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Award

Basildon Hospital main entrance and retail facility

Mid and South Essex NHS Foundation Trust

F15: Voluntary ex ante transparency notice

Notice identifier: 2021/S 000-017414

Procurement identifier (OCID): ocids-h6vhtk-02cb74

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Section I: Contracting authority/entity

I.1) Name and addresses

Mid and South Essex NHS Foundation Trust

Basildon University Hospital, Nethermayne

Basildon

SS16 5NL

Contact

Tracey Leforte

Email

Tracey.leforte1@nhs.net

Telephone

+44 1702508120

Country

United Kingdom

NUTS code

UKH3 - Essex

Internet address(es)

Main address

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

Buyer's address

<https://www.mse.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

Basildon Hospital main entrance and retail facility

II.1.2) Main CPV code

- 45000000 - Construction work

II.1.3) Type of contract

Works

II.1.4) Short description

Mid and South Essex NHS Foundation Trust ("MSE") intends to enter into a series of leasing arrangements with Noviniti Dev Co 8 Ltd ("Noviniti") and WHSmith ("WHS") in respect of a retail development ("the Development") at Basildon Hospital, Essex ("the Hospital") with WHS as Noviniti's initial tenant and retail operator. MSE has structured the contractual arrangement as a land transaction exempt from the Public Contracts Regulations 2015 (PCR) and the Concession Contracts Regulations 2015 (CCR).

Noviniti has an option to draw down a 35-year ground lease ("GL") of the site in exercise of an option agreement ("OA") with MSE. The GL has break clauses in favour of MSE after 2 years (so MSE can recover the site if the Development is not commenced) and 30 years from practical completion 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: £10,650,000

II.2) Description

II.2.2) Additional CPV code(s)

- 45214710 - Entrance hall construction work
- 45215100 - Construction work for buildings relating to health

- 45215140 - Hospital facilities construction work
- 55900000 - Retail trade services

II.2.3) Place of performance

NUTS codes

- UKH37 - Essex Thames Gateway

Main site or place of performance

Basildon Hospital main entrance and retail facility

II.2.4) Description of the procurement

MSE now intends to enter into a tripartite Agreement for Underlease with Noviniti and WHS. In this agreement WHS commits to accepting the grant of a 15-year underlease (with rent obligations to Noviniti) on practical completion of the retail facilities. MSE (as head landlord) will have insurance obligations owed to WHS and a repairing covenant for the retail facilities. MSE may step-in to take the underlease if WHS fails to enter the underlease at practical completion. MSE may enter an Overriding Lease (to become WHS's landlord) if WHS becomes insolvent or defaults on its Underlease, in order to maintain the rental payments to Noviniti. MSE may enter a 15-year Reversionary Lease (with rent obligations to Noviniti) to take effect from the expiry of WHS's underlease. MSE may instead direct these leases be granted to an alternate operator if MSE guarantees rent.

There will be some office space and common parts delivered as part of the scheme.

II.2.11) Information about options

Options: No

II.2.14) Additional information

Please see Voluntary Transparency Notice of 22.3.2021 for details of option agreement and ground lease <https://www.find-tender.service.gov.uk/Notice/005723-2021>

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:

MSE 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 GL can only be drawn down by Noviniti when acceptable planning permission is secured. As the planning application is an agreed document under the OA and defines the permitted alterations under the Licence 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 MSE under the terms of the Agreement for Lease and the Licence for Alterations.

Under a separate 15 year lease between MSE and WHS of additional space at the Hospital, MSE secures an annual income of rent from the separate lease and a turnover share from retail carried out in the additional space and at the Development.

At practical completion MSE guarantees to meet the payment and performance obligations of WHS for the 15-year term of the Operator Lease; any alternate tenant it nominates to take the Reversionary Lease; any other costs which Noviniti may incur in relation to the Development for 30 years. The guarantee protects Noviniti's investment where MSE does not itself enter the Reversionary Lease, Step-In Lease and/or Overriding Lease.

MSE holds that there is no works contract for lack of an enforceable obligation and Noviniti is able to "walk away" from having to deliver the Development and/or MSE is able to award the Development on the basis that Noviniti has an exclusive right to the land conferred under the GL pursuant to Regulation 32(2)(b)(iii) Public Contracts Regulations 2015.

To the extent that the overall scheme could be considered a mixed contract of works and a land transaction, MSE holds that the land element is the main object of the arrangement

MSE holds that there is no works concession contract as there is insufficient transfer of operating risk to Noviniti in exploiting the works.

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

15 July 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

Noviniti Dev Co 8 Ltd

The Stables, Churchfield Farm, Harley Way, Oundle

Peterborough

PE8 5AU

Email

jonathan.houlston@noviniti.co.uk

Country

United Kingdom

NUTS code

- UK - United Kingdom

The contractor/concessionaire is an SME

No

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

Initial estimated total value of the contract/lot/concession: £10,650,000

Total value of the contract/lot/concession: £10,650,000

Section VI. Complementary information

VI.3) Additional information

The estimated value in II.1.7 and V.2.4 represents the estimated rental returns to Noviniti.

V.2.1) Date of contract award decision: The Trust Investment Group recommended approval of the scheme on 15 July subject to a further approval on 29 July 2021 with documents to be signed immediately after that.

VI.4) Procedures for review

VI.4.1) Review body

Royal Courts 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).