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Contract

Development at Elwick Place, Ashford, Kent

Ashford Borough Council

F03: Contract award notice

Notice identifier: 2022/S 000-006141

Procurement identifier (OCID): ocids-h6vhtk-031e96

Published 7 March 2022, 11:17am

Section I: Contracting authority

I.1) Name and addresses

Ashford Borough Council

Civic Centre, Tannery Lane

Ashford

TN23 1PL

Email

paul.mckenner@ashford.gov.uk

Telephone

+44 1233333311

Country

United Kingdom

NUTS code

UKJ4 - Kent

Internet address(es)

Main address

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

Buyer's address

https://www.mytenders.co.uk/search/Search_AuthProfile.aspx?ID=AA28849

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

Development at Elwick Place, Ashford, Kent

II.1.2) Main CPV code

- 45212000 - Construction work for buildings relating to leisure, sports, culture, lodging and restaurants

II.1.3) Type of contract

Works

II.1.4) Short description

A development agreement ("DA") was originally entered into in 2010 between the South East England Development Agency ("SEEDA") and Stanhope PLC and concerned the re-development, in phases, of a site in the centre of Ashford known as Elwick Place according to a masterplan to be agreed between the parties. In 2015 the Council acquired the site and the rights and obligations formerly vested in SEEDA under the DA. The Phases are now as follows: Phase 1 (cinema, hotel, restaurants, retail units and car park),

Phase 2 (200 residential flats) and Phase 3 (yet to be agreed). The parties have now agreed certain changes to the DA. This notice concerns those changes.

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: £80,250,000

II.2) Description

II.2.2) Additional CPV code(s)

- 45211340 - Multi-dwelling buildings construction work

II.2.3) Place of performance

NUTS codes

- UKJ4 - Kent

Main site or place of performance

Ashford, Kent

II.2.4) Description of the procurement

Phase 1 of the development has now been completed. The DA required Stanhope to begin the process of drawing down Phase 2 prior to two key dates: the “Long Stop Date” (16 March 2022) and the “Phase Termination Date” (4 May 2022) but it may only do so after satisfying a number of conditions. Delays caused by (a) the Covid-19 pandemic; and (b) the Stodmarsh issue (see below) each independently and also together cumulatively mean that Stanhope will not be able to meet the conditions before the deadlines.

The Stodmarsh issue arises from formal statutory advice issued by Natural England in 2020 on development proposals in the Stour Valley River Catchment Area (“SVRCA”) and the potential for these to increase harmful nutrient impacts at designated protected lakes at Stodmarsh in east Kent. The SVRCA covers large parts of Ashford Borough including Elwick Place. Planning applications for housing development within the SVRCA cannot now be determined until formal assessment of the effects on the Stodmarsh Lakes has been completed by the Council as planning authority. The Council is progressing a strategy to offer suitable mitigations for sites (such as Elwick Phase 2) not able to offer onsite mitigation, but timescales for this are uncertain so it is unclear when the planning authority will be able to grant a Phase 2 planning permission on terms that will enable the

drawdown conditions to be satisfied. Accordingly, the parties entered into an agreement on 4 March 2022 to extend each of the deadlines (the “Extension”) by up to 515 days or (if later) until 40 days after (i) any off-site Stodmarsh mitigation measures required of the developer in respect of Phase 2 have been complied with or if later (ii) the period for any Judicial Review challenge to the Phase 2 planning permission has expired with no challenge being made or any challenge has been resolved. Provided that if Stanhope has yet to complete a planning obligation that would result in the issue of a Phase 2 planning permission the maximum Extension is 9 months from the date on which the local Council’s resolution to grant a Phase 2 planning permission will not require any offsite Stodmarsh mitigation measures to be complied with by Stanhope. The aim is to restore Stanhope, in terms of the timing of Phase 2, to the situation it would have been in had Covid and Stodmarsh not intervened. The parties have also provided for new activity milestones in respect of Phase 2. If Stanhope fails to achieve any of these milestones the Council may terminate the DA. Additionally, Stanhope has agreed to relinquish certain rights it had over the Phase 3 land.

II.2.5) Award criteria

Quality criterion - Name: Price Evaluation / Weighting: 0

Quality criterion - Name: Quality Evaluation / Weighting: 0

Price - Weighting: 0

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

II.2.14) Additional information

The current value of the Development Agreement as provided in this notice strips out the effects of inflation, as required by Regulation 72(7) Public Contracts Regulations 2015

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:

Regulation 72(1)(c) Public Contracts Regulations 2015 applies. Stanhope planned to seek bids from residential development and funding partners in Spring 2020, in ample time to satisfy the drawdown conditions for Phase 2 within the terms of the DA. The March 2020 Covid national lockdown and the ongoing restrictions thereafter radically altered the situation causing huge uncertainties for valuation, funding and development generally. Funders were preoccupied with preserving their existing investments through the unprecedented crisis: there was no appetite for taking on new projects. Accordingly, Stanhope was advised not to engage the market as planned. Only in late Spring 2021 was Stanhope able to progress the appointment of partners and the process of satisfying the drawdown conditions, which nonetheless cannot be completed until the Stodmarsh situation has been resolved. Neither the Covid-19 pandemic, and the resulting series of national lockdowns and regional tiered restrictions on normal activities, nor the Stodmarsh issue could have been foreseen by a diligent authority when the DA was entered into in 2010 and none of these events were foreseen by the Council. The new activity milestones and Stanhope's relinquishing of certain rights over the Phase 3 land, do not entail substantial change: if they alter the economic balance at all they do so in favour of the Council. None of the amendments change the nature of the agreement.

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

A contract/lot is awarded: Yes

V.2) Award of contract

V.2.1) Date of conclusion of the contract

4 March 2022

V.2.2) Information about tenders

Number of tenders received: 1

Number of tenders received from SMEs: 0

Number of tenders received from tenderers from other EU Member States: 0

Number of tenders received from tenderers from non-EU Member States: 1

Number of tenders received by electronic means: 1

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

V.2.3) Name and address of the contractor

Stanhope PLC

London

Country

United Kingdom

NUTS code

- UKI - London

The contractor is an SME

No

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

Total value of the contract/lot: £80,250,000

Section VI. Complementary information

VI.3) Additional information

The current value of the Development Agreement as provided in this notice strips out the effects of inflation, as required by Regulation 72(7) Public Contracts Regulations 2015

(MT Ref:224963)

VI.4) Procedures for review

VI.4.1) Review body

High Court, Royal Courts of Justice

London

Country

United Kingdom