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Award

Hampden Road Lease

The Royal Borough of Kingston upon Thames

F15: Voluntary ex ante transparency notice

Notice identifier: 2021/S 000-014335

Procurement identifier (OCID): ocds-h6vhtk-02bf72

Published 23 June 2021, 4:13pm

Section I: Contracting authority/entity

I.1) Name and addresses

The Royal Borough of Kingston upon Thames

Guildhall 2

Kingston upon Thames

KT1 1EU

Contact

Mr Bola James

Email

bola.james@kingston.gov.uk

Telephone

+44 2085475000

Country

United Kingdom

NUTS code

UK - United Kingdom

Internet address(es)

Main address

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

Buyer's address

<http://www.kingston.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

Hampden Road Lease

Reference number

DN552223

II.1.2) Main CPV code

- 70220000 - Non-residential property renting or leasing services

II.1.3) Type of contract

Services

II.1.4) Short description

The Royal Borough of Kingston upon Thames (the Council) is entering into an agreement for lease to take a lease of 20 to 40 years of 65 Hampden Road, Kingston Upon Thames, KT1 3HG (the Property) from Legal and General Pensions Limited (the Landlord), which the Council is proposing to sub-let to Guildhall Capital Limited (GCL) or another company under control of the Council.

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: £58,500,000

II.2) Description

II.2.3) Place of performance

NUTS codes

- UK - United Kingdom

II.2.4) Description of the procurement

The Council is entering into an agreement for lease to take a lease of 20 to 40 years of the Property from the Landlord which the Council is proposing to sub-let to GCL or another company under control of the Council.

GCL is a wholly owned company of the Council, The Landlord intends to construct 79 residential units, as well as commercial and ancillary areas on the Property which is being acquired by the Landlord from a third party unconnected with the Council. These works will be funded by the Landlord. The Council is not conducting a procurement process under the Public Contracts Regulations (“PCR 2015”) because the agreement for lease comprises an exempt land transaction and is not a public works contract or a public works concession contract pursuant to the Concession Contracts Regulations 2016 (“CCR 2016”). Neither the Council nor GCL are imposing legally enforceable obligations to carry out works nor have they specified requirements for the development. The original planning permission for the development was obtained prior to the involvement of GCL and the Council as potential tenants.

The Council/GCL will be permitted under the lease to grant tenancy agreements on the commercial and private residential elements of the Property up to a maximum of five (5) years for each residential unit and to underlet the Affordable Housing units for more than five (5) years. The Council will have the right to purchase the Property for a nominal sum at the end of the 40 year lease. The lease, which will be a full repairing and insuring lease, will be subject to annual index linked rent reviews with any changes subject to limits as to the maximum

increase.

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:

Award of a contract without prior publication of a call for competition in the Official Journal of the European

Union in the cases listed below

- The procurement falls outside the scope of application of the directive

Explanation:

This is a contract for the acquisition of a leasehold interest and rental of the Property which is exempt from the Public Contracts Regulations 2015 under Regulation 10(1)(a). For complete transparency, the Council is publishing this notice to detail the exempt land transaction and will be respecting a voluntary 10 day standstill period. The Property is being acquired by the Landlord from a third party unconnected with the Council, original planning permission for the development was obtained prior to the involvement of GCL and the Council as potential tenants and the development is being funded by the Landlord who will enter into a development agreement for the construction of the Property with a third party developer.

Any works and general maintenance and management services being undertaken by the Landlord are incidental to the lease arrangements and the Council is not specifying any works, hence the agreement for lease does not constitute a public works or services contract or concession contract.

The Council has not published a contract notice for the opportunity pursuant to the PCR 2015 or the Concession Contracts Regulations 2016, because the transaction detailed above does not comprise a 'public works or services contract' or a 'concession' which would require formal procurement pursuant to the UK's public procurement regime. Instead, the agreement for lease comprises a land transaction which is excluded from the scope of the procurement regime, pursuant to regulation 10(1)(a) and/or regulation 4(2)(b) of the PCR 2015 and/or regulation 10(11)(a) and/or regulation 20(4)(a) of the CCR 2016.

The cumulative requirements for a public works contract is not met. Neither the Council nor GLC setting

the specification for works. The works involved– construction of residential and commercial property and ancillary accommodation are being specified by the Landlord and its developer. The Council and GLC are not exercising control or decisive influence over the construction or design of the development and their role is limited to inspection rights in respect of the development, updates on progress and some limited consultation on desirable outcomes. As noted above, there is no legally enforceable obligation on the Landlord to undertake the construction.

The Council's predominant purpose in this transaction is obtaining a leasehold interest via an exempt land transaction and, therefore, insofar as any works are involved (which the Council does not accept), this would be an exempt transaction in accordance with regulation 4 of the PCR 2015 and/or regulation 20 of the CCR 2016.

The Council may therefore enter into the agreement for lease without prior publication of a Contract Notice. Whilst not legally required to publish this notice, the Council has taken the step in the interests of giving full transparency to the agreement for lease which as results from the private sector development of the site and will be voluntarily respecting a 10 day standstill period following the publication of this notice before entering into the above mentioned transaction.

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

The procurement is covered by the Government Procurement Agreement: No

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

20 May 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

Legal and General Pensions Limited

One Coleman Street

LONDON

EC23 5AA

Country

United Kingdom

NUTS code

- UK - United Kingdom

Internet address

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

The contractor/concessionaire is an SME

No

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

Total value of the contract/lot/concession: £58,500,000

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

High Court of England and Whales

London

Country

United Kingdom

