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Awarded contract

Meadows Phase 2B/2C Student Accommodation Project

UNIVERSITY OF ESSEX

F15: Voluntary ex ante transparency notice

Notice reference: 2021/S 000-011469

Published: 24 May 2021, 12:12pm

Section I: Contracting authority/entity

I.1) Name and addresses

UNIVERSITY OF ESSEX

Wivenhoe Park

COLCHESTER

CO43SQ

Email

procure@essex.ac.uk

Country

United Kingdom

NUTS code

UKH3 - Essex

Internet address(es)

Main address

www.essex.ac.uk

Buyer's address

www.essex.ac.uk

I.4) Type of the contracting authority

Body governed by public law

I.5) Main activity

Education

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Meadows Phase 2B/2C Student Accommodation Project

II.1.2) Main CPV code

- 79993000 - Building and facilities management services

II.1.3) Type of contract

Services

II.1.4) Short description

A contract for the design, build, finance and maintenance of the Meadows Phase 2B/2C Student Accommodation Project at the University of Essex's Colchester campus.

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: £95,000,000 / Highest offer: £105,000,000 taken into consideration

II.2) Description

II.2.2) Additional CPV code(s)

- 45210000 - Building construction work
- 50700000 - Repair and maintenance services of building installations
- 50800000 - Miscellaneous repair and maintenance services
- 71500000 - Construction-related services
- 79993000 - Building and facilities management services
- 98340000 - Accommodation and office services

II.2.3) Place of performance

NUTS codes

- UKH3 - Essex

Main site or place of performance

Colchester

II.2.4) Description of the procurement

Building and facilities management services. Construction work for university buildings. Construction work. Building construction work. Construction-related services. Multi-dwelling buildings construction work. Multi-functional buildings construction work. Repair and maintenance services of building installations. Miscellaneous repair and maintenance services. Accommodation and office services.

In 2012, the University sought partners to establish a long term partnership to facilitate the design, build, finance and maintenance of 648 new bedrooms of student accommodation within the University of Essex Knowledge Gateway site ready for the start of the 2013/2014 academic year, together with the potential leasehold sale of an established residential development comprising 767 bedrooms (the "Phase 1" project). ULiving Consortium were identified as the successful tenderer, and subsequently entered into the contract (via a special purpose vehicle called ULiving@Essex Limited) to provide the required services with the University. In line with market norms, the Phase 1 project documentation contained a

Restrictive Covenant which restricted the University's ability to provide additional student accommodation unless certain student to bed ratio and occupancy track record tests were met.

Contracts relating to a second phase of residences ("Phase 2A") were entered into with the ULiving Consortium (via a special purpose vehicle called ULiving@Essex2 Limited) pursuant to a Voluntary ex Ante Transparency Notice (published 23 May 2015), delivering 643 bedrooms (on a design, build, finance and maintenance basis) adjacent to Phase 1. The VEAT Notice was used as the contractual Restrictive Covenant tests on Phase 1 had not been satisfied. Again, in line with market norms, the Phase 2A project documentation contained a Restrictive Covenant which restricted the University's ability to provide additional student accommodation unless certain student to bed ratio and occupancy track record tests were met. The tests for Phase 1 and Phase 2A are set out in VI.3. Phase 2B/2C is the third phase of the residences development and the University wishes to contract for the provision of a further 1,262 units of student residential accommodation on a design, build, finance and operate basis. The ULiving Consortium will (through the use of a special purpose vehicle called ULiving@Essex3 LLP) operate the residences for c 50 years following completion of construction. The sites are located at the University's Colchester Campus. Planning documentation providing further detail can be found here -

<https://www.colchester.gov.uk/planning-app-details/?id=e2fc087d-84be-e911-a976-000d3ab42b3b#ValidationSummaryEntityFormView>.

The Restrictive Covenant tests under the Phase 1 and Phase 2A documentation have not been satisfied at the time of publication of this notice, meaning that the ULiving Consortium has exclusive rights to deliver Phases 2B and 2C at present and for at least the next 3 years (September 2024 being the earliest point at which the tests can now be met) as the ULiving Consortium (via ULiving@Essex Limited and ULiving@Essex2 Limited) will only consent to the development taking place if the ULiving Consortium (via ULiving@Essex3 LLP) also delivers Phases 2B and 2C.

II.2.11) Information about options

Options: No

II.2.14) Additional information

The construction value of this project is currently estimated between 95 000 000 and 105 000 000 GBP. ULiving@Essex3 LLP will also generate revenue through the operation of the accommodation, by way of retaining the majority of the rental income on rooms reserved by the University or otherwise let over the c 50 year operational period

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Negotiated without a prior call for competition

- The works, supplies or services can be provided only by a particular economic operator for the following reason:
 - protection of exclusive rights, including intellectual property rights

Explanation:

The Contractor is the only economic operator which can deliver the development due to the existence of exclusive rights owned by it in connection with the services required (pursuant to Regulation 32(2)(b)(iii) of the Public Contracts Regulations 2015). Those rights exist pursuant to restrictive covenants under existing agreements entered into by the University, and thus the Contractor has an exclusive right in connection with the services required pursuant to Regulation 32(2)(b)(iii) of the Public Contracts Regulations 2015.

In 2012, the University sought partners to design, build, finance and maintain 648 new student bedrooms, together with the potential leasehold sale of an established development comprising 767 bedrooms ("Phase 1"). ULiving Consortium were identified as the successful tenderer, and subsequently entered into contract (via a special purpose vehicle called ULiving@Essex Limited) with the University to deliver Phase 1. In line with market norms, the Phase 1 documentation contained a Restrictive Covenant which restricted the University's ability to provide additional student accommodation unless certain tests were met.

Contracts relating to the development of additional student residences ("Phase 2A") were entered into with the ULiving Consortium (via ULiving@Essex2 Limited) pursuant to a Voluntary ex Ante Transparency Notice (published 23 May 2015), delivering 643 bedrooms (on a design, build, finance and maintenance basis) adjacent to Phase 1. The VEAT Notice was used as the Restrictive Covenant tests on Phase 1 were not satisfied. In line with market norms, the Phase 2A documentation contained a Restrictive Covenant which restricted the University's ability to provide additional student accommodation unless certain tests were met.

The University wishes to contract for the provision of a further 1,262 units of student residential accommodation on a design, build, finance and operate basis. The Restrictive Covenants on Phases 1 and 2A prevent the University from carrying out the development without the consent of companies related to the Contractor unless certain tests are

satisfied.

The tests are:

(a) for each of the previous three (3) consecutive Contract Years the ratio of Total Student Demand to Total Bed Supply has not fallen below 1.5:1.00;

(b) the number of proposed further rooms is such that when occupied the ratio of Total Student Demand to Total Bed Supply will not fall below 1.5:1.00 for the following three (3) Contract Years assessed on the basis of the University's projected student number returns to HEFCE (now HESA);

(c) for each of the previous three (3) consecutive Contract Years at least ninety eight per cent (98%) of the Rooms within the Accommodation have been occupied for the whole of the relevant Letting Period.

Test (a) was not met for the Contract Years 2017/18 and 2018/19 and test (c) has not been satisfied. This is the case for both Phases 1 and 2A.

The companies related to the Contractor (such related companies being ULiving@Essex Limited and ULiving@Essex2 Limited) will only consent to the development taking place if it is carried out by the Contractor (via ULiving@Essex3 LLP). The Contractor therefore has exclusive rights to carry out the development.

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: Yes

IV.2) Administrative information

IV.2.1) Previous publication concerning this procedure

Notice number: [2015/S 099-180882](#)

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

1 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

ULiving Consortium (acting via ULiving@Essex3 LLP)

3rd Floor South Building, 200 Aldersgate Street

London

EC1A 4HD

Country

United Kingdom

NUTS code

- UKI - London

The contractor/concessionaire is an SME

No

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

Lowest offer: £95,000,000 / Highest offer: £105,000,000 taken into consideration

V.2.5) Information about subcontracting

The contract/lot/concession is likely to be subcontracted

Value or proportion likely to be subcontracted to third parties

Proportion: 100 %

Short description of the part of the contract to be subcontracted

All design and build obligations will be sub-contracted to Bouygues (U.K.) Limited.

All FM services will be sub-contracted to Bouygues E&S Solutions Limited

Section VI. Complementary information

VI.3) Additional information

The tests referred to above are:

(a) for each of the previous three (3) consecutive Contract Years the ratio of Total Student Demand to Total Bed Supply has not fallen below 1.5:1.00;

(b) the number of proposed further rooms is such that when occupied the ratio of Total Student Demand to Total Bed Supply will not fall below 1.5:1.00 for the following three (3) Contract Years assessed on the basis of the University's projected student number returns to HEFCE (now the Higher Education Statistics Agency - "HESA");

(c) for each of the previous three (3) consecutive Contract Years at least ninety eight per cent (98%) of the Rooms within the Accommodation have been occupied for the whole of the relevant Letting Period.

Phase 1 Definitions

Total Student Demand means all full time University Students who are, in the relevant Contract Year, enrolled at the University and

based at the Colchester Campus less University Students who live prior to the relevant Contract Year within Essex, Bedfordshire, Cambridgeshire, Hertfordshire, Norfolk or Suffolk who are not currently living in Term Time Accommodation as measured by HESA data subject to the University reserving the right to revise the HESA data where they are reasonably able to demonstrate that such HESA data includes material factual inaccuracies in relation to the origin of Qualifying Students to the reasonable satisfaction of the Service Provider (ULiving@Essex Limited).

Total Bed Supply means: (a) existing University accommodation within the Colchester

Campus; and (b) the Phase 1 Accommodation; and (c) any Relevant Arrangements allowed under the Phase 1 Project Agreement (including approved or anticipated accommodation to be developed but not yet available); (d) any accommodation which the University is at the relevant time proposing to become the subject of a Relevant Arrangement; and (e) the University's accommodation at The Maltings.

Contract Year means the period from 7 August 2012 until 31 August 2013 and each successive twelve month period thereafter commencing on 1 September in each year.

Relevant Arrangement means any agreement or arrangement concerning the construction and/or refurbishment and/or provision of

residential accommodation to be let (whether by tenancy, licence, nominations agreement or otherwise) to Qualifying Persons (registered full-time students of the University or another Higher Education institution) by or on behalf of the University or the University Group or by any other person in cooperation with the University. The Phase 2B/2C contract is a Relevant Arrangement.

Letting Period means the period identified in each Licence being either (a) thirty nine (39) weeks; or (b) fifty (50) weeks.

Phase 2A Definitions

Total Student Demand means all full time University Students who are, in the relevant Contract Year, enrolled at the University and

based at the Colchester Campus less University Students who live prior to the relevant Contract Year within Essex, Bedfordshire, Cambridgeshire, Hertfordshire, Norfolk or Suffolk who are not currently living in Term Time Accommodation as measured by HESA data subject to the University reserving the right to revise the HESA data where they are reasonably able to demonstrate that such HESA data includes material factual inaccuracies in relation to the origin of Qualifying Students to the reasonable satisfaction of the Service Provider (ULiving@Essex2 Limited).

Total Bed Supply means: (a) existing University accommodation within the Colchester Campus; and (b) the Phase 2A Accommodation; and (c) any Relevant Arrangements allowed under the Phase 2A Project Agreement (including approved or anticipated accommodation to be developed but not yet available); (d) any accommodation which the University is at the relevant time proposing to become the subject of a Relevant Arrangement; and (e) the University's accommodation at The Maltings.

Contract Year means the period from 31 May 2017 until 31 August 2017 and each successive twelve month period thereafter commencing on 1 September in each year.

Relevant Arrangement means any agreement or arrangement concerning the construction and/or refurbishment and/or provision of

residential accommodation to be let (whether by tenancy, licence, nominations agreement or otherwise) to Qualifying Persons (registered full-time students of the University or another Higher Education institution) by or on behalf of the University or the University Group or by any other person in cooperation with the University. The Phase 2B/2C contract is a Relevant Arrangement.

Letting Period means the period identified in each Licence being thirty nine (39) weeks.

Outcome

Test (a) was not met for the Contract Years 2017/18 and 2018/19 and test (c) has not been satisfied. This is the case for both Phase 1 and Phase 2A.

VI.4) Procedures for review

VI.4.1) Review body

High Court of England and Wales

Royal Courts of Justice, Strand

London

: WC2A 2LL

Telephone

+44 2079477882

Country

United Kingdom