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Contract

Queen Alexandra Hospital, ground leases of land at the Main Entrance and North Entrance

Portsmouth Hospitals University NHS Trust

F25: Concession award notice

Notice identifier: 2023/S 000-015568

Procurement identifier (OCID): ocids-h6vhtk-03d2f8

Published 1 June 2023, 2:11pm

Section I: Contracting authority/entity

I.1) Name and addresses

Portsmouth Hospitals University NHS Trust

Queen Alexandra Hospital, Southwick Hill Road

Portsmouth

PO6 3LY

Contact

Mark Magrath

Email

mark@magrathconsulting.com

Country

United Kingdom

Region code

UKJ31 - Portsmouth

Justification for not providing organisation identifier

Not on any register

Internet address(es)

Main address

<https://www.porthosp.nhs.uk/>

I.4) Type of the contracting authority

Body governed by public law

I.5) Main activity

Health

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Queen Alexandra Hospital, ground leases of land at the Main Entrance and North Entrance

II.1.2) Main CPV code

- 45000000 - Construction work

II.1.3) Type of contract

Works

II.1.4) Short description

Portsmouth Hospitals University NHS Trust ("PHUT") has entered into a series of leasing agreements with Noviniti Dev Co 7 Limited ("Noviniti") in respect of a new retail use and lecture theatre and clinical space development ("the Development") at land at the Main Entrance and North Entrance at the Queen Alexandra Hospital, Portsmouth ("the

Hospital") with Compass as Noviniti's initial tenant and retail operator. The contractual arrangements are structured as a land transaction exempt from the Public Contracts Regulations 2015 ("PCR") and the Concession Contracts Regulations 2016 ("CCR").

Noviniti has drawn down two 46 -year ground leases ("GL") of the site in exercise of an option agreement with PHUT. The GLs have break clauses in favour of PHUT after 2 years (so PHUT can recover the site if the Development is not commenced); after 6 years (so PHUT can recover the site if only one of the two entrances is completed) and 40 years from practical completion of the Development.

II.1.6) Information about lots

This concession is divided into lots: No

II.1.7) Total value of the procurement (excluding VAT)

Value excluding VAT: £13,200,000

II.2) Description

II.2.2) Additional CPV code(s)

- 45213100 - Construction work for commercial buildings

II.2.3) Place of performance

NUTS codes

- UKJ31 - Portsmouth

Main site or place of performance

Queen Alexandra Hospital, Southwick Hill Road, Portsmouth PO6 3LY

II.2.4) Description of the procurement

PHUT has entered into an Agreement for Underlease in respect of the Main Entrance & North Entrance sites with Noviniti Dev Co 7 Ltd ("Noviniti") and Compass Contract Services (UK) Limited ("Compass"). Compass commits to accepting the grant of two 15 year underleases (with rent obligations to Noviniti) on practical completion ("PC") of the retail space. PHUT (as head landlord) will have insurance obligations owed to Compass and a repairing covenant for the retail space. PHUT will be required to step-in to take the underlease if Compass fails to do so on PC. PHUT must enter into an Overriding Lease (to become Compass' landlord) if Compass becomes insolvent or defaults on its Underlease, in order to maintain the rental payments to Noviniti. PHUT will enter into a 25-year Reversionary Lease (with rent obligations to Noviniti) to take effect from expiry of

Compass' underlease. Some education space, research and development space and common parts will be delivered as part of the scheme.

II.2.5) Award criteria

Concession is awarded on the basis of the criteria described below:

- Criterion: Not applicable

II.2.7) Duration of the concession

Duration in months

480

II.2.14) Additional information

Please see Voluntary Transparency Notice of 23 December 2022 (reference 2022/S 000-036583) for details of option agreement and ground lease

<https://www.find-tender.service.gov.uk/Notice/036583-2022?origin=SearchResults&p=1>

In relation to II.2.5. above, we have inserted "not applicable" as the requirement was not competitively tendered under the PCR/CCR"

Section IV. Procedure

IV.1) Description

IV.1.1) Form of procedure

Award procedure without prior publication of a concession notice in the cases listed below

- The services can be provided only by a particular economic operator for the following reason:
 - absence of competition for technical reasons

Explanation:

The procurement falls outside the scope of application of the regulations

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

The procurement is covered by the Government Procurement Agreement: No

IV.1.11) Main features of the award procedure

PHUT considers that the arrangements fall within the land exemption under Regulation 10(1)(a) Public Contracts Regulations 2015 and/or Regulation 10(11)(a) Concessions Contracts Regulations 2015.

The GLs were only drawn down by Noviniti when certificates for lawful development had been secured. As the certificates for lawful development are referenced under the OA and must be complied with when carrying out the permitted alterations under the Licences for Alterations the Trust has had input to the details of the Development.

On execution of the GL Noviniti is not obliged to undertake the Development. Once Noviniti serves notice electing to carry out the Development this engages enforceable obligations for Noviniti to carry out and complete the Development for PHUT under the terms of the Agreement for Lease and the Licence for Alterations.

However, as Noviniti is under no obligation to serve notice to elect to carry out the works PHUT considers that no public works contract arises for lack of an enforceable obligation and Noviniti is able to "walk away" from having to deliver the Potential Development.

Section V. Award of concession

A concession/lot is awarded: Yes

V.2) Award of concession

V.2.1) Date of concession award decision

25 January 2023

V.2.2) Information about tenders

Number of tenders received: 1

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

V.2.3) Name and address of the concessionaire

Noviniti Dev Co 7 Limited

Unit 2, Newby Stables Newby Hall

Ripon

HG4 5AE

Country

United Kingdom

NUTS code

- UK - United Kingdom

Companies House

12938566

The concessionaire is an SME

Yes

V.2.4) Information on value of concession and main financing terms (excluding VAT)

Total value of the concession/lot: £13,200,000

Section VI. Complementary information

VI.3) Additional information

The Trust Board approved a decision to proceed with Noviniti on 25 January 2023 subject to a further approval on 29th March 2023 with documents to be signed immediately after that.

The estimated value range in II.1.7 and V.2.4 represents rental to Noviniti (with an estimated value of approximately £13.2m (subject to RPI under the terms of the lease arrangements)) and projected operator turnover, subject to deduction of circa £330k per annum in respect of rental obligations to Noviniti). The rent that Compass has agreed to pay Noviniti is calculated on the basis of an expected level of turnover. In the event that the retail facilities do not achieve the expected level of turnover (whether as a result of some action the Trust has taken or otherwise) the Trust is liable to share some of the risk of this with the retail tenant.

If Noviniti chooses to go ahead Noviniti currently anticipates that any development would begin at the Main Entrance site, with development of the North Entrance to follow. In the event that Noviniti chooses to proceed with the Potential Development, the 15 year underlease to Compass in respect of the ground floor of the Main Entrance site will be granted on completion of the development at the Main Entrance. On completion of the development of the North Entrance a replacement underlease in respect of the ground floor Main Entrance will be granted to Compass to take account of the build period of the work at the North Entrance so that the underleases to Compass of both areas on the ground floor effectively run for a period of 15 years from completion of the Development at the North Entrance.

Compass is procuring a guarantee from Compass Group UK & Ireland Limited (the Guarantor) in respect of its obligations under the underleases at the sites in the event that Noviniti proceeds with the Potential Development and the underleases are granted.

There will be some education space, research and development space and common parts delivered as part of the scheme which the Trust will occupy via a sub-underlease agreed with Compass.

VI.4) Procedures for review

VI.4.1) Review body

High Courts of Justice

The Royal Court of Justice, The Strand

London

WC2A 2LL

Country

United Kingdom

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures

In accordance with Chapter 6 of the Public Contracts Regulations 2015 (as amended) (Regulations 88 to 104) or Chapter 2 of the Concession Contracts Regulations 2016 (Regulation 49 to 64).