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Contract

Development at Elwick Place, Ashford, Kent

Ashford Borough Council

F20: Modification notice

Notice identifier: 2022/S 000-006142

Procurement identifier (OCID): ocds-h6vhtk-031e97

Published 7 March 2022, 11:17am

Section I: Contracting authority/entity

I.1) Name and addresses

Ashford Borough Council

Civic Centre, Tannery Lane

Ashford

TN23 1PL

Email

procurement@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

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.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 at the time of conclusion of the contract:

The development agreement was entered into in 2010 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. The Phases are now as follows: Phase I (cinema, hotel, restaurants, retail units and car park), Phase 2 (200 residential flats) and Phase 3 (yet to be agreed)

II.2.7) Duration of the contract, framework agreement, dynamic purchasing system or concession

Duration in months

183

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.2) Administrative information

IV.2.1) Contract award notice concerning this contract

Notice number: [2022/S 042-110271](#)

Section V. Award of contract/concession

Contract No

Elwick/2010/1

Title

Development at Elwick Place, Ashford, Kent

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract/concession award decision:

16 March 2010

V.2.2) Information about tenders

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

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

Stanhope PLC

2nd Floor, 100 New Oxford Street

London

WC1A 1HB

Country

United Kingdom

NUTS code

- UKI - London

The contractor/concessionaire is an SME

No

V.2.4) Information on value of the contract/lot/concession (at the time of conclusion of the contract;excluding VAT)

Total value of the procurement: £58,250,000

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.

The figure stated in response to QVII.1.5 is an estimated contract duration.

(MT Ref:224985)

VI.4) Procedures for review

VI.4.1) Review body

High Court, Royal Courts of Justice

London

Country

United Kingdom

Section VII: Modifications to the contract/concession

VII.1) Description of the procurement after the modifications

VII.1.1) Main CPV code

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

VII.1.2) Additional CPV code(s)

- 45211340 - Multi-dwelling buildings construction work

VII.1.3) Place of performance

NUTS code

- UKJ4 - Kent

Main site or place of performance

Ashford, Kent

VII.1.4) Description of the procurement:

The modifications principally impact Phase 2. The scope and value of Phase 2 is unchanged, but the Developer now has a longer period within which to undertake it. Additionally the Developer has agreed to relinquish certain rights it had in respect of the land comprised within Phase 3

VII.1.5) Duration of the contract, framework agreement, dynamic purchasing system or concession

Duration in months

222

VII.1.6) Information on value of the contract/lot/concession (excluding VAT)

Total value of the contract/lot/concession:

£80,250,000

VII.1.7) Name and address of the contractor/concessionaire

Stanhope PLC

2nd Floor, 100 New Oxford Street

London

WC1A 1HB

Country

United Kingdom

NUTS code

- UKI - London

National registration number

03017841

The contractor/concessionaire is an SME

No

VII.2) Information about modifications

VII.2.1) Description of the modifications

Nature and extent of the modifications (with indication of possible earlier changes to the contract):

The development agreement (“DA”) was entered into in 2010 between Stanhope as developer and South East England Development Agency as landowner. In 2015 the Council acquired the site and the landowner’s rights and obligations under the DA. It agreed to give Stanhope longer to develop Phase 1 and split Phase 2 into two (Phase 2 and Phase 3). Further changes were made in 2017 to facilitate the Council funding Stanhope’s development of Phase 1 and continuing to own the Phase 1 land on completion of that Phase. Phase 1 has now been completed. Stanhope must 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 certain conditions. Delays caused by (i) the Covid-19 pandemic; and (ii) 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 the 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 offsite Stodmarsh mitigation measures required of the developer in respect of Phase 2 have been complied with; or (ii) if later, 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 position it would have been in had Covid and Stodmarsh not intervened. The agreement also provides for (i) new activity milestones in respect of Phase 2: if Stanhope fails to achieve any of these, the Council is entitled to terminate the DA; and (ii) Stanhope to relinquish certain rights over the Phase 3

land. Neither of these entails substantial change: if there is any alteration in economic balance, it favours the Council. None of the amendments change the nature of the DA.

VII.2.2) Reasons for modification

Need for modification brought about by circumstances which a diligent contracting authority/entity could not foresee.

Description of the circumstances which rendered the modification necessary and explanation of the unforeseen nature of these circumstances:

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 lockdown, and the ongoing restrictions through the rest of 2020 and early 2021, radically altered the situation and caused huge uncertainties for valuation, funding and development generally. Funders were preoccupied with preserving their existing investments through the crisis: there was no appetite for taking on new projects. Only in late Spring 2021 could Stanhope recommence the process of satisfying the drawdown conditions, which nonetheless cannot be completed until the Stodmarsh issues for Phase 2 are resolved. The Covid pandemic and the Stodmarsh situation could not have been foreseen when the DA was entered into in 2010.

VII.2.3) Increase in price

Updated total contract value before the modifications (taking into account possible earlier contract modifications, price adaptations and average inflation)

Value excluding VAT: £80,250,000

Total contract value after the modifications

Value excluding VAT: £80,250,000