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Contract

## **Queen Alexandra Hospital, North Car Park, MSCP**

Portsmouth Hospitals University NHS Trust

F25: Concession award notice

Notice identifier: 2021/S 000-024138

Procurement identifier (OCID): ocds-h6vhtk-02e5ba

Published 28 September 2021, 5:56pm

### **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](mailto:mark@magrathconsulting.com)

#### **Country**

United Kingdom

#### **NUTS code**

UKJ31 - Portsmouth

**Internet address(es)**

Main address

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

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

Body governed by public law

**I.5) Main activity**

Health

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## **Section II: Object**

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

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

Queen Alexandra Hospital, North Car Park, MSCP

#### **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 arrangements with Noviniti Dev Co 6 Ltd ("Noviniti") and Engie Services Limited ("Engie") in respect of a new multi-storey car park development ("the Development") at Queen Alexandra Hospital, Portsmouth ("the Hospital") with Engie as Noviniti's initial tenant and the car park 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). There is a Deed of Covenant ("the Deed") between the Trust and Engie requiring Engie to operate the car park.

Noviniti has drawn down a 35-year ground lease of the site in exercise of an option agreement with the PHUT.

#### **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: £13,560,000

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

#### **II.2.2) Additional CPV code(s)**

- 45213312 - Car park building construction work
- 98351000 - Car park management services

### **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 a tripartite Agreement for Underlease with Noviniti and Engie. In this agreement Engie commits to accepting the grant of an 18-year underlease (with rent obligations to Noviniti) on practical completion of the car park. PHUT (as head landlord) will have insurance obligations owed to Engie and a repairing covenant for the car park. PHUT will be required to step-in to take the underlease if Engie fails to enter the underlease at practical completion. PHUT will also be required to enter an Overriding Lease (to become Engie's landlord) if Engie becomes insolvent or defaults on its Underlease in order to maintain the rental payments to Noviniti. PHUT will enter a 12-year Reversionary Lease (with rent obligations to Noviniti) to take effect from the expiry of Engie's underlease.

### **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

360

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

Please see Voluntary Transparency Notice of 23/03/2021 for details of option agreement and ground lease

<https://www.find-tender.service.gov.uk/Notice/003619-2021>

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

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## 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 procurement falls outside the scope of application of the regulations

Explanation:

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 2016.

The Ground Lease can only be drawn down by Noviniti when there is an acceptable planning permission secured. As the planning application is an agreed document under the option agreement (and which will also define the permitted alterations under the Licence for Alterations) the Trust has had input in determining the details of the Development to be delivered on the site. The Ground Lease is subject to break clauses in favour of PHUT after 2 years (to enable PHUT to recover the site if the Development is not commenced) and again at 30th anniversary of practical completion of the Development.

On execution of the Ground Lease Noviniti is not obliged to undertake the Development. Once Noviniti has served notice in electing to carry out the Development then this will engage enforceable obligations for Noviniti to carry out and complete the development for PHUT under the terms of the tripartite Agreement for Lease and also the Licence for Alterations granted by PHUT to Noviniti.

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 Development.

Under a Deed of Covenant between PHUT and Engie, Engie have obligations to open the car park for 24 hours per day every day for each year of the contractual term; apply and collect tariffs and enforcement charges; and apply the car parking policy specified by PHUT. PHUT will secure an annual income relating to the amount by which the rental receipts from the car park operator exceed the total of rental payments to Noviniti under the terms of the underlease, Engie's operator amount (covering costs and an operator margin) and Engie's gainshare amount. If there is a shortfall in the annual income collected to meet yearly rent due from Engie to Noviniti then PHUT would pay Engie an amount equal to the shortfall value. The contractual term is co-terminus with the 18 year

underlease from Noviniti to Engie.

PHUT considers that if the Deed of Covenant is a services concession contract to operate a car park then its estimated value to Engie over the contractual term would be below the CCR threshold and therefore the CCR would not apply to the Deed.

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

The procurement is covered by the Government Procurement Agreement: No

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### **Section V. Award of concession**

A concession/lot is awarded: Yes

#### **V.2) Award of concession**

##### **V.2.1) Date of concession award decision**

24 September 2021

##### **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 6 Ltd

The Stables, Churchfield Farm, Harley Way, Oundle

Peterborough

PE8 5AU

Email

[jonathan.houlston@noviniti.co.uk](mailto:jonathan.houlston@noviniti.co.uk)

Country

United Kingdom

NUTS code

- UK - United Kingdom

The concessionaire is an SME

No

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

Total value of the concession/lot: £13,560,000

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## **Section VI. Complementary information**

### **VI.3) Additional information**

The estimated value in II.1.7 and V.2.4 represents rental to Noviniti (with an estimated value of between £11.3m to £13.5m (subject to RPI under the terms of lease arrangements)) and operator revenue under the Deed of circa £394K (subject to RPI under the terms of the Deed and after deduction of between circa £7m to £8m rental obligations to Noviniti)). The operator revenue represents the cost to the operator of running (but not maintaining) the car park and of accounting to and paying across to the Trust all car parking revenue which exceeds the rental obligations to Noviniti and the operator revenue.

### **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).