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Contract

Retail and elective hub development

South Warwickshire NHS Foundation Trust

F03: Contract award notice

Notice identifier: 2024/S 000-004619

Procurement identifier (OCID): ocds-h6vhtk-043947

Published 12 February 2024, 1:17pm

Section I: Contracting authority

I.1) Name and addresses

South Warwickshire NHS Foundation Trust

Lakin Road

Warwick

CV34 5BW

Contact

Gaynor McGarry

Email

gaynor.mcgarry@swft.nhs.uk

Telephone

+44 07810856110

Country

United Kingdom

Region code

UKG13 - Warwickshire

Internet address(es)

Main address

<https://www.swft.nhs.uk/>

Buyer's address

<https://www.swft.nhs.uk/>

I.4) Type of the contracting authority

Body governed by public law

I.5) Main activity

Health

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Retail and elective hub development

II.1.2) Main CPV code

- 45000000 - Construction work

II.1.3) Type of contract

Works

II.1.4) Short description

South Warwickshire University NHS Foundation Trust ("SWFT") has entered into contracts with (1) Noviniti Dev Co 2 Limited ("Noviniti") (2) Compass Contract Services (UK) Limited ("Compass") and (3) Compass Group UK & Ireland Limited ("Guarantor") as guarantor of Compass' obligations in relation to a single storey retail and administrative use development ("GFD") at Warwick Hospital ("the Hospital"). The documents executed by SWFT comprise a Principal Agreement for Underleases ("S2AFL") and a Licence for Alterations ("LTA") to be granted to Noviniti to permit Noviniti to undertake the GFD . The completed building will be leased to Compass for retail purposes with the remainder of the ground floor (together with the building structure) being underlet to SWFT. The contractual arrangements are structured as a land transaction exempt from the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016.

II.1.6) Information about lots

This contract is divided into lots: No

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

Lowest offer: £6,000,000 / Highest offer: £17,000,000 taken into consideration

II.2) Description

II.2.2) Additional CPV code(s)

- 45213100 - Construction work for commercial buildings
- 45000000 - Construction work

II.2.3) Place of performance

NUTS codes

- UKG13 - Warwickshire

Main site or place of performance

Warwick

II.2.4) Description of the procurement

SWFT has entered into the S2AFL with Noviniti, Compass and the Guarantor and the LTA with Noviniti. Under the S2AFL and the LTA, Noviniti has the right to undertake the GFD at the Hospital. Following completion of the GFD, Noviniti will grant two leases ("the Operator Leases") to Compass (guaranteed by the Guarantor). Compass will grant three sub-underleases of areas of the GFD to SWFT. Those sub-leases will comprise two areas for the occupation and use of SWFT and one lease of the common parts and structure of the GFD, leaving Compass in occupation of the retail area of the GFD. SWFT will be obliged to accept leases of the GFD directly from Noviniti if Compass defaults. SWFT has structured the contractual arrangements as a land transaction exempt from the Public Contracts Regulations 2015 ("PCR") and the Concession Contracts Regulations 2016 ("CCR").

II.2.5) Award criteria

Quality criterion - Name: Quality / Weighting: 0%

Cost criterion - Name: PRICE / Weighting: 100%

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:

Following on from the Agreement for Lease dated 24 March 2023 entered into between SWFT and Noviniti (S1AFL) relating to the grant to Noviniti of a lease of the site of the GFD for a term of 45 years (the Noviniti Lease), SWFT proposes to enter into the S2AFL and the LTA. Completion of the Noviniti Lease took place on 6 November 2023. The S1AFL was the subject of a VEAT Notice published on 19 January 2023 and the S2AFL was the subject of a further VEAT Notice published on 8 November 2023 with reference 2023/S 000-033015. Under the S2AFL Noviniti is not obliged to undertake the GFD but if it does not, SWFT may terminate the Noviniti Lease. The Noviniti Lease contains a break right in favour of SWFT if Noviniti does not commence the GFD by an agreed deadline.

If Noviniti completes the construction of the GFD, Noviniti may call for Compass and the Guarantor to accept the two Operator Leases which in aggregate comprise the whole of the GFD for a term of 40 years with a break right for Compass at 15 years and further specified points. In the event that Compass exercises its break right SWFT will accept Occupational Leases of those areas for the remainder of the term. The Trust will also enter into a Deed of Guarantee in favour of Noviniti's funder in respect of the obligations under the Operator Leases.

There is provision for SWFT to accept direct leases from Noviniti of the GFD in place of the two Operator Leases if Compass defaults and also for SWFT to accept Overriding Leases to become the direct tenant of Noviniti if Compass defaults during the term of the Operator Leases.

Following completion of the Operator Leases, Compass will grant SWFT 3 sub-leases of areas of the GFD being the whole of the GFD other than the retail areas to be occupied and operated by Compass (and to include the common parts and structure of the GFD).

At completion, Noviniti and SWFT will execute a deed of variation surrendering the airspace above the completed GFD. That will permit SWFT to undertake a 2 storey development of hospital wards and administration space to be sited directly above the GFD ("UFD"). SWFT is not required to undertake the UFD but the documents enable SWFT to do so.

At completion, SWFT and Compass may enter into a Deed of Covenant under which turnover rent is payable to the Trust and the Trust commits to support the rent payable by Compass in certain instances.

Noviniti is under no obligation to serve notice to elect to carry out the GFD. No public works contract arises due to the lack of an enforceable obligation.

Following completion of the Noviniti Lease Noviniti has the exclusive right to undertake the GFD until such time as the SWFT break right under the Noviniti Lease becomes capable of exercise.

SWFT considers that the arrangements fall within the land exemption under Regulation 10(1)(a) PCR and/or regulation 10(11)(a) CCR

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

The procurement is covered by the Government Procurement Agreement: No

Section V. Award of contract

A contract/lot is awarded: Yes

V.2) Award of contract

V.2.1) Date of conclusion of the contract

9 February 2024

V.2.2) Information about tenders

Number of tenders received: 1

Number of tenders received from SMEs: 1

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

V.2.3) Name and address of the contractor

Noviniti Dev Co 2

Unit 2 , Newby Stables, Newby Hall, Ripon

Ripon

HG4 5AE

Country

United Kingdom

NUTS code

- UK - United Kingdom

National registration number

11384262

The contractor is an SME

Yes

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

Initial estimated total value of the contract/lot: £17,000,000

Total value of the contract/lot: £17,000,000

Section VI. Complementary information

VI.3) Additional information

Following on from the Agreement for Lease dated 24 March 2023 entered into between SWFT and Noviniti (S1AFL) relating to the grant to Noviniti of a lease of the site of the GFD for a term of 45 years (the Noviniti Lease), SWFT proposes to enter into the S2AFL and the LTA. Completion of the Noviniti Lease took place on 6 November 2023. The S1AFL was the subject of a VEAT Notice published on 19 January 2023 and the S2AFL was the subject of a further VEAT Notice published on 8 November 2023 with reference 2023/S 000-033015. Under the S2AFL Noviniti is not obliged to undertake the GFD but if it does not, SWFT may terminate the Noviniti Lease. The Noviniti Lease contains a break right in favour of SWFT if Noviniti does not commence the GFD by an agreed deadline.

If Noviniti completes the construction of the GFD, Noviniti may call for Compass and the Guarantor to accept the two Operator Leases which in aggregate comprise the whole of the GFD for a term of 40 years with a break right for Compass at 15 years and further specified points. In the event that Compass exercises its break right SWFT will accept Occupational Leases of those areas for the remainder of the term. The Trust will also enter into a Deed of Guarantee in favour of Noviniti's funder in respect of the obligations under the Operator Leases.

There is provision for SWFT to accept direct leases from Noviniti of the GFD in place of the

two Operator Leases if Compass defaults and also for SWFT to accept Overriding Leases to become the direct tenant of Noviniti if Compass defaults during the term of the Operator Leases.

Following completion of the Operator Leases, Compass will grant SWFT 3 sub-leases of areas of the GFD being the whole of the GFD other than the retail areas to be occupied and operated by Compass (and to include the common parts and structure of the GFD).

At completion, Noviniti and SWFT will execute a deed of variation surrendering the airspace above the completed GFD. That will permit SWFT to undertake a 2 storey development of hospital wards and administration space to be sited directly above the GFD ("UFD"). SWFT is not required to undertake the UFD but the documents enable SWFT to do so.

At completion, SWFT and Compass may enter into a Deed of Covenant under which turnover rent is payable to the Trust and the Trust commits to support the rent payable by Compass in certain instances.

Noviniti is under no obligation to serve notice to elect to carry out the GFD. No public works contract arises due to the lack of an enforceable obligation.

Following completion of the Noviniti Lease Noviniti has the exclusive right to undertake the GFD until such time as the SWFT break right under the Noviniti Lease becomes capable of exercise.

SWFT considers that the arrangements fall within the land exemption under Regulation 10(1)(a) PCR and/or regulation 10(11)(a) CCR.

VI.4) Procedures for review

VI.4.1) Review body

The High Court

The Strand

London

WC2A 2LL

Country

United Kingdom

Internet address

<https://www.judiciary.uk/courts-and-tribunals/high-court/>