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Award

## **EHC 0718 Procurement of a Developer Partner for Old River Lane Bishop's Stortford**

East Hertfordshire District Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2024/S 000-029866

Procurement identifier (OCID): ocds-h6vhtk-049beb

Published 18 September 2024, 2:53pm

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

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

East Hertfordshire District Council

Wallfields

Hertford

SG138EQ

#### **Email**

[Procurement@eastherts.gov.uk](mailto:Procurement@eastherts.gov.uk)

#### **Country**

United Kingdom

#### **Region code**

UKH23 - Hertfordshire

#### **Justification for not providing organisation identifier**

Not on any register

**Internet address(es)**

Main address

[www.eastherts.gov.uk](http://www.eastherts.gov.uk)

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

Regional or local authority

**I.5) Main activity**

General public services

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## **Section II: Object**

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

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

EHC 0718 Procurement of a Developer Partner for Old River Lane Bishop's Stortford

Reference number

EHC012/0122/2018

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

- 45000000 - Construction work

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

Works

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

East Hertfordshire District Council ("the Council") intends to enter into a development agreement ("the Agreement") with Cityheart Limited ("Cityheart"). The Agreement will relate to a proposed development of an area of land in Bishop's Stortford, in the Council's area, by way of a town centre regeneration scheme.

The Agreement may be a public works contract or works concession within the meaning of the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016. Cityheart was selected as the preferred bidder to be the developer because it submitted the most highly evaluated tender in a procurement advertised by an OJEU notice dated 28 July 2018 and conducted using the competitive dialogue procedure ("the Procurement").

As further described below, there have been changes to the development proposal since Cityheart's final tender was submitted in January 2019. The Council's position is that the changes are not such as to take the Agreement as now contemplated outside the scope of what was originally advertised, and accordingly that this is not a case in which the Council is required to publish a further contract notice before entering into the Agreement.

#### **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: £65,000,000

## **II.2) Description**

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

- 45000000 - Construction work
- 70110000 - Development services of real estate
- 71248000 - Supervision of project and documentation

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

NUTS codes

- UKH23 - Hertfordshire

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

The operative provisions of the Agreement will be subject to certain preconditions. Once those conditions are satisfied, it will require Cityheart to procure the commencement, carrying out and completion of the works constituting the development, namely the construction of proposed buildings and ancillary space to support and develop a high quality residential and cultural led mixed use scheme, as more particularly described in a Masterplan annexed to the Agreement. The development will include construction of public realm works on identified land in accordance with the Council's specifications, and the installation of utility services into that area. The public realm will take the form of a new public square (separately funded by the Council as the arts centre contemplated in the original development proposal would have been), with the potential for that space to be developed as an arts centre in the future.

The Masterplan may be varied by Cityheart within a specified period following the conclusion of the Agreement if the Council approves the variations, which approval is not unreasonably to be withheld or delayed. The development must also be undertaken in accordance with the planning permission which will have been granted before the Agreement becomes unconditional, and with other approved plans, specifications etc.

The Masterplan as annexed to the intended Agreement is indicative in nature and is expressed to be subject to public consultation, planning consent and design development. It is based upon a 145 dwelling residential scheme, including varying sizes of dwelling, and approximately 2750 square metres of office space, with further workspaces and mixed uses at ground floor level, as well as ancillary uses and undercroft parking spaces. The intended Agreement also annexes a document referred to as the Appraisal, whose contractual function pertains to assessment of whether the financial viability condition in the Agreement has been fulfilled, but which represents Cityheart's current estimate of

what the finalised Masterplan may be likely to specify. The Appraisal is based on 116 properties of varying sizes for private sale, 29 properties of varying sizes for use as affordable housing, a total floor area for the 145 residential properties of approximately 8855 square metres, 70 car parking spaces, 4 retail units totalling approximately 1610 square metres, and office space of approximately 1765 square metres.

An initial fee is payable to the Council by Cityheart when the preconditions are satisfied. Upon practical completion of the development, the Council will grant a 200 year lease of the developed site (not including the public realm area) to Cityheart or an approved funder, and Cityheart will pay to the Council a purchase price representing the market value of the developed land net of the development costs and a 10% profit allowance on those costs. On any subsequent disposal of the long lease, the Council will have a potential entitlement to overage.

In relation to the commercial (as opposed to residential) elements of the scheme, Cityheart and any future head or sub-head lessees will be obliged to comply with a letting strategy appended to the Agreement (which will be subject to annual review and amendment by agreement for 5 years following practical completion, with the Council entitled to make representations about further revisions for another 5 years). The letting strategy is designed to secure a diverse range of uses consistent with a high quality town centre development.

#### **II.2.11) Information about options**

Options: No

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

The Council's intention at the time of the Procurement, and the selection of Cityheart as preferred bidder, was to enter into a development agreement in the course of 2019. Conclusion of the Agreement has been delayed for a number of reasons including: disputes and judicial review litigation in relation to planning consent for facilities intended to meet parking needs displaced from the development site; the need to redesign site access because highway authority consent for the original proposals was not forthcoming; negotiations with landowners and other issues in relation to site assembly; and a need to carry out de-culverting works. The access and land assembly issues have also led to reconfiguration of the proposed development on a development site of reduced size, and to linked changes in the design and massing of buildings.

Additionally, it was the original intention that the developer would, as part of the development, construct an arts and entertainment centre which would be separately and directly funded by the Council. Severe escalation in anticipated construction costs since the Procurement, in the context of the budgetary constraints facing the Council, has meant that it is no longer feasible to proceed with the arts centre as part of the

development pursuant to the Agreement, although the public square which is now to be constructed will provide the space and the utility connections for the construction of such a centre in the future.

There has also been a modest increase to the number of residential units proposed for the development, as well as minor changes to the precise amount of retail, office and workshop space proposed.

However, the Agreement will remain based upon essentially the same commercial structure as Cityheart's tender in the Procurement, namely: the transfer of land from the Council to Cityheart when the Agreement becomes unconditional; the payment by Cityheart of a guaranteed capital sum in return for that transfer (increased from £2.07 million to £2.77 million as compared with the original tender); indemnity of the Council by Cityheart in relation to the costs of acquiring third party land; and the Council taking a 50% share in profits of the development after Cityheart has recouped the development costs and taken 10% of those costs as profit. Further, the net developable area (i.e. the footprint of the proposed buildings, apart from the area originally intended for the arts centre and now for the public square) has not changed substantially. The total floor area of the proposed development has materially increased as compared with Cityheart's original tender, and so has the gross development value (which is the value stated in this notice), but that value remains within the range stated in the notice which advertised the Procurement. In its tender Cityheart proposed a fee of 3.5% of the arts centre construction costs for its work in managing the construction of that element; the proposed fee in relation to the public square and associated works is now 5% of the construction costs, but that will now be applied to a much lesser sum (a maximum of £1.5 million, as opposed to the original arts centre budget in excess of £20 million).

The essential nature of the development will remain consistent with the basis upon which the Procurement was originally advertised, namely a mixed use development as to the composition and design of which the Council did not impose prescriptive requirements. It will remain consistent with the objectives originally identified when the Procurement was advertised, save that for the financial reasons identified above the Council will no longer require the construction of a separately funded arts centre.

The Council's position is accordingly that the changes to the scheme as between the point of tender and the Agreement are ones which are justified to deal with external factors and unforeseen changes in circumstances, and which are not such as to require a new competition.

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## **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:

Please see explanation in section II

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

The procurement is covered by the Government Procurement Agreement: Yes

### **IV.2) Administrative information**

#### **IV.2.1) Previous publication concerning this procedure**

Notice number: [2018/S 144-328515](#)

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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**

18 September 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**

Cityheart Ltd

2 Hilliard's Court, Chester Business Park

Chester

CH4 9PX

Country

United Kingdom

NUTS code

- UKD6 - Cheshire

Companies House

5609443

The contractor/concessionaire is an SME

Yes

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

Initial estimated total value of the contract/lot/concession: £200,000,000

Total value of the contract/lot/concession: £65,000,000

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## **Section VI. Complementary information**

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

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

High court

London

Country

United Kingdom