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Award

Legal Advisor for Birmingham Smithfield Regeneration Project

Birmingham City Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2021/S 000-004702

Procurement identifier (OCID): ocds-h6vhtk-0299cf

Published 9 March 2021, 1:00pm

Section I: Contracting authority/entity

I.1) Name and addresses

Birmingham City Council

10 Woodcock Street

Birmingham

B4 7WB

Email

cps@birmingham.gov.uk

Telephone

+44 1214648000

Country

United Kingdom

NUTS code

UKG - West Midlands (England)

Internet address(es)

Main address

www.finditinbirmingham.com

Buyer's address

www.in-tendhost.co.uk/birminghamcc

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

Legal Advisor for Birmingham Smithfield Regeneration Project

Reference number

P0350

II.1.2) Main CPV code

- 79111000 - Legal advisory services

II.1.3) Type of contract

Services

II.1.4) Short description

This is a VEAT notice of Birmingham City Council's ('Council') intention to enter into a Contract Variation of the legal advice with the incumbent supplier following a period of 10 days from the date of publication of this notice. The Contract Variation provides for additional legal advice required to conclude the contract for the Smithfield Regeneration Project.

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: £500,000

II.2) Description

II.2.2) Additional CPV code(s)

- 79111000 - Legal advisory services

II.2.3) Place of performance

NUTS codes

- UKG - West Midlands (England)

II.2.4) Description of the procurement

The Council requires legal advice that supported the procurement process for the Smithfield Regeneration Project and awarded a contract following a further competition exercise using the Crown Commercial Service Legal Services Framework Agreement in December 2016 for a 4 year period.

The services were as follows:

- Assistance in developing operational model options providing advice on the legal implications to the Council
- Identify appropriate forms of development/investment partner contract/agreement(s) providing advice on the legal implications to the Council
- Provide legal advice for general corporate matters including Company law, Joint Ventures, Taxation (including VAT) and Venture capital advice
- Assist in drafting development/investment partner contract/agreement(s)
- Assist in executing development/investment partner contract/agreement(s)
- Provide legal advice on Property and Estates matters including Acquisitions and disposals (including relevant tax advice), Compulsory purchases, Leases, licences and conveyancing, Landlord and tenant matters, Site re-developments/ property development
- Provide legal advice on General Commercial matters including Public Procurement, Contract advice or drafting, PPP/PFIs including project finance, Partnering/ alliance arrangements, Outsourcing/contracting out of services, Competition law, Regulatory law and Public infrastructure regulation

Further legal advice and enhanced due diligence is needed to continue to efficiently and effectively deal with the complexities of the procurement to protect the Council's interests, maximise value for money and reduce the level of risk exposure for the process to the entering of the contract with the Development Partner. The additional complexities identified throughout the process were unforeseen, in particular due to the size and profile of the development. These additional services include:

- Dealing with Land Registry enquiries, reviewing title deeds and preparing land registry applications.
- Negotiating and finalising the Joint Venture Agreement, Site Assembly Agreement, form of Phase Development Agreement, [Phase] [Leases], and related ancillary documents
Construction documents namely - JCT design & build contract, JCT design & build sub-contract, Construction Management Agreement, Trade Contract, Parent Company Guarantee, and a Performance Bond to formally appoint the Development/Investment Partner for Birmingham Smithfield.
- Preparing a tailored EZ Funding Agreement to appropriately extend the Council's EZ capital funding obligations onto the Development Partner.

Consequently, the project has proved to be more complex and is taking longer to finalise than originally envisaged. The recommended supplier has provided a satisfactory level of service to date and to ensure the continuity of the high quality legal advice it is vital for the successful delivery of this complex project. It would also eliminate the inherent unacceptable risk of inconsistent legal advice, duplication of costs, and significant delays to the project if the service were to be competitively procured resulting in a change to the supplier.

II.2.11) Information about options

Options: No

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Negotiated without a prior call for competition

- Additional deliveries by the original supplier

Explanation:

Regulation 72(1)(b) PCR: For the reasons set out in II.2.4 above, the provision of additional services has become necessary and a change of provider:

(i) cannot be made for economic and technical reasons due to the complexity of the project during the preferred bidder stage and the need to consistent legal advice that is vital for one of the Council's major developments to supporting the economic growth of the city; and

(ii) would cause significant inconvenience and substantial duplication of costs for the Council in terms of the likely delays and increased risks of involving a new provider.

The Council further considers the proposed extensions to be lawfully permitted in accordance with Regulation 72(1)(c) of PCR on the basis that:

(i) the need for the additional advice has fully crystallised following scope changes to the project which the Council could not have foreseen; and

(ii) the services to be provided by the incumbent will remain consistent and there will be no alteration to the overall nature of the Contract.

The Council will publish a Modification Notice pursuant to Regulation 72(3) of PCR.

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

Title

Legal Advisor for the Birmingham Smithfield Regeneration Project

A contract/lot is awarded: Yes

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract

23 November 2016

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

Bevan Brittan LLP

Kings Orchard, 1 Queen Street

Bristol

BS2 0HQ

Telephone

+44 03701941000

Country

United Kingdom

NUTS code

- UK - United Kingdom

Internet address

<https://www.bevanbrittan.com/>

The contractor/concessionaire is an SME

No

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

Total value of the contract/lot/concession: £201,011

Section VI. Complementary information

VI.3) Additional information

Award of a contract without prior publication of a call for competition in the Official Journal of the European Union in the cases listed below

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

Explanation:

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(i) cannot be made for economic and technical reasons due to the complexity of the project during the preferred bidder stage and the need to consistent legal advice that is vital for one of the Council's major developments to supporting the economic growth of the city; and

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(ii) the services to be provided by the incumbent will remain consistent and there will be no alteration to the overall nature of the Contract.

The Council will publish a Modification Notice pursuant to Regulation 72(3) of PCR.

VI.4) Procedures for review

VI.4.1) Review body

High Court of England and Wales

Royal Courts of Justice, Strand

London

WC2A 2LL

Telephone

+044 2079477882

Country

United Kingdom