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Award

## **Retail and Elective Hub Development**

South Warwickshire NHS Foundation Trust

F15: Voluntary ex ante transparency notice

Notice identifier: 2023/S 000-033015

Procurement identifier (OCID): ocds-h6vhtk-0416b1

Published 8 November 2023, 11:28am

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

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

South Warwickshire NHS Foundation Trust

Lakin Road

Warwick

CV34 5BW

#### **Contact**

Gaynor McGarry

#### **Email**

[Gaynor.McGarry@swft.nhs.uk](mailto:Gaynor.McGarry@swft.nhs.uk)

#### **Country**

United Kingdom

#### **Region code**

UKG13 - Warwickshire

**Internet address(es)**

Main address

<https://www.swft.nhs.uk/>

Buyer's address

<https://www.swft.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**

Retail and Elective Hub Development

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

- 45000000 - Construction work

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

Works

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

South Warwickshire University NHS Foundation Trust ("SWFT") intends to enter into contracts with (1) Noviniti Dev Co 2 Limited ("Noviniti") (2) Compass Contract Services (UK) Limited ("Compass") and (3) Compass Group UK & Ireland Limited ("Guarantor") as guarantor of Compass' obligations in relation to a single storey retail and administrative use development ("GFD") at Warwick Hospital ("the Hospital"). The documents to be executed by SWFT comprise a Principal Agreement for Underleases ("S2AFL") and a Licence for Alterations ("LTA") to be granted to Noviniti to permit Noviniti to undertake the GFD . The completed building will be leased to Compass for retail purposes with the remainder of the ground floor (together with the building structure) being underlet to SWFT. The contractual arrangements are structured as a land transaction exempt from the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016.

#### **II.1.6) Information about lots**

This contract is divided into lots: No

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

Lowest offer: £6,000,000 / Highest offer: £17,000,000 taken into consideration

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

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

- 45213100 - Construction work for commercial buildings

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

NUTS codes

- UKG3 - West Midlands

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

SWFT intends to enter into the S2AFL with Noviniti, Compass and the Guarantor and the LTA with Noviniti. Under the S2AFL and the LTA, Noviniti has the right to undertake the GFD at the Hospital. Following completion of the GFD, Noviniti will grant two leases ("the Operator Leases") to Compass (guaranteed by the Guarantor). Compass will grant three sub-underleases of areas of the GFD to SWFT. Those sub-leases will comprise two areas for the occupation and use of SWFT and one lease of the common parts and structure of the GFD, leaving Compass in occupation of the retail area of the GFD. SWFT will be obliged to accept leases of the GFD directly from Noviniti if Compass defaults. SWFT has structured the contractual arrangements as a land transaction exempt from the Public Contracts Regulations 2015 ("PCR") and the Concession Contracts Regulations 2016 ("CCR").

#### **II.2.5) Award criteria**

Price

#### **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

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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:

Following on from the Agreement for Lease dated 24 March 2023 entered into between SWFT and Noviniti (S1AFL) relating to the grant to Noviniti of a lease of the site of the GFD for a term of 45 years (the Noviniti Lease), SWFT proposes to enter into the S2AFL and the LTA. Completion of the Noviniti Lease took place on 6 November 2023. The S1AFL was the subject of a VEAT Notice published on 19 January 2023. Under the S2AFL Noviniti is not obliged to undertake the GFD but if it does not, SWFT may terminate the Noviniti Lease. The Noviniti Lease contains a break right in favour of SWFT if Noviniti does not commence the GFD by an agreed deadline.

If Noviniti completes the construction of the GFD, Noviniti may call for Compass and the Guarantor to accept the two Operator Leases which in aggregate comprise the whole of the GFD for a term of 15 years and for SWFT to accept Reversionary Leases of those areas for a further term of 25 years.

There is provision for SWFT to accept direct leases from Noviniti of the GFD in place of the two Operator Leases if Compass defaults and also for SWFT to accept Overriding Leases to become the direct tenant of Noviniti if Compass defaults during the term of the Operator Leases.

Following completion of the Operator Leases, Compass will grant SWFT 3 sub-leases of areas of the GFD being the whole of the GFD other than the retail areas to be occupied and operated by Compass (and to include the common parts and structure of the GFD).

At completion, Noviniti and SWFT will execute a deed of variation surrendering the airspace above the completed GFD. That will permit SWFT to undertake a 2 storey development of hospital wards and administration space to be sited directly above the GFD ("UFD"). SWFT is not required to undertake the UFD but the documents enable SWFT to do so.

At completion, SWFT and Compass may enter into a Deed of Covenant under which turnover rent is payable to the Trust and the Trust commits to support the rent payable by Compass in certain instances.

Noviniti is under no obligation to serve notice to elect to carry out the GFD. No public works contract arises due to the lack of an enforceable obligation.

Following completion of the Noviniti Lease Noviniti has the exclusive right to undertake the GFD until such time as the SWFT break right under the Noviniti Lease becomes capable of exercise.

SWFT considers that the arrangements fall within the land exemption under Regulation 10(1)(a) PCR and/or regulation 10(11)(a) CCR.

#### **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 contract/concession**

A contract/lot is awarded: Yes

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

#### **V.2.1) Date of conclusion of the contract**

3 November 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**

Noviniti Dev Co 2

The Stables Churchfield Farm Harley Way Oundel

Peterborough

PE8 5 AU

Country

United Kingdom

NUTS code

- UK - United Kingdom

The contractor/concessionaire is an SME

No

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

Lowest offer: £6,000,000 / Highest offer: £17,000,000 taken into consideration

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## **Section VI. Complementary information**

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

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

Royal Courts of Justice

London

London

London

Country

United Kingdom

Internet address

<https://www.justice.gov.uk>