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Award

Union Place, Worthing - commercial joint venture agreement including conditional transfer of land to enable residential-led, mixed-use development as a two-phase scheme.

WORTHING BOROUGH COUNCIL

F15: Voluntary ex ante transparency notice

Notice identifier: 2023/S 000-030519

Procurement identifier (OCID): ocds-h6vhtk-040c79

Published 16 October 2023, 5:00pm

Section I: Contracting authority/entity

I.1) Name and addresses

WORTHING BOROUGH COUNCIL

Portland House,44 Richmond Road

WORTHING

BN111HS

Contact

Procurement Team

Email

procurement@adur-worthing.gov.uk

Telephone

+44 1903221454

Country

United Kingdom

Region code

UKJ27 - West Sussex (South West)

Justification for not providing organisation identifier

Not on any register

Internet address(es)

Main address

<https://www.adur-worthing.gov.uk/>

I.4) Type of the contracting authority

Regional or local authority

I.5) Main activity

Housing and community amenities

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Union Place, Worthing - commercial joint venture agreement including conditional transfer of land to enable residential-led, mixed-use development as a two-phase scheme.

II.1.2) Main CPV code

- 70111000 - Development of residential real estate

II.1.3) Type of contract

Services

II.1.4) Short description

The Contracting Authority (CA) proposes to enter into a limited liability partnership (or other similar joint venture) (JVA) agreement with Roffey Homes Limited (JVPartner), under which both parties will establish and become members of a limited liability partnership (LLP). The Contracting Authority proposes to transfer land into the LLP. Subject to satisfactory planning permission for residential-led, mixed use development having been obtained, and to satisfying certain conditions precedent, and if JVPartner carries out the development, the LLP will dispose of/sell the developed land, and distribute the resulting sales proceeds in accordance with the LLP members' 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: £52,000,000

II.2) Description

II.2.2) Additional CPV code(s)

- 45000000 - Construction work
- 70120000 - Buying and selling of real estate

II.2.3) Place of performance

NUTS codes

- UKK - South West (England)

II.2.4) Description of the procurement

The JVA will regulate proposed joint ownership of the LLP by CA and Roffey (JVPartner). JVPartner is seeking planning permission for a residential led mixed-use, phased development. CA-owned land at Union Place, Worthing, will transfer to LLP, which (potentially through CA) will also acquire third party Union Place land (CA and third party land together "the Site"). JVPartner may contribute capital, and potentially debt funding, to LLP (CA might also do this), which may also raise third party debt funding. JVPartner doesn't have to do works for/provide services to CA or LLP. In some circumstances if JVPartner doesn't satisfy conditions precedent to enable development, or doesn't develop in a timeframe, CA can acquire JVPartner's share in the LLP, on agreed terms. JVA will provide, if JVPartner develops the Site, for the Site properties to be sold/disposed of, receipts being distributed between CA and JVPartner.

II.2.11) Information about options

Options: No

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:

CA proposes entering into a joint venture LLP agreement (JVA) with Roffey Homes Limited ('JVP'), regulating proposed joint ownership by CA and JVP of a limited liability partnership (LLP). CA will transfer its land at Union Place, Worthing to LLP, which will also acquire third party-owned Union Place land (CA and third party-owned land together being "the Site"). The CA land will be transferred in Phases; Phase 1 at JVA outset or after planning consent obtained, Phase 2 later, after satisfying conditions precedent ("CP's") (planning consent for development having first been obtained). JVP contributes capital, and potentially debt funding, to LLP (CA might also do this). LLP will raise third party debt funding. It is expected that (so far as not already obtained) JVP will apply for

planning permission for a residential mixed-use, phased Site development. CA will use reasonable endeavours to get vacant possession of parts of Site, as needed for development. JVA will provide, if JVP develops the Site, for Site properties to be sold/disposed of, receipts distributed between CA and JVP.

If satisfactory planning consent has not previously been/is not granted/CP's aren't satisfied, or either party decides not to proceed with the development, the CA or the JVP may terminate JVA, CA bearing part of JVP's abortive costs, but acquiring JVP's LLP share. If JVA is terminated after satisfactory planning permission is obtained, CA may (itself, or through LLP/a third party) proceed with development, subject to offering JVP a first refusal right on previous JVA terms. If CA and JVP are "deadlocked", ie. can't agree certain matters, either party can buy the other out on agreed terms.

On JVP's insolvency, or if development isn't carried out in a certain way/by milestones, CA can terminate JVA, with rights to acquire JVP's share of LLP on an agreed basis, and to continue with development or sell, subject to any senior debt funder of LLP exercising step-in rights.

JVP will enter into a building contract with its sister company (building contractor), under which the building contractor contracts with JVP to develop the Site at LLP's cost. However, neither JVP nor building contractor have obligations to CA or LLP to carry out development/other works, or to provide any services (unless JVP carries out the development).

For these reasons, CA considers that JVA does not constitute a public contract under the Public Contracts Regulations 2015, but is an exempt land transaction.

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

The procurement is covered by the Government Procurement Agreement: No

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

14 March 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

Roffey Homes Limited

Worthing

Bn11 1qr

Country

United Kingdom

NUTS code

- UKK - South West (England)

Companies House

00657938

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: £52,000,000

Total value of the contract/lot/concession: £52,000,000

V.2.5) Information about subcontracting

The contract/lot/concession is likely to be subcontracted

Short description of the part of the contract to be subcontracted

JVP anticipates entering into a building contract with its sister company, Westbrooke Developments Limited, (contractor), under which the contractor contracts with JVP to develop the Site at LLP's cost. However, neither the JV Partner nor the contractor are obliged to the contracting authority or LLP to carry out development/ or to provide any services (unless JVP does the development).

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

Royal Courts of Justice

London

XC2A 2LL

Telephone

+44 2079476000

Country

United Kingdom

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures

In accordance with Regulations 88 - 104 (Applications to the Court) of the Public Contracts Regulations 2015 (as amended). Proceedings under the Public Contracts Regulations 2015 are time limited, and any such proceedings must be brought in the High Court of England and Wales.