of funding the works. No economic detriment will be sustained by the contracting authority in consequence of entering into the section 278 agreement. The highway works will be delivered in kind rather than through the provision of funding to the contracting authority.

3. Under the Section 278 Agreement there will be no liability for the highway works to be delivered unless the Development is implemented and it is entirely at the discretion of the Developer as to whether the Development is implemented. There is no obligation on the Developer in the Section 278 agreement or the prior S106 agreement to implement the Development. Thus the Section 278 agreement correspond to the Section 106 agreement considered in the case of *R (Midlands Co-operative Society Ltd) v Birmingham City Council* (1) *Tesco Stores Ltd* (2) as approved in the Faraday case (paragraph 52) on the basis that the agreement considered in the Midlands Co-operative Society case contained no obligation contingent or otherwise for the carrying out of development.

Notes:

a. The estimated aggregate value of the works further to the Section 278 agreement which the Developer is to undertake is £10.8 million.

b. In the Section 278 Agreement the Developer will undertake a transparent and impartial procurement process for the highway works.

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: Yes

Section V. Award of contract/concession

A contract/lot is awarded: Yes

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract

5 March 2021

V.2.2) Information about tenders

The contract has been awarded to a group of economic operators: No

V.2.3) Name and address of the contractor/concessionaire

Thomas White (Oxford) Limited

8 King Edward Street

Oxford

OX1 4HL

Country

United Kingdom

NUTS code

- UKJ14 - Oxfordshire

National registration number

09602528

The contractor/concessionaire is an SME

Yes

V.2.4) Information on value of contract/lot/concession (excluding VAT)

Total value of the contract/lot/concession: £10,800,000

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

Oxfordshire County Council

Oxford

OX1 1ND

Country

United Kingdom