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Award

Funding and development agreement South Coalville Primary School

Leicestershire County Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2023/S 000-019903

Procurement identifier (OCID): ocds-h6vhtk-03e0fc

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Section I: Contracting authority/entity

I.1) Name and addresses

Leicestershire County Council

County Hall, Leicester Road, Glenfield

Leicester

LE3 8RA

Contact

Mr Simon Ip

Email

commissioning.support@leics.gov.uk

Telephone

+44 1163055390

Country

United Kingdom

Region code

UKF2 - Leicestershire, Rutland and Northamptonshire

Internet address(es)

Main address

<https://www.eastmidstenders.org/index.html>

Buyer's address

<https://www.eastmidstenders.org/index.html/https://www.southeastcoalville.co.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

Funding and development agreement South Coalville Primary School

Reference number

DN661632

II.1.2) Main CPV code

- 45214210 - Primary school construction work

II.1.3) Type of contract

Works

II.1.4) Short description

Leicestershire County Council (“LCC”) is entering into a supplementary funding and development agreement (“DFA”) to support the new build delivery of South Coalville primary school (“School”) to fulfill s.106 obligations.

The School site is owned by the developer, Harworth Estates. The site is subject to planning obligations imposed by North West Leicestershire District Council in its capacity as local planning authority and LCC in its capacity as local highway authority and local education authority in the s.106 agreement of 26 September 2016 (as varied). Under the s.106 agreement the developer is required to build a two-form entry primary school. The freehold to the site of the School will be transferred by the developer to LCC for nominal consideration at or around the time the DFA is entered into.

Under a Deed of Variation to the s.106 agreement made on 21 March 2023 the developer is not obliged to build the School if the development cost is above £9m but is instead obliged to pay a contribution cost and transfer the site to LCC.

Continues II.2.4 below.

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: £1 / Highest offer: £13,000,000 taken into consideration

II.2) Description

II.2.2) Additional CPV code(s)

- 45214210 - Primary school construction work

II.2.3) Place of performance

NUTS codes

- UKF22 - Leicestershire CC and Rutland

II.2.4) Description of the procurement

Continues from II.1.4 above.

The developer must consult with LCC if the development cost is in excess of £9m on possible alternatives and has absolute discretion as to whether to agree alternative routes to deliver the School.

The LCC intends to enter into the DFA with the developer which will provide up to £3m support funding if the School development cost exceeds £9m in order to facilitate its delivery. The DFA will also address specification requirements, certification and step-in rights to protect LCC's interests relating to making the funding contribution available.

The developer is delivering a wider housing development scheme of up to 2,700 dwellings in the area as consented for in the relevant outline planning permission and the School forms part of the planning requirements under the s.106 agreement.

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

The date in V.2.1 below relates to the approval by LCC to proceed with the DFA.

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:

The primary obligation for the developer to deliver the School derives from obligations under the s.106 agreement. S.106 agreements are recognised as being a different kind of agreements from public works contracts under the Public Contracts Regulations 2015 (as amended) (“PCR”). Its purpose is to regulate the development of land so its essential object is to ensure the proper planning in the local planning authority’s area rather than the delivery of the specified works. Consequently, such agreements are not governed under the PCR as per the principle in *Faraday Development Ltd v West Berkshire Council* [2018] EWCA Civ 2532.

There is no positive obligation for the developer to deliver the School with costs in excess of £9m under the terms of the s.106 variation.

If the developer elects to deliver the School with costs in excess of £9m and wishes to access LCC’s funding, then the DFA contains an enforceable obligation to deliver works specified by LCC in order to define and regulate the expenditure of LCC’s contribution towards discharging the s.106 obligations. LCC considers that the DFA is incidental and ancillary to the performance of the pre-existing s.106 agreement and is not intended to form a separate project to deliver a work in its own right. The DFA will provide for LCC to have: the benefit of step-in rights through the Collateral Warranties to enable LCC to step-in and instruct the completion of the build should the developer default; a Performance Bond from the building contractor; and payment of liquidated damages for late delivery to reflect LCC’s anticipated cost of procuring temporary alternative school accommodation.

LCC does have an economic benefit in the School being transferred to it on completion. However LCC does not consider that the DFA forms a public works contract for the purposes of the PCR given its primary purpose is to provide supplemental funding and any perceived works obligations are incidental and ancillary to the performance of the s.106 agreement which is exempt from the PCR.

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

The procurement is covered by the Government Procurement Agreement: Yes

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

26 June 2023

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

Harworth Estates (Agricultural Land)

Advantage House, Poplar Way, Catcliffe

Rotherham

S60 5TR

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: £13,000,000

Lowest offer: £1 / Highest offer: £13,000,000 taken into consideration

Section VI. Complementary information

VI.3) Additional information

The estimated value in V.2.4 and II.1.7 relates to the current projected capital cost of the School. The developer is obliged under the DFA to fund the delivery of the School save for LCC's contribution which is capped at £3M under the DFA.

VI.4) Procedures for review

VI.4.1) Review body

The High Court Justice

The Royal Court of Justice, The Strand

London

WC24 2LL

Country

United Kingdom

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures

In accordance with Regulation 88 to Regulation 102 of the PCR 2015 (particularly, Regulations 92, 93, 94 and 99 in relation to deadlines).