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Contract

## **Landmark Court (Mini-Competition from TfL Property Partnerships Framework - TfL 91437)**

Transport for London

F20: Modification notice

Notice identifier: 2021/S 000-009302

Procurement identifier (OCID): ocds-h6vhtk-02abc7

Published 29 April 2021, 3:25pm

### **Section I: Contracting authority/entity**

#### **I.1) Name and addresses**

Transport for London

5 ENDEAVOUR SQUARE

LONDON

E201JN

#### **Contact**

Asher Frawley

#### **Email**

[asherfrawley@tfl.gov.uk](mailto:asherfrawley@tfl.gov.uk)

#### **Country**

United Kingdom

## **NUTS code**

UKI - London

## **Internet address(es)**

Main address

<https://tfl.gov.uk>

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## **Section II: Object**

### **II.1) Scope of the procurement**

#### **II.1.1) Title**

Landmark Court (Mini-Competition from TfL Property Partnerships Framework - TfL 91437)

Reference number

TfL 91437\_co002

#### **II.1.2) Main CPV code**

- 70000000 - Real estate services

#### **II.1.3) Type of contract**

Services

### **II.2) Description**

#### **II.2.3) Place of performance**

NUTS codes

- UKI - London

Main site or place of performance

Landmark Court site located within London Borough of Southwark, London, United Kingdom

**II.2.4) Description of the procurement at the time of conclusion of the contract:**

Procurement of a Joint Venture partner to develop Transport for London's site at Landmark Court via a Mini-Competition/Call-Off from TfL Property Partnerships Framework (TfL 91437 - 2015/S 028-047348). This Mini-Competition/Call-Off does not have its own unique Contract Notice Reference.

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

End date

30 June 2022

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**Section IV. Procedure**
**IV.2) Administrative information****IV.2.1) Contract award notice concerning this contract**

Notice number: [2015/S 028-047348](#)

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**Section V. Award of contract/concession**
**Contract No**

TfL 91437\_co002

**Title**

Landmark Court (Mini-Competition from TfL Property Partnerships Framework - TfL 91437)

**V.2) Award of contract/concession****V.2.1) Date of conclusion of the contract/concession award decision:**

22 December 2017

**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**

Triangle London Developments LLP

7a Howick Place

London

SW1P 1DZ

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: £255,000,000

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## **Section VI. Complementary information**

### **VI.3) Additional information**

Where stated Values at V.2.4, VII.1.6 and VII.2.3 reflect the estimated Net Development Value of this opportunity. We do not expect a change to the Net Development Value. Prior to this notified modification it was between £213,000,000 - £255,000,000 and it remains between £213,000,000 - £255,000,000.

Where stated Contract Duration at II.2.7 and VII.1.5 references the target date expiry of the Conditional Joint Venture Agreement (CJVA) only.

### **VI.4) Procedures for review**

#### **VI.4.1) Review body**

High Court of England and Wales

London

Country

United Kingdom

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## **Section VII: Modifications to the contract/concession**

### **VII.1) Description of the procurement after the modifications**

#### **VII.1.1) Main CPV code**

- 700000000 - Real estate services

#### **VII.1.3) Place of performance**

NUTS code

- UKI - London

Main site or place of performance

Landmark Court site located within London Borough of Southwark, London, United Kingdom

#### **VII.1.4) Description of the procurement:**

Procurement of a Joint Venture partner to develop Transport for London's site at Landmark Court via a Mini-Competition/Call-Off from the TfL Property Partnerships Framework (TfL 91437).

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

End date

30 June 2022

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

Total value of the contract/lot/concession:

£255,000,000

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

Triangle London Developments LLP

7a Howick Place

London

SW1P 1DZ

Country

United Kingdom

NUTS code

- UKI - London

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 following modifications have been agreed to the original awarded Conditional Joint Venture Agreement (CJVA) and will form an amended CJVA between the parties:

- Addition of a 'Forward Funding' condition which is a new approach to funding the Joint venture through a single forward-fund transaction by a reputable (non-prohibited) third-party investor to acquire the whole site by way of sub-sale from the Joint Venture before development.
- The amount payable by the Forward Funder will be subject to a minimum amount of the aggregate of the Guaranteed Minimum Land Value (GMLV) of £21m as per the existing Conditional Joint Venture Agreement (CJVA), and as a consequence of the modification, the sum of all the conditional period costs (payable in the performance of the CJVA). The amended CJVA will provide for all Conditional Period costs to be returned to the parties from the land receipt proceeds once the forward funding agreement is complete and the land receipt obtained.
- The Condition target date to secure funding, as set out in the CJVA, is to be extended to 30 June 2022 with a longstop date of 31 March 2023 to allow certain additional works to be carried out in advance of completion of the conditional period to de-risk the site, such as archaeological works and RIBA Stage 3 design; and to identify/select a Forward Funder.
- Introduction of a right for Transport for London to terminate the CJVA if the Forward

Funding condition is not satisfied by the longstop date of 31 March 2023, subject to reimbursement of Triangle London Developments LLP's partial cost.

- Transport for London's share in the Joint Venture will be increase from 25 per cent set out in the original procurement and CJVA to 49 per cent. This will increase Transport for London's right to profit going forward and the share of 'post-amendment' cost will also mirror the new Transport for London shareholding.
- Reduction of the period upon which sales overage is due under the existing CJVA from 20 years to the later of 10 years from CJVA signing in Dec 2017 or 2 years from Practical Completion of the whole development. The reduction will maximise Transport for London's upfront capital receipt.
- A short-term funding loan (earning interest) will be offered (but need not be accepted by Transport for London) by U&I Group PLC (Principal Supplier of Triangle London Developments LLP) if Transport for London fails to meet any obligation to fund Post-Amendment Costs.
- The capital receipt from the land disposal and all development costs will be funded by a Forward Funder in return of acquiring the development and long lease of the site. Therefore, the equity investment required by Transport for London under the existing agreement to deliver the development will be substituted by the equity provided by the Forward Funder.
- Under the 'Forward Funding' condition, the Forward Funder will be required to provide the guarantees for the development risks including guarantee obligations imposed by Network Rail. Additionally, if the most commercially advantageous forward fund proposal requires that the Joint Venture (of which Transport for London will have 49 per cent stake) and the Joint Venture's guarantors (Transport Trading Limited and U+I Group PLC) provide guarantees then Transport Trading Limited may need to enter into a joint and several guarantee with the Forward Funder, for a limited timescale. Under the existing agreement Transport Trading Limited was similarly required to provide a financial guarantee to U+I Group PLC for the obligation to fund the Joint Venture. This financial guarantee will be reduced and U+I Group PLC will provide a reciprocal guarantee to Transport Trading Limited .

There are also non-material, consequential changes to the Business & Development Management Agreement (BDMA) entered into on 22 December 2017 as a result of the above listed changes to the CJVA. The Shareholders' Agreement, Works Agreement, Overage Agreement and Lease shall be entered into by the Parties subject to satisfactory completion of the CJVA conditions applying the principles of this amended CJVA as applicable.

## **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) permits modification of contracts if caused by unforeseen circumstances outside of both parties' control where the nature of the contracts are not changing and the value of the deal to the contractor is not increasing by more than 50%. This permitted reason is based on unprecedented economic shock as a result of the current pandemic, and in accordance with PPN 02/20.

As a result of the current markets, the development is not considered optimal on the current method of financing . The Forward Fund strategy seeks to improve Transport for London's cashflow, reduces risk of Transport for London's capital investment and seeks to increase Transport for London's land receipt through the development.

Notwithstanding this Transport for London considers that the nature of the change would be exempt under Regulation 72 in any event as it does not meet the definition of "Substantial Modification" as set out in regulation 72(8) of the Public Contracts Regulations 2015. It is not a change which renders the contract materially different from that originally tendered; it does not introduce conditions which would have altered the outcome of the competition held under the Framework Agreement or allowed any new economic operators to tender for such opportunity; it does not amend the economic balance of the contract in favour of the contractor as the changes will be more financially beneficial for Transport for London and nor does it amend the parties to the original contracts. The changes are largely concerned with the manner in which the JV chooses to finance the development.

Moreover, the amendments do not materially change the overall concession value of the contract.

### **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: £255,000,000

Total contract value after the modifications

Value excluding VAT: £255,000,000