

This is a published notice on the Find a Tender service: <https://www.find-tender.service.gov.uk/Notice/032943-2024>

Award

NKDC Leisure Management Services

North Kesteven District Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2024/S 000-032943

Procurement identifier (OCID): ocds-h6vhtk-04abb2

Published 14 October 2024, 11:35am

Section I: Contracting authority/entity

I.1) Name and addresses

North Kesteven District Council

District Council Offices, Kesteven Street

Sleaford

NG34 7EF

Contact

Mr Tony Mabbott

Email

tony_mabbott@n-kesteven.gov.uk

Telephone

+44 1529414155

Country

United Kingdom

Region code

UKF3 - Lincolnshire

Internet address(es)

Main address

<https://www.n-kesteven.gov.uk/>

Buyer's address

<https://www.n-kesteven.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

NKDC Leisure Management Services

Reference number

DN251222

II.1.2) Main CPV code

- 92000000 - Recreational, cultural and sporting services

II.1.3) Type of contract

Services

II.1.4) Short description

Lot 1 - Sports and Physical Activity Services

Lot 2 - Natural World Centre - Whisby Nature Park

Lot 3 - Countryside Services

II.1.6) Information about lots

This contract is divided into lots: Yes

II.1.7) Total value of the procurement (excluding VAT)

Value excluding VAT: £1,376,734

II.2) Description

II.2.1) Title

Lot No

1

II.2.2) Additional CPV code(s)

- 92000000 - Recreational, cultural and sporting services

II.2.3) Place of performance

NUTS codes

- UKF3 - Lincolnshire

Main site or place of performance

In North Kesteven District.

II.2.4) Description of the procurement

Sports and Physical Activity Services via agency 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

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Negotiated without a prior call for competition

- Extreme urgency brought about by events unforeseeable for the contracting authority

Explanation:

The manner of exercising the powers

4.3 There are restrictions on these powers. Section 2(3) of the LA 2011 prevents a local authority from using the general power to make or alter:

4.3.1 arrangements for the discharge of a local authority's functions by committees,

joint committees, another authority, or an officer under Part 6 of the Local Government Act 1972;

4.3.2 arrangements for local authority governance in England under Part 1A of the Local Government Act 2000 (as inserted by the LA 2011); or

4.3.3 any other contracting-out arrangements, or other arrangements that authorise a person to exercise a function of a local authority.

4.4 The effect of these provisions, particularly the provision described at paragraph 4.3.3, is that

NKDC cannot enter into a contract which divests the authority of its statutory powers or obliges the authority not to exercise its powers. This means that the varied contract establishing the Agency Model should not be capable of being interpreted as a delegation of power. It must be a genuine agency relationship.

THL.164904104.3 6 LPS.108654.00001

4.5 An agent is a tool through which the principal acts, without any loss of control or direction.

A delegate exercises a degree of discretion in performing the functions of the delegator on its behalf.

4.6 Provided that the amended contract establishes a genuine agency model, our view is that

NKDC would not be acting outside of its vires by engaging GLL as its agent to provide leisure

services. There is supporting case law for this point, which sets out that a genuine agency arrangement will not be a delegation of power:

"The general principle is that when a statute gives someone the right to invoke some legal

procedure by giving a notice or taking some other formal step, he may either do so in person

or authorise someone else to do it on his behalf." (General Legal Council ex parte Whitter v

Frankson [2006] UKPC 42 (per Lord Hoffmann at [4]).)

4.7 It will be vital that the amended contract not only refers to GLL as NKDC's agent, but also

ensures that this is reflected in the substance of GLL's obligations, i.e. the degree of control

that NKDC retains and the scope of discretion that GLL is given to deliver the services. We

would be happy to assist with this point.

4.8 Provided that a delegation of power is avoided, our view is that NKDC has the power to

enter into the Agency Model.

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

Contract No

DN251222

Lot No

1

A contract/lot is awarded: Yes

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract

14 October 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

Greenwich Leisure Ltd

Middlegate House, The Royal Arsenal, Woolwich

London

SE18 6SX

Email

justin.jardin@gll.org

Country

United Kingdom

NUTS code

- UKF3 - Lincolnshire

The contractor/concessionaire is an SME

No

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

Total value of the contract/lot/concession: £1,376,734

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

North Kesteven District Council

Sleaford

Country

United Kingdom