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Award

Forge Island Redevelopment

Rotherham Metropolitan Borough Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2022/S 000-026834

Procurement identifier (OCID): ocids-h6vhtk-036b58

Published 26 September 2022, 12:01pm

Section I: Contracting authority/entity

I.1) Name and addresses

Rotherham Metropolitan Borough Council

Riverside House, Main Street

ROTHERHAM

S60 1AE

Contact

Karen Middlebrook

Email

karen.middlebrook@rotherham.gov.uk

Telephone

+44 1709334755

Country

United Kingdom

Region code

UKE31 - Barnsley, Doncaster and Rotherham

Justification for not providing organisation identifier

Not on any register

Internet address(es)

Main address

www.rotherham.gov.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

Forge Island Redevelopment

Reference number

22-173

II.1.2) Main CPV code

- 45210000 - Building construction work

II.1.3) Type of contract

Works

II.1.4) Short description

Rotherham Metropolitan Borough Council (Council) intends to enter into further agreements with its development partner, Muse Developments Limited (Developer) in respect of the regeneration of Forge Island, Rotherham through the development of a new anchor leisure development.

This project forms a key part of the Council's town centre regeneration masterplan.

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: £46,805,664

II.2) Description

II.2.2) Additional CPV code(s)

- 45100000 - Site preparation work
- 45212100 - Construction work of leisure facilities
- 45212150 - Cinema construction work
- 45212170 - Entertainment building construction work
- 45212171 - Entertainment centre construction work
- 45212400 - Accommodation and restaurant buildings
- 45212410 - Construction work for lodging buildings
- 45212411 - Hotel construction work
- 45212420 - Construction work for restaurants and similar facilities
- 45212421 - Restaurant construction work
- 45213100 - Construction work for commercial buildings
- 45213312 - Car park building construction work
- 45213313 - Service-area building construction work
- 45300000 - Building installation work

- 45400000 - Building completion work
- 45500000 - Hire of construction and civil engineering machinery and equipment with operator

II.2.3) Place of performance

NUTS codes

- UKE31 - Barnsley, Doncaster and Rotherham

Main site or place of performance

Forge Island, Rotherham

II.2.4) Description of the procurement

The Council intends to enter into further contractual arrangements with its Developer to take the Forge Island development opportunity forward and realise the Council's aspirations for the site, within the context of challenging market and financing conditions.

II.2.11) Information about options

Options: No

II.2.14) Additional information

For transparency, the total value of this procurement stated at II.1.7 (£46,805,664) is made up of 2 contract sums as follows. £3,012,012 is the cost of the enabling contract, with £43,793,652 making up the remaining costs from the total value.

The total construction cost is £33,726,000. The total development cost of £46,805,664 includes pre-construction costs, design marketing, professional fees, letting costs, tenant incentives and development management fees.

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:
 - protection of exclusive rights, including intellectual property rights
- Extreme urgency brought about by events unforeseeable for the contracting authority

Explanation:

In 2018, following a competition to secure best value, Muse Developments Limited (Muse) was selected as the development partner to deliver the regeneration of Forge Island, Rotherham.

The arrangement was not considered to constitute a public works contract for the purposes of the Public Contracts Regulations 2015. The project envisaged that Muse would secure external funding but allowed for alternative options, including for the Council to partially or fully fund the development to be considered.

Due to unforeseen market conditions, particularly shifts in the gilt market, the external funding available to Muse for the delivery of this project has significantly reduced. The Council was notified of this issue on the 13 September 2022.

Against this backdrop, the Council intends to enter into a funding agreement with Muse to fund and retain the project and will take market standard security relating to this funding, including an obligation on Muse to develop in accordance with an agreed specification.

The Council considers that the project is strictly necessary as a key part of the Rotherham Town Centre Masterplan and that acting as funder is the only reasonable option to secure delivery of the project (there being no alternative funding options available within a reasonable timescale or within a cost that would make the scheme viable) and considers that this proposal will secure best value for the Council.

Maintaining the current programme is essential to enable satisfaction of existing contractual obligations with tenants. There is an imperative to act urgently for the following reasons:

- The scheme is anchored by a cinema, which has a date for satisfying conditionality of 31 December 2022. The scheme will no longer be viable if the cinema agreement falls away, setting delivery back likely in excess of 2-3 years and jeopardising the entire delivery of the scheme. Recent developments in the cinema market indicate that identifying a replacement would be very challenging.
- Construction costs for the project is currently tendered and fixed for a very limited period. Re-tendering of the construction works will add substantial additional inflationary cost and risk, threatening the viability of the project.

Muse is in an exclusive position as it has developed designs, fully tendered and costed the scheme and has secured pre-lets with various occupiers meaning that competition would be absent for technical reasons. These designs and arrangements with occupiers, which are dependent on the agreement with the cinema proceeding, are exclusive rights that require protection.

Given the complex nature of the project, and the extreme urgency described above, the Council does not consider that there is sufficient time to conduct a new procurement procedure. The Council has considered an accelerated procurement, concluding that it would be pointless as it would not allow bidders the opportunity to assemble a meaningful costed proposal or to secure deliverable agreements with end users.

The Council therefore considers that it is permitted to utilise the negotiated procedure without prior publication on the basis of exclusive rights as a result of competition being absent for technical reasons (as provided for in Regulation 32(2)(b)(ii)) and, or in the alternative, on the basis of urgency (as provided for in Regulation 32(2)(c)).

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

Contract No

22-173

Title

Forge Island Redevelopment

A contract/lot is awarded: Yes

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract

26 September 2022

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

Muse Developments Limited

Kent House, 14-17 Market Place

London

W1W 8AJ

Country

United Kingdom

NUTS code

- UKI - London

Companies House

02717800

Internet address

www.musedevelopments.com

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: £46,805,664

Total value of the contract/lot/concession: £46,805,664

V.2.5) Information about subcontracting

The contract/lot/concession is likely to be subcontracted

Value or proportion likely to be subcontracted to third parties

Value excluding VAT: £33,726,000

Short description of the part of the contract to be subcontracted

The scheme comprises the design and development of a town centre regeneration scheme. The Developer will deliver the construction element of the scheme through a main contractor who will further subcontract with the supply chain.

Section VI. Complementary information

VI.3) Additional information

It is important to note that at the point of publication of this VEAT, the Council has not formally awarded or entered into the Contract with Muse Developments Ltd, but is setting out its intentions to do so.

VI.4) Procedures for review

VI.4.1) Review body

The High Court of Justice

London

Country

United Kingdom

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures

The Council will incorporate a minimum 10 calendar day standstill period from the publication of this VEAT notice before formally entering into Contract with Muse Developments Ltd. The Public Contracts Regulations 2015 (as amended) provide for aggrieved parties to take legal action as a result of a breach of the rules. Any such action must be brought within the applicable limitation periods. Where a contract has not been entered into, the Court may order the setting aside of the award decision or order the Contracting Authority to amend any document and may award damages. If the Contract has been entered into, the Court may, depending on the circumstances, award damages, make a declaration of ineffectiveness, order the Contracting Authority to pay a fine, and/or order that the duration of the Contract be shortened. The purpose of the standstill period referred to above is to allow the parties to apply to the Courts to set aside the award decision before the contract is entered into.