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Award

## **Sea Wall Works Contract for Tipner East Sea wall and associated works and services**

VIVID

F15: Voluntary ex ante transparency notice

Notice identifier: 2024/S 000-018389

Procurement identifier (OCID): ocds-h6vhtk-046fdc

Published 14 June 2024, 8:14am

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

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

VIVID

Peninsular House, Wharf Road

Portsmouth

PO2 8HB

#### **Contact**

Victoria Harfield

#### **Email**

[Victoria.Harfield@vividhomes.co.uk](mailto:Victoria.Harfield@vividhomes.co.uk)

#### **Country**

United Kingdom

#### **Region code**

UKJ3 - Hampshire and Isle of Wight

**Internet address(es)**

Main address

<http://www.vividhomes.co.uk>

Buyer's address

<http://www.vividhomes.co.uk>

**I.4) Type of the contracting authority**

Body governed by public law

**I.5) Main activity**

Housing and community amenities

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## **Section II: Object**

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

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

Sea Wall Works Contract for Tipner East Sea wall and associated works and services

Reference number

DN724193

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

- 45210000 - Building construction work

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

Works

#### **II.1.4) Short description**

Vivid Housing Limited ("Vivid") intends to enter a JCT 2016 D&B Contract with PMC Construction and Development Services Ltd ("PMC") for the construction of a 500m sea wall and associated infrastructure at the Tipner East site (the "Sea Wall Works Contract").

#### **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: £4,653,536

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

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

NUTS codes

- UKJ3 - Hampshire and Isle of Wight

#### **II.2.4) Description of the procurement**

Vivid Housing Limited ("Vivid") intends to enter a JCT 2016 D&B Contract with PMC

Construction and Development Services Ltd ("PMC") for the construction of a 500m sea wall and associated infrastructure to be undertaken as part of the Tipner East regeneration scheme (the "Sea Wall Works Contract").

The Tipner East regeneration scheme is a mixed tenure housing development involving the construction of 835 dwellings on the site consisting of houses, maisonettes and flats. The development will be undertaken in several phases. The scope of works to be carried out under the Sea Wall Works Contract will be limited to the construction of the sea wall and associated infrastructure works and related services.

PMC are currently providing various pre-construction services in relation to the Tipner East regeneration scheme under a Pre-Construction Services Agreement ("PCSA") which was awarded to PMC by Vivid via Vivid's contractors framework agreement. These pre-construction services include site remediation works, scheme design, flood defence design and assistance with the planning application for the development. It is intended that such services will be subsumed by and included within the scope of the Sea Wall Works Contract when entered into.

#### **II.2.5) Award criteria**

Price

#### **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

#### **II.2.14) Additional information**

Vivid intends to enter into this contract following a minimum 10 day calendar day standstill period starting on the day after this notice is published in the UK Find a Tender Service. The Public Contracts Regulations 2015 (SI 2015 No 102) (as amended) (the PCR) provide for aggrieved parties who have been harmed or who are at risk of harm by a breach of the PCR to bring proceedings in the High Court. Any such proceedings must be brought within the limitation period specified by the PCR according to the remedy sought.

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## 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:
  - absence of competition for technical reasons

Explanation:

The Sea Wall Works Contract is to be awarded to PMC pursuant to Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 (the “PCR”). For the reasons below, Vivid’s view is that the Sea Wall Works Contract can only be awarded to PMC because competition is absent for technical reasons, and no reasonable alternative exists.

PMC introduced the site opportunity to Vivid and were awarded the PCSA under Vivid’s PCR-compliant contractors framework agreement on this basis. Pursuant to the PCSA, PMC have been heavily involved in working up the design for scheme and input into the planning application (amongst other things);

It was always envisaged that following completion of the services under the PCSA PMC would be appointed to carry out relevant works on site under a separate form of contract, given its knowledge of the scheme and the input it had provided into it under the PCSA. Ordinarily, the Sea Wall Works Contract would have been awarded to PMC under Vivid’s framework agreement, but this has now expired so is not possible.

The sea wall to be constructed is located on a highly constrained site adjacent to Portsmouth Harbour a SSSI and RAMSAR and includes remediation, still being completed by PMC pursuant to the PCSA. This presents significant complexity of developing this enabling phase as a standalone project.

PMC are currently on site for enabling works for the remediation phase of the development project and have a well-established site set up. As PMC are already set up and understand the difficulties and constraints of the site, if there were a change of contractor Vivid would face significant duplication of mobilization costs in order for the new contractor to get up to speed with these issues.

Part of the proposed conditions attached to the works include the ongoing monitoring of wildlife and ecology of open remaining remediated space part of this is being used by

PMC as site set-up and as a compound. This entire site and the foreshore area need to be monitored and controlled to minimise impact on nesting and over wintering birds throughout the construction. PMC have, over a period of 4 years working with Natural England, the Environment Agency and PCC gathered a significant amount of information and agreed acceptable ways of working with the various agencies. These are specific and detailed and relate to a Marine Management Order giving approval to work on the coastline outside of the nesting season only. Given the location of the proposed works on the site and its complex remediation requirements and time restrictions the switch to another contractor will require a delay to the construction of the sea wall which will increase the site and surrounding areas flood risk. The continuation of possession of the site by PMC will also require them to be responsible for the flood risk management plan. This was agreed by PMC with the Environment Agency and as such they are best placed to manage it until the sea wall is constructed. A change of contractor would add time and risk to the site's continued flood protection. PMC's local knowledge of the site set-up arrangements and constraints throughout the delivery of the PCSA, will minimize the substantial duplication of prelims.

Given PMC's extensive knowledge of the scheme and the involvement it has had in it to date, if Vivid were to put the Sea Wall Works Contract out to competitive tender in accordance with the PCR it is likely that genuine competition for it would be absent because it would not be possible for another contractor to compete with PMC's tender proposals for the contract, and thereby provide a reasonable alternative.

The above circumstances have not come about as a result of an "artificial narrowing down of the parameters of the procurement" by Vivid. On the contrary, they have come about as a result of PMC's prior knowledge of the scheme and the performance of its role under the PCSA, which was awarded to it under Vivid's PCR-compliant framework agreement.

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

The procurement is covered by the Government Procurement Agreement: Yes

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## **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**

16 May 2024

#### **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**

PMC Construction and Development Services Ltd

80a High Street, Cosham

Portsmouth

PO6 3FL

Country

United Kingdom

NUTS code

- UKJ3 - Hampshire and Isle of Wight

The contractor/concessionaire is an SME

Yes

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

Total value of the contract/lot/concession: £4,653,536

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## **Section VI. Complementary information**

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

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

High Court of England and Wales

London

Country

United Kingdom

#### **VI.4.2) Body responsible for mediation procedures**

High Court of England and Wales

London

Country

United Kingdom

#### **VI.4.3) Review procedure**

Precise information on deadline(s) for review procedures

In accordance with Part 3 of the Public Contracts Regulations 2015.

#### **VI.4.4) Service from which information about the review procedure may be obtained**

Cabinet Office

London

Country

United Kingdom