

Voluntary ex ante transparency notice

DRAFT 26 AUG 2020

Directive 2014/23/EC []

Directive 2014/24/EU []

Directive 2014/25/EU []

Directive 2009/81/EC []

This notice aims at providing voluntary prior transparency as referred to in Article 2d(4) of Directives 89/665/EEC and 92/13/EEC on remedies, and Article 60(4) of Directive 2009/81/EC

SECTION I: CONTRACTING AUTHORITY

I.1) Name and addresses¹

Official name: London Borough of Havering		National registration number (if known):	
Postal address: Town Hall, Main Road			
Town: Romford	NUTS code: UKI21	Postal code: RM1 3BD	Country: United Kingdom
Contact points(s): [<input type="checkbox"/>]		Telephone:	
Email: [<input type="checkbox"/>]		Fax:	
Internet Address(es) :(if applicable) Main address: (URL) www.havering.gov.uk Address of the buyer profile (URL):			

I.4) Type of the contracting authority (in the case of a notice published by a contracting authority)

<input type="checkbox"/> Ministry or any other national or federal authority, including their regional or local subdivisions <input type="checkbox"/> National or federal agency/office <input checked="" type="checkbox"/> Regional or local authority <input type="checkbox"/> Regional or local agency/office <input type="checkbox"/> Body governed by public law <input type="checkbox"/> European institution/agency or international organisation <input type="checkbox"/> Other type:

I.5) Main activity (in the case of a notice published by a contracting authority)

<input checked="" type="checkbox"/> General public services <input type="checkbox"/> Defence <input type="checkbox"/> Public order and safety <input type="checkbox"/> Environment <input type="checkbox"/> Economic and financial affairs <input type="checkbox"/> Health <input type="checkbox"/> Housing and community amenities <input type="checkbox"/> Social protection <input type="checkbox"/> Recreation, culture and religion <input type="checkbox"/> Education <input type="checkbox"/> Other activity:
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I.6) Main activity (in the case of a notice published by a contracting entity)

¹ Use as many times as necessary

- Production, transport and distribution of gas and heat
- Electricity
- Extraction of gas and oil
- Exploration and extraction of coal and other solid fuels
- Water
- Postal services
- Railway services
- Urban railway, tramway, trolleybus or bus services
- Port-related activities
- Airport-related activities
- Other activity:

Section II: Object

II.1) Scope of the procurement

II.1.1) Title: Havering Estate Regeneration Partner – Property/Asset JV Company	Reference number: <i>(if applicable)</i>
II.1.2) Main CPV code: 70111000	Supplementary CPV code: [] [] [] [] []
II.1.3) Type of contract (<input checked="" type="checkbox"/>) Works (<input type="checkbox"/>) Supplies (<input type="checkbox"/>) Services	
II.1.4) Short description: <i>(1000 characters with spaces)</i>	
<p>LB of Havering (“the Council”) entered into a contract for up to 30 years for a partner to form a long-term corporate joint venture (“JV”) property vehicle to secure investment and expertise to deliver Havering’s housing led regeneration strategy, entered into 27 April 2018 (“the Contract”). The opportunity was advertised in OJEU (2017/S 094-185114) and procured under the Concession Contracts Regulations 2016. Further details of the original Contract are in that OJEU Notice. The Contract includes a Members’ Agreement (MA) and Development Agreement (DA) with the JV LLP and other ancillary documents.</p> <p>The Council intends to make additional funding available, refresh the JV’s business plan and modify the DA.</p> <p>Further information can be found in the Council’s supplement document, at:</p> <p>The information in the supplement document should be read in conjunction with this notice and both documents should be considered as a whole.</p>	
II.1.6) Information about lots	
This contract is divided into lots yes <input type="checkbox"/> no <input checked="" type="checkbox"/>	
II.1.7) Total value of the procurement (excluding VAT)	
Value: 1 177 000 000 GBP	
<i>(Please give the total value of the procurement. For information about individual contracts, please use section V)</i>	
or	
Lowest offer: [] / Highest offer: [] taken into consideration	
Currency: GBP	
(for framework agreements – total maximum value for their entire duration)	
(for contracts based on framework agreements, if required – value of contract(s) not included in previous contract award notices)	

II.2) Description

II.2.1) Title: Havering Estate Regeneration Partner – Property/Asset JV Company	Lot No:
II.2.2) Additional CPV code(s)	
Main CPV code: 70111000 Development of residential real estate	
Supplementary CPV code: [][][][]	
 70000000 Real estate services	
 71000000 Architectural, construction, engineering and inspection services	

70110000 Development services of real estate
70111000 Development of residential real estate
70121100 Building sale services
71315300 Building surveying services
71410000 Urban planning services
90712100 Urban environmental development planning
71313400 Environmental impact assessment for construction
71313420 Environmental standards for construction
71200000 Architectural and related services
71222000 Architectural services for outdoor areas
71420000 Landscape architectural services
45112700 Landscaping work
45112710 Landscaping work for green areas
45112711 Landscaping work for parks
71520000 Construction supervision services
71521000 Construction-site supervision services
71500000 Construction-related services
73220000 Development consultancy services
79410000 Business and management consultancy services
79412000 Financial management consultancy services
79418000 Procurement consultancy services
45111000 Demolition, site preparation and clearance work
45211300 Houses construction work
45211340 Multi-dwelling buildings construction work
45211341 Flats construction work
45211350 Multi-functional buildings construction work
45212000 Construction work for buildings relating to leisure, sports, culture, lodging and restaurants
45213112 Shop units construction work
45213100 Construction work for commercial buildings
45213150 Office block construction work
45211360 Urban development construction work
71314200 Energy-management services
71314300 Energy-efficiency consultancy services
65300000 Electricity distribution and related services

45223300 Parking lot construction work
71315200 Building consultancy services
70331000 Residential property services
70332200 Commercial property management services

II.2.3) Place of performance
NUTS code: UKI21 The London Borough of Havering
(please repeat as many times as needed)
(200 characters with spaces)

II.2.4) Description of the procurement:
(nature and quality of works, supplies or services)
(1000 characters with spaces)

Further info is at [\[insert link\]](#). The Council intends to:

1. Make additional £58.3m equity funding available to JV. Also, to refresh JV business plan (BP) to include Council forward funding of £45.4m for phase 1 (in the light of additional 53 affordable housing units & reduction of open market units from 1085 to 934, changes to design and other factors).
2. Refresh JV BP to remove Delta estate.
3. Refresh JV BP to include addition of further sites.
4. Amend DA to bring forward timing of demolition of Waterloo Estate and Council providing additional £7.8m financing in place of debt funding (some changes to be made by variation to the DA and a new supplemental dev agreement with JV).

Continued in VI.3 (Additional Information).

II.2.5) Award criteria

(Directive 2014/24/EU / Directive 2014/25/EU)

- Quality criterion – Name: / Weighting:
 Cost criterion – Name: / Weighting:
 Price – Weighting:

(Directive 2014/23/EU)

- Criterion: (award criteria should be given in descending order of importance)

(Directive 2009/81/EC)

- Lowest price
 The most economically advantageous tender in terms of
Criterion: / Weighting:

II.2.11) Information about options

Options yes no Description of options:

(400 characters with spaces)

II.2.13) Information about European Union funds

The procurement is related to a project and/or programme financed by European Union funds

- yes no

Identification of the project:

II.2.14) Additional information:

(400 characters with spaces)

Est value in II.1.7 and V.2.4 is projected value of proposed modified Contract.

Section IV: Procedure

IV.1) Description

IV.1.1) Type of procedure (please complete Annex D) <input type="checkbox"/> Negotiated procedure without prior publication (in accordance with Article 32 of Directive 2014/24/EU) <input type="checkbox"/> Negotiated procedure without prior call for competition (in accordance with Article 50 of Directive 2014/25/EU) <input type="checkbox"/> Negotiated procedure without publication of a contract notice (in accordance with Article 28 of Directive 2009/81/EC) <input type="checkbox"/> Award of a concession without prior publication of a concession notice (in accordance with Article 31(4) and (5) of Directive 2014/23/EU) <input checked="" type="checkbox"/> Award of a contract without prior publication of a call for competition in the Official Journal of the European Union in the cases listed below (please complete point 2 of the Annex D)
IV.1.3) Information about framework agreement <input type="checkbox"/> The procurement involves the establishment of a framework agreement
IV.1.8) Information about the Government Procurement Agreement (GPA) The procurement is covered by the Government Procurement Agreement <input checked="" type="checkbox"/> yes <input type="checkbox"/> no

IV.2) Administrative information

IV.2.1) Previous publication concerning this procedure (if applicable) Notice number in the OJ S: 2017/S 094-185114
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Section V: Award of contract/concession

Contract No: **Lot No:** (if applicable) **Title:**

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract/concession award decision: (dd/mm/yyyy)			
V.2.2) Information about tenders The contract has been awarded to a group of economic operators <input type="checkbox"/> yes <input checked="" type="checkbox"/> no			
V.2.3) Name and address of the contractor/concessionaire (please repeat as many times as needed)			
Official name: Wates Construction Ltd		National registration number (if applicable):	
Postal address: Wates House, Station Approach			
Town: Leatherhead	NUTS code:	Postal code: KT22 7SW	Country: United Kingdom
E-mail:		Telephone:	
Internet address: (URL) https://www.wates.co.uk/		Fax:	
The contractor/concessionaire will be an SME <input type="checkbox"/> yes <input checked="" type="checkbox"/> no (SME – as defined in Commission Recommendation 2003/361/EC)			
V.2.4) Information on value of the contract/lot/concession (excluding VAT) Initial estimated total value of the contract/lot/concession (if applicable): [800 000 000.00 GBP] Total value of the contract/lot/concession: [1 177 000 000 GBP] or Lowest offer <input type="checkbox"/> / Highest offer <input type="checkbox"/> taken into consideration Currency: GBP for framework agreements – total maximum value for this lot for contracts based on framework agreements, if required – value of contract(s) for this lot not included in previous contract award notices			
V.2.5) Information about subcontracting <input type="checkbox"/> The contract/lot/concession is likely to be subcontracted Value or proportion likely to be subcontracted to third parties (if this information is known) Value excluding VAT: <input type="checkbox"/> Currency: <input type="checkbox"/> <input type="checkbox"/> Proportion: <input type="checkbox"/> % Short description of the part of the contract to be subcontracted: (400 characters with spaces) (Only in the case of a notice covered by Directive 2009/81/EC) <input type="checkbox"/> All or certain subcontracts will be awarded through a competitive procedure (see Title III of Directive 2009/81/EC) <input type="checkbox"/> A share of the contract will be subcontracted through a competitive procedure (see Title III of Directive 2009/81/EC) Minimum percentage: <input type="checkbox"/> / Maximum percentage: <input type="checkbox"/> (The maximum percentage may not exceed 30 % of the value of the contract)			

Section VI: Complementary information
VI.3) Additional information (if applicable):

(1000 characters with spaces)

Continued from **II.2.4 (Description of the procurement)**:

5. Amend DA for Council to purchase all 197 units in Napier House & New Plymouth House development ("NNP"). Refresh JV BP: payment for NNP will now be build contract sum approach (as opposed to fixed price per unit).

6. Amend DA so that development can commence in relation to the three Phase 1 sites (Napier and New Plymouth; Solar, Serena and Sunrise Courts and Waterloo Estates) to allow each site to be drawn down independently for development rather than together when site conditions have been met for all three sites.

Council intends to refresh the BP, modify the DA, enter into funding agreements and a supplemental DA.

VI.4) Procedures for review

VI.4.1) Review body		
Official name: Royal Courts of Justice		
Postal address: Strand, Holborn		
Town: London	Postal code: WC2A 2LL	Country: United Kingdom
Email:	Telephone:	
Internet address: (URL):	Fax:	

VI.4.2) Body responsible for mediation procedures (if applicable)		
Official name:		
Postal address:		
Town:	Postal code:	Country:
Email:	Telephone:	
Internet address: (URL):	Fax:	

VI.4.3) Review procedure
Precise information on deadline(s) for review procedures: <i>(4000 characters with spaces)</i>
In accordance with Regulation 49 - 64 (Applications to the Court) of the Concession Contracts Regulations 2016 ("CCR").
Cont from Annex D4 (expl. for type of procedure) (Section IV.1.1.):
4: OJEU notice contained demolition CPV and DA included demolition obligations. Council considers that bringing forward demolition and £7.8m financing would not impact on Proc Outcome and is needed to expedite delivery and avoid additional costs. A change will be made to DA and a new supplemental DA entered into re. this item alone. The procurement of an alternative contractor would have legal and financial ramifications for Council, would stall the 12 Site Regeneration Programme and would not be a reasonable alternative. The Council therefore further relies on Reg 31(6)(b)(ii).
5: Re. purchase of units & payment for NNP, Council also relies on: Reg 43(1)(c) - both changes are reasonable and proportionate response to COVID (and needed to ensure the dev remains viable in current uncertain housing market). As per PPN01/20, changes are limited. The changes do not alter overall nature nor exceed original value by more than 50%; Reg 43(1)(e) - NNP represents under 6% of expected unit outputs. Re. build contract sum, the Council is accepting the risk of cost overruns, but any change will not

be substantial and surveys provide assurance on this. No impact on Proc Outcome; Reg 43(1)(a) – contract stated price to be paid on Practical Completion but envisaged a change could be made if provided in BP or agreed between parties.

6. The DA links 3 Sites (Napier New Plymouth, Serena Sunrise and Waterloo Phase 1) into Stage 1 and requires that the pre-conditions be satisfied in relation to all 3 sites and that the sites be drawn down together for development. The DA is being varied to allow each of the Stage 1 Sites to be drawn down separately (in an order to be agreed between the parties) rather than all of Stage 1 having to be drawn down together. No impact on Proc Outcome Reg. 43(1)(e) in terms of the requirement to build out all 3 sites remaining in place and it is still proposed that they will be developed in close proximity in programme.

Further information can be found in the Council's supplement document.

VI.4.4) Service from which information about the review procedure may be obtained (if applicable)

Official name:

Postal address:

Town:

Postal code:

Country:

Email:

Telephone:

Internet address:

Fax:

VI.5) Date of dispatch of this notice: (dd/mm/yyyy)

**Annex D1 – General procurement
Justification for the award of the contract without prior publication of a call for competition in the
Official Journal of the European Union**

Directive 2014/24/EU

(please select the relevant option and provide an explanation)

1. Justification for the choice of the negotiated procedure without prior publication of a call for competition in accordance with Article 32 of Directive 2014/24/EU

No tenders or no suitable tenders/requests to participate in response to

open procedure

restricted procedure

The products involved are manufactured purely for the purpose of research, experiment, study or development under the conditions stated in the directive *(for supplies only)*

The works, supplies or services can be provided only by a particular economic operator for the following reason:

- absence of competition for technical reasons
- procurement aiming at the creation or acquisition of a unique work of art or artistic performance
- protection of exclusive rights, including intellectual property rights

Extreme urgency brought about by events unforeseeable for the contracting authority and in accordance with the strict conditions stated in the directive

- Additional deliveries by the original supplier ordered under the strict conditions stated in the directive
- New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the directive
- Service contract to be awarded to the winner or one of winners under the rules of a design contest
- Procurement of supplies quoted and purchased on a commodity market
- Purchase of supplies or services on particularly advantageous terms
 - from a supplier which is definitively winding up its business activities
 - from the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws and regulations

2. Other justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union

The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive: (500 words maximum)/ *(2500 characters with spaces)*

Directive 2014/25/EU

(please select the relevant option and provide an explanation)

1. Justification for the choice of the negotiated procedure without prior publication of a call for competition in accordance with Article 50 of Directive 2014/25/EU

No tenders or no suitable tenders/requests to participate in response to a procedure with prior call for competition

The contract involved is purely for the purpose of research, experiment, study or development under the conditions stated in the directive

The works, supplies or services can be provided only by a particular economic operator for the following reason:

absence of competition for technical reasons

procurement aiming at the creation or acquisition of a unique work of art or artistic performance

protection of exclusive rights, including intellectual property rights

Extreme urgency brought about by events unforeseeable for the contracting entity and in accordance with the strict conditions stated in the directive

Additional deliveries by the original supplier ordered under the strict conditions stated in the directive

New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the directive

Service contract to be awarded to the winner or one of winners under the rules of a design contest

Procurement of supplies quoted and purchased on a commodity market

Purchase of supplies or services on particularly advantageous terms

From a supplier which is definitively winding up its business activities

From the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws and regulations

Bargain purchase taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than market prices

2. Other justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union

The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive: (500 words maximum) / (2500 characters with spaces)

Annex D3 – Defence and security
Justification for the award of the contract without prior publication of a call for competition in the
Official Journal of the European Union
Directive 2009/81/EC

(please select the relevant option and provide an explanation)

1. Justification for the choice of the negotiated procedure without publication of a call for competition in accordance with Article 28 of Directive 2009/81/EC
- No tenders or no suitable tenders/requests to participate in response to
- restricted procedure
- negotiated procedure with prior publication of a contract notice
- competitive dialogue
- The contract concerns research and development services other than those referred to in Article 13 of Directive 2009/81/EC (for services and supplies only)
- The products involved are manufactured purely for the purpose of research, experiment, study or development under the conditions stated in the directive (for services and supplies only)
- All tenders submitted in reply to a restricted procedure, negotiated procedure with prior publication of a contract notice or competitive dialogue were irregular or unacceptable. Only those tenderers were included in the negotiations which have satisfied the qualitative selection criteria
- The works, supplies or services can be provided only by a particular economic operator for the following reason:
- absence of competition for technical reasons
- protection of exclusive rights, including intellectual property rights
- The periods for the restricted procedure and the negotiated procedure with prior publication of a contract notice are incompatible with the urgency resulting from a crisis
- Extreme urgency brought about by events unforeseeable by the contracting authority/entity and in accordance with the strict conditions stated in the directive
- Additional deliveries by the original supplier ordered under the strict conditions stated in the directive
- New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the directive
- Procurement of supplies quoted and purchased on a commodity market
- Purchase of supplies or services on particularly advantageous terms
- from a supplier which is definitively winding up its business activities
- from the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws and regulations
- Contract related to the provision of air and maritime transport services for the armed forces of a Member State deployed or to be deployed abroad, under the strict conditions stated in the directive
2. Other justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union
- The contract has as its object services listed in Annex II B to the directive
- The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive: (500 words maximum) / **(2500 characters with spaces)**

Annex D4 – Concession
Justification for the award of the concession without prior publication of a concession notice in the Official Journal of the European Union

Directive 2014/23/EU
(please select the relevant option and provide an explanation)

1. Justification for the award of the concession without publication of a concession notice in accordance with Article 31(4) and (5) of Directive 2014/23/EU

No applications, no tenders or no suitable tenders/applications in response to a prior concession award procedure

The works or services can be provided only by a particular economic operator for the following reason:

concession aiming at the creation or acquisition of a unique work of art or artistic performance

absence of competition for technical reasons

existence of an exclusive right

protection of intellectual property rights and exclusive rights other than those defined in point (10) of Article 5 of the directive

2. Other justification for the award of the concession without prior publication of a concession notice in the Official Journal of the European Union

The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive: (500 words maximum) / (2500 characters with spaces)

Assessed individually and cumulatively, items 1–5 (as referred to in II.2.4) are all within the scope of the original OJEU/procurement and would not have affected the outcome (“Procurement Outcome”).

The Council additionally/alternatively relies on Reg43(1)(a) (clear, precise, unequivocal review clauses), (c) (unforeseeability), (e) (non substantial amendments - i.e. there is no material change in character of the contract, no considerable extension of scope, no distortion of competition and no change in the economic balance in favour of the contractor) and also Reg 31(6)(b)(ii) as further described below:

The forward funding described in Change 1 and also Changes 2 and 3 are part of the annual business plan refresh, are within procurement scope and do not result in a change to the Contract.

1. Re. additional equity funding: there is no increase in the Council’s peak net investment, no impact on the risk profile and no change in the economic balance. No change to the Contract.

Re. forward funding: this is required due to a stagnant housing market eroding land value (impacting viability), build cost inflation, design enhancements, reduction in private sale cross subsidy and more affordable and family sized housing. These features would have applied to all bidders and the Council considers the Procurement Outcome would not have been impacted. Further, schedule 8, para 1.3 included scope to adjust Low Cost Unit Sum pursuant to VFM Standard and Code of Practice of Homes and Communities Agency.

2. Re. removal of the delta estate from current programme; this is a development phasing detail as no commitment was made to developing out the delta estate at this point in time, it was not tested as a sample scheme during the procurement process. Neither bidding behaviour nor Procurement Outcome would have been impacted.

3. Re. additional sites, these were within the OJEU notice scope and are similar to the sample sites tested as part of the procurement. Their delivery is consistent with financial and technical commitments in the tender to apply to subsequent schemes. The addition of further sites was transparently set out in the procurement documentation, is subject to an agreed mechanism and was incorporated into the evaluation questions. The Council alternatively relies on Reg 43(1)(a) (clear, precise, unequivocal review clauses).

Explanation continues in VI.4.3) Review procedure

