

DRAFT: 25 May 2023

Voluntary ex ante transparency notice¹

Directive 2014/23/EC

Directive 2014/24/EU

Directive 2014/25/EU

Directive 2009/81/EC

SECTION I: CONTRACTING AUTHORITY

I.1) Name and addresses²

Official name: Cardiff Council		National registration number (if known):	
Postal address: County Hall, Atlantic Wharf			
Town: Cardiff	NUTS code: UKL22	Postal code: CF10 4UW	Country: United Kingdom
Contact points(s): [ENTER DETAILS]		Telephone:	
Email: [ENTER DETAILS]		Fax:	
Internet Address:(if applicable) Main address: www.cardiff.gov.uk Address of the buyer profile (URL): https://www.sell2wales.gov.wales/search/Search_AuthProfile.aspx?ID=AA0422			

I.2) Joint procurement

The contract involves joint procurement
In the case of joint procurement involving different countries, state applicable national procurement law:

The contract is awarded by a central purchasing body

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

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

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

¹ This notice aims at providing voluntary prior transparency as referred to in Article 2d(4) of Directives 9/665/EEC and 92/13/EEC on remedies, and Article 60(4) of Directive 2009/81/EC
² Use as many times as necessary

- General public services
- Defence
- Public order and safety
- Environment
- Economic and financial affairs
- Health
- Housing and community amenities
- Social protection
- Recreation, culture and religion
- Education
- Other activity:

Section II: Object

II.1) Scope of the procurement

II.1.1) Title: St David's Hall	Reference number: (if applicable)
II.1.2) Main CPV code: 92000000 Recreational, cultural and sporting services	
Supplementary CPV code: [] [] [] []	
II.1.3) Type of contract () Works () Supplies (X) Services	
II.1.4) Short description: 1000 characters <p>This notice relates to a proposed arrangement between the Cardiff Council ("the Council") and Academy Music Group ("AMG") in respect of St David's Hall ("the Venue") in Cardiff city centre</p> <p>The proposed arrangement will involve the grant of a 45 year lease of the Council's freehold land in relation to the Venue. This lease will enable AMG, as tenant to operate the building as an independent commercial enterprise in accordance with its terms.</p> <p>In addition, the Council will enter into a Business Sale Agreement ("BSA") with AMG which will transfer to AMG, for nil value the "book" of existing planned events (and existing ticket proceeds) and the assets of ancillary business at the Venue as well as the benefit of relevant consents etc, and would provide for the TUPE transfer of Venue staff.</p> <p>The Council has structured the contractual arrangements as a land transaction, which is exempt from the Public Contracts Regulations 2015 (as amended) and Concession Contracts Regulations 2016.</p>	
II.1.6) Information about lots This contract is divided into lots yes [] no [X]	
II.1.7) Total value of the procurement (excluding VAT) Value: £[TBC] Currency: GBP	

II.2) Description

II.2.1) Title:	(if applicable)	Lot No:
II.2.2) Additional CPV code(s) Main CPV code: 92300000 Entertainment services 92312100 Theatrical producers', singer groups', bands' and orchestras' entertainment services		

92312120 Singer group entertainment services
92312130 Band entertainment services
92312140 Orchestral entertainment services

45000000 Construction Work
55120000 Hotel meeting and conference services
55130000 Other hotel services
55520000 Catering services
55330000 Cafeteria services
55400000 Beverage-serving services
55410000 Bar management services
55500000 Canteen and catering services
70220000 Non-residential property renting or leasing services
70332000 Non-residential property services
70330000 Property management services of real estate on a fee or contract basis
70332200 Commercial property management services
79993000 Building and facilities management services
79993100 Facilities management services
90911200 Building-cleaning services
75241000 Public security services
79710000 Security services

79950000 Exhibition, fair and congress organisation services
79951000 Seminar organisation services
79952000 Event services
79952100 Cultural event organisation services
79953000 Festival organisation services
79956000 Fair and exhibition organisation services

Supplementary CPV code: [][][][]

II.2.3) Place of performance

NUTS code: UKL22

Main site or place of performance: St David's Hall, Cardiff, CF10 1AH.

II.2.4) Description of the procurement:

(nature and quality of works, supplies or services) 1000 characters

The lease contains (amongst other common requirements) an obligation on AMG to keep the Venue open (except in limited circumstances set out in the lease) and in a state and condition as to be safe and operational in line with industry standards and as required by all statutory and licensing requirements.

The lease will involve the Council placing a legally enforceable obligation on AMG to rectify "defects" (estimated value of £[38m]) during the term of the lease.

The lease will also require AMG to make the Venue available to third parties to book for up to 90 days per annum. Where required the Council will place a legally enforceable obligation on AMG to make the Venue available which will also involve AMG providing the associated staff and accommodation/Venue services (as set out in II.2.2.) to support the events. The Council will not be required to pay AMG for these accommodation/Venue services.

II.2.11) Information about options

Options [] yes [X] no Description of options: 400 characters

II.2.13) Information about European Union funds

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

[] yes [X] no

Identification of the project:

II.2.14) Additional information: 400 characters

The estimated value in II.1.7 and V.2.4 refers to the lower end value of the lease, incidental/ancillary services and the projected gross operator income over the term of the lease but this could be up to £[TBC].

Section IV: Procedure

IV.1) Description

IV.1.1) Type of procedure (please complete Annex D)

- Negotiated procedure without prior publication (in accordance with Article 32 of Directive 2014/24/EU)
- Negotiated procedure without prior call for competition (in accordance with Article 50 of Directive 2014/25/EU)
- Negotiated procedure without publication of a contract notice (in accordance with Article 28 of Directive 2009/81/EC)
- Award of a concession without prior publication of a concession notice (in accordance with Article 31(4) and (5) of Directive 2014/23/EU)
- 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.2) Administrative information

IV.2.1) Previous publication concerning this procedure (if applicable)

Notice number in the OJ S:

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 yes no

V.2.3) Name and address of the contractor/concessionaire (please repeat as many times as needed) **Academy Music Group** (company number 003463738)

Official name: **National registration number** (if applicable):

Postal address: 211 Stockwell Road

Town: London **NUTS code:** **Postal code:** SW9 9SL **Country:** UK

E-mail: **Telephone:**

Internet address: (URL) **Fax:**

The contractor/concessionaire will be an SME yes 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):

Total value of the contract/lot/concession: [£ insert details]

Section VI: Complementary information**VI.3) Additional information (if applicable):** *1000 characters***VI.4) Procedures for review**

VI.4.1) Review body		
Official name: The Royal Courts of Justice		
Postal address: The Royal Courts of Justice, The Strand		
Town: London	Postal code: WC2A 2LL	Country:
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</i>		
<p>In accordance with Regulations 88 – 104 (enforcement of duties through the court) of the Public Contracts Regulations 2015 (as amended) and Regulations 49 – 64 of the Concession Contracts Regulations 2016.</p> <p>Continued from Annex D4:</p> <p>The accommodation/Venue services that AMG may be required to provide are set out in II.2.2 of this notice. Whilst some of the CPV codes referred to above are full-regime services, the Council considers that the majority of the services provided for in this notice fall within the scope of the light-touch regime.</p> <p>The accommodation/Venue services to be provided by AMG amount to approximately 24% of the event days available each year (based on the maximum 90 day period referred to above). The third-party revenue estimated for AMG for these accommodation/Venue services is [£750,000] per annum. The Council considers this to represents a small proportion of the overall transaction and is small in value (in the context of the disposal and would not be required if the Venue was not being disposed of (so are indivisible). In any event the accommodation/Venue services are incidental/ancillary to the main purpose of the proposed arrangements.</p> <p>The lease also contains a turnover rent provision whereby if AMG meets/exceeds a stipulated profit threshold (which the Council has obtained commercial advice on) this will require the payment of a further amount to the Council.</p>		
VI.4.4) Service from which information about the review procedure may be obtained (if		

<i>applicable)</i>		
Official name:		
Postal address:		
Town:	Postal code:	Country:
Email:		Telephone:
Internet address:		Fax:

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

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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: *2500 characters*

The main object of this transaction is the leasing of the Venue to AMG. The transaction also includes works and services aspects/obligations (as set out below) which are inseparably linked and therefore form an indivisible whole. Those components are considered ancillary to the main purpose of the arrangements, which is the disposal of the Venue.

The Council has obtained valuation advice in respect of the proposed disposal and will grant the lease for peppercorn rent. The rent acknowledges and takes into account the building liability and remedial works that AMG will be taking on as tenant of the Venue.

The lease contains (amongst other common requirements) an obligation on AMG to keep the Venue open (except in limited circumstances set out in the lease) and in a state and condition as to be safe and operational in line with industry standards and as required by all statutory and licensing requirements.

The lease will involve the Council placing a legally enforceable obligation on AMG to rectify "defects" (estimated value of £[38m]) during the term of the lease. The "defects" are set out in a condition survey which the Council previously procured which will be appended to the lease. However, the Council will not have any influence over the specification of the works to be provided and these are incidental/ancillary to the main purpose of the proposed arrangements. If AMG does not rectify the "defects" so that the Venue is in a state and condition so as to be safe and operational, the Council will be able to terminate the lease or procure the delivery of those works, the cost of which will be borne by AMG. The lease also anticipates that AMG may voluntarily elect to carry out works at the Venue in accordance with its own requirements in order to make the Venue fit for its intended use.

The lease will require AMG to make the Venue available to third parties to book for up to 90 days per annum. Where required the Council will place a legally enforceable obligation on AMG to make the Venue available which will also involve AMG providing the associated staff and accommodation/Venue services to support the events, i.e. security, operating the bar, cloakroom and security. The Council will not be required to pay AMG for these accommodation/Venue

services.

Continued in VI.4.3.

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