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Awarded contract

Highway Maintenance, Design, Construction and Other Services - CPU 455.

Oxfordshire County Council

F15: Voluntary ex ante transparency notice

Notice reference: 2021/S 000-005447

Published: 17 March 2021, 4:40pm

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**

Highway Maintenance, Design, Construction and Other Services - CPU 455.

Reference number

DN530639

II.1.2) Main CPV code

- 45000000 - Construction work

II.1.3) Type of contract

Works

II.1.4) Short description

The Highways Contract is for the contractor to develop, with the Council, a high performing comprehensive highways service. The Highways Contract encompasses highway maintenance, design, construction, transport planning consultancy, with other services including but not limited to vehicle and grounds maintenance.

On 13 July 2010 the Council entered into the Highways Contract with Atkins Limited ("Atkins") to provide the above works following a tender process commenced by contract notice 2008/S 210-279078 dated 29 October 2008. The Highways Contract is for a contract period of 10 years commencing 1 April 2010, extendable by up to a further 10 years. So far, the contract has been extended by three years so that the contract period expires end of March 2023. The values set out at II.2.7 of this VEAT Notice represent the estimated remaining value of the Highways Contract across the possible remaining term.

Atkins contracted to sell its highways maintenance business to Skanska Construction UK Limited ("Skanska"). The sale proceeded by way of an asset sale and included the plant and equipment required to operate the highways maintenance business of Atkins, the transfer of leases or rights to use properties and facilities previously used by the highways maintenance business, and the transfer of approximately 1,200 employees, including around 80 in the central management and business support functions. It also included the transfer of customer contracts, including the Highways Contract with the Council.

The Highways Contract between the Council and Atkins permitted assignment by Atkins of the benefit of the Contract with the consent of the Council. Atkins requested consent to assign the benefit of the Contract to Skanska and the Council consented to such assignment. The Highways Contract also provided that the original Provider should remain legally responsible for performance of the Contract, even if the benefit of the Contract is assigned. The Council relied on this provision.

A VEAT notice was published in OJEU.

Skanska have contracted to sell its highways maintenance business to Milestone Infrastructure Limited. The sale will proceed by way of an asset sale, and will include plant and equipment required to operate the highways maintenance business of Skanska, the transfer of leases or rights to use properties and facilities previously used by the highways maintenance business, and the transfer of approximately 1,200 employees, including around 80 in the central management and business support functions. It also includes the transfer of customer contracts, including the Highways Contract with the Council.

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: £97,000,000 / Highest offer: £166,000,000 taken into consideration

II.2) Description

II.2.2) Additional CPV code(s)

- 45221100 - Construction work for bridges
- 50000000 - Repair and maintenance services
- 50100000 - Repair, maintenance and associated services of vehicles and related equipment
- 71000000 - Architectural, construction, engineering and inspection services
- 77000000 - Agricultural, forestry, horticultural, aquacultural and apicultural services

II.2.3) Place of performance

NUTS codes

- UKJ14 - Oxfordshire

II.2.4) Description of the procurement

The Highways Contract is for the contractor to develop, with the Council, a high performing comprehensive highways service. The Highways Contract encompasses highway maintenance, design, construction, transport planning consultancy, with other services including but not limited to vehicle and grounds maintenance.

On 13 July 2010 the Council entered into the Highways Contract with Atkins Limited ("Atkins") to provide the above works following a tender process commenced by contract notice 2008/S 210-279078 dated 29 October 2008. The Highways Contract is for a contract period of 10 years commencing 1 April 2010, extendable by up to a further 10 years. So far, the contract has been extended by three years so that the contract period expires end of March 2023. The values set out at II.2.7 of this VEAT Notice represent the estimated remaining value of the Highways Contract across the possible remaining term.

Atkins contracted to sell its highways maintenance business to Skanska Construction UK Limited ("Skanska"). The sale proceeded by way of an asset sale and included the plant and

equipment required to operate the highways maintenance business of Atkins, the transfer of leases or rights to use properties and facilities previously used by the highways maintenance business, and the transfer of approximately 1,200 employees, including around 80 in the central management and business support functions. It also included the transfer of customer contracts, including the Highways Contract with the Council.

The Highways Contract between the Council and Atkins permitted assignment by Atkins of the benefit of the Contract with the consent of the Council. Atkins requested consent to assign the benefit of the Contract to Skanska and the Council consented to such assignment. The Highways Contract also provided that the original Provider should remain legally responsible for performance of the Contract, even if the benefit of the Contract is assigned. The Council relied on this provision.

A VEAT notice was published in OJEU.

Skanska have contracted to sell its highways maintenance business to Milestone Infrastructure Limited. The sale will proceed by way of an asset sale, and will include plant and equipment required to operate the highways maintenance business of Skanska, the transfer of leases or rights to use properties and facilities previously used by the highways maintenance business, and the transfer of approximately 1,200 employees, including around 80 in the central management and business support functions. It also includes the transfer of customer contracts, including the Highways Contract with the Council.

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:

This Voluntary Transparency Notice gives notice that Oxfordshire County Council (the "Council") intends to enter into a contract in the form of a Deed of Novation (the "Deed of Novation") to novate an underlying public works contract (the "Contract") to Milestone Infrastructure Limited ("Milestone").

The Council considers the effect of entering into the Deed of Novation to be a permitted modification to the Contract under regulation 72 of the Public Contracts Regulations 2015 and, as such, does not require a separate procurement procedure.

In particular, the novation to Milestone falls within the safe harbour at regulation 72(1)(d) on the basis that a new contractor replaces the one to which the Council had initially awarded the Contract. More specifically:

1. Milestone is replacing the original contractor following a corporate restructuring in the form of a business sale to Milestone. This business sale has the consequence of the universal succession of Milestone into the position of the initial contractor (within the meaning of regulation 72(1)(d)(ii));
2. Milestone fulfils the criteria for qualitative selection initially established in the procurement of Contract; and
3. The novation of the Contract to Milestone does not entail any other substantial modifications to the contract, and is not aimed at circumventing the application of the Public Contracts Regulations 2015.

For the reasons set out in this notice, the modification to the Contract by way of the Deed of Novation is permitted under the Public Contract Regulations 2015, and a new procurement procedure is not required.

The Council has not yet entered into the Deed of Novation but intends to do so as soon as practicable following a ten day standstill period starting from the date after publication of this notice.

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

17 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

Milestone Infrastructure Limited

Abel Smith House, Gunnels Wood Road

Stevenage

SG1 2ST

Country

United Kingdom

NUTS code

- UKJ14 - Oxfordshire

National registration number

10260164

The contractor/concessionaire is an SME

No

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

Lowest offer: £97,000,000 / Highest offer: £166,000,000 taken into consideration

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

High Court of England and Wales

Royal Courts of Justice

London

WC1A 2LL

Country

United Kingdom