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Award

Agreement further to Section 106 of the Town and Country Planning Act 1990 relating to development on land to the east of Kingston Bagpuize, Oxfordshire

Oxfordshire County Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2024/S 000-009146

Procurement identifier (OCID): ocds-h6vhtk-044b1e

Published 21 March 2024, 10:41am

Section I: Contracting authority/entity

I.1) Name and addresses

Oxfordshire County Council

3rd Floor, County Hall

Oxford

OX1 1ND

Contact

Ms Lauren Hawkins

Email

Lauren.Hawkins@Oxfordshire.gov.uk

Telephone

+44 0

Country

United Kingdom

Region 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

Agreement further to Section 106 of the Town and Country Planning Act 1990 relating to development on land to the east of Kingston Bagpuize, Oxfordshire

Reference number

DN716585

II.1.2) Main CPV code

- 45210000 - Building construction work

II.1.3) Type of contract

Works

II.1.4) Short description

The proposed contract will be a planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990 relating to proposed residential and associated development (“the Development”) on land to the east of Kingston Bagpuize, Oxfordshire (“the Site”). It will contain a series of commitments by the ultimate developer, conditional on implementation of the Development (entirely at the discretion of the developer) and the progress of the Development for the design and execution of a series of improvements to highway infrastructure in the area to facilitate and mitigate the impact of the Development.

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: £12,418,920

II.2) Description**II.2.3) Place of performance**

NUTS codes

- UKJ14 - Oxfordshire

II.2.4) Description of the procurement

The proposed contract will be a planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990 relating to proposed residential and associated development (“the Development”) on land to the east of Kingston Bagpuize, Oxfordshire (“the Site”). It will contain a series of commitments by the ultimate developer, conditional on implementation of the Development (entirely at the discretion of the developer) and the progress of the Development for the design and execution of a series of improvements to highway infrastructure in the area to facilitate and mitigate the impact of the Development.

Further information:

- It is understood that the contract award is taking place under EU directive 2014/24/EU.

Although it is noted that the relevant UK legislation is the Public Contracts Regulations 2015 as the procedure was not commenced prior to 31st December 2020 (end of the transition period) so it is not governed by the EU directive 2014/24/EU but just by the Public Contracts Regulations 2015 (which of course transposed directive 2014/24/EU into UK Law) as amended by the Public Procurement (Amendments)(EU Exit) Regulations 2020.

- Start and end date of the contract: not known as it is conditional on the grant of planning permission by Vale of the White Horse District Council and the commencement of development by the developer. Oxfordshire County Council intends to conclude the proposed agreement as soon as practicable after the operation of a standstill period of at least 10 days from the day after the date of publication of this notice

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:

The proposed agreement (“the Section 106 Agreement”) will contain commitments by the ultimate developer (“the Developer”) to design and execute a series of improvements to existing highway infrastructure in the area to provide suitable safe and satisfactory access to the Development and to address the additional demands that will be placed upon the local highway network by the Development. It is considered that the Section 106 Agreement will not constitute a public works contract for the following reasons:

1. The Section 106 agreement is required to make the Development acceptable in planning terms, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010. The essential objective of the Section 106 Agreement is for a planning purpose in accordance with the statutory planning regime. It is to ensure the grant of a satisfactory permission to develop the Site rather than the realisation of any specific public works by the Developer on or near the Site. It was endorsed in *Faraday Development Ltd v West Berkshire Council and St Modwen Developments Ltd* (“the Faraday Case”) following the principle established in *Helmut Muller GmbH v Bundesanstalt für Immobilienaufgaben-Helmut Muller*) that an agreement was not a public works contract where the contracting authority’s primary objective was of a planning nature under the statutory regime.

2. An essential ingredient of a public works contract is that it is for pecuniary interest – see Regulation 2 of the Public Contract Regulations 2015. The Advocate General’s opinion in *European Commission v Kingdom of Spain* seeks to provide a definitive statement of the meaning of “pecuniary interest” concluding that it implies that the contracting authority needs to use its own funds either directly or indirectly. No direct financing will be provided by the contracting authority in respect of the Section 106 agreement. Indirect financing occurs when the contracting authority suffers economic detriment as a result of the method of funding the works. No economic detriment will be sustained by the contracting authority in consequence of entering into the section 106 agreement. The highway works will be delivered in kind rather than through the provision of funding to the contracting authority.

3. It is a requirement of a public works contract that there must be a legally enforceable

obligation to carry out works. Under the Section 106 Agreement there will be no obligation for the highway works to be delivered unless the Development is implemented and it is entirely at the discretion of the Developer as to whether the Development is implemented. Thus the Section 106 Agreement corresponds to the agreement considered in the case of R (Midlands Co-operative Society Ltd) v Birmingham City Council (1) Tesco Stores Ltd (2) (as subsequently approved in the Faraday Case) where the agreement contained no obligation contingent or otherwise for the carrying out of development and so was not a public works contract.

Notes:

- a. The estimated aggregate value (including VAT) of the highway works further to the Section 106 Agreement which the Developer is to undertake is £14,902,703.
- b. In the agreements under Section 278 of the Highways Act 1980 that will follow the Section 106 Agreement and the grant of planning permission for the Development, the Developer will undertake a transparent and impartial procurement process for the highway works.
- c. The contract (Section 106 Agreement) has been awarded jointly to:

The President and Scholars of Saint John Baptist College in the University of Oxford (1) and Lioncourt Strategic Land Limited (2).

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

21 March 2024

V.2.2) Information about tenders

The contract has been awarded to a group of economic operators: Yes

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

The President and Scholars of Saint John Baptist College in the University of Oxford

St. Giles

Oxford

OX1 3JP

Country

United Kingdom

NUTS code

- UKJ14 - Oxfordshire

The contractor/concessionaire is an SME

Yes

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

Lioncourt Strategic Land Limited

Apex Park, Wainwright Road

Worcester

WR4 9FN

Country

United Kingdom

NUTS code

- UKJ14 - Oxfordshire

The contractor/concessionaire is an SME

Yes

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

Total value of the contract/lot/concession: £12,418,920

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