

Dear Recipient,

## **Biodiversity Net Gain (BNG): Legal Support for setting up a Cumbria-wide Nature Special Purpose Vehicle (SPV) – Invitation to Tender (ITT)**

Lake District National Park Authority (LDNPA), in partnership with Westmorland and Furness Council (WFC), the Yorkshire Dales National Park, Cumberland Council (CC), and Cumbria Wildlife Trust (CWT) (“the partners”), seeks to appoint a legal advisor to assist them in the setup of a Cumbria wide Nature Special Purpose Vehicle (SPV).

The purpose of a Cumbria Nature SPV is to increase nature restoration and nutrient mitigation<sup>1</sup> for the benefit of Natural Capital in Cumbria.

The scope of a Cumbria-wide Nature SPV would be to support the development of ecosystem service projects, and the creation and trading of ecosystem service outcomes as units or credits.

The Nature SPV would ultimately have the capacity to support a variety of different ecosystem service models, facilitating the stacking of different ecosystem service revenues from a given site or project. In the near term the Nature SPV would seek to prioritise Biodiversity Net Gain (BNG) and Nutrient Neutrality (NN) opportunities.

The Nature SPV’s primary geographical focus would be within, but not restricted to, a Cumbrian footprint. It would be jointly owned by the partners but would be managed on an arms-length basis; it would reflect our collective strategic ambitions and would operate within an agreed set of principles.

To meet the expectations of our funders, the Nature SPV should be ready for trading no later than March 2025.

A Cumbria wide Nature SPV would:

- Enable the strategic delivery of nature recovery (or mitigation) across the county.
- Make the most efficient use of our collective resources.
- Help meet the needs of Cumbrian developers and corporations by providing a simple one-stop-shop for the purchase of units/credits.
- Help unlock housing development across Cumbria which has currently stalled due to the requirement for nutrient mitigation.
- Provide a mechanism for landowners to take their units/credit to the market with a greater confidence in local authority, Lake District National Park Authority (LDNPA), the Yorkshire Dales National Park Authority and Cumbria Wildlife Trust (CWT) backing.
- Create a credible, strong and reputable SPV brand, one which will provide confidence to both sellers and buyers.
- Provide a local ‘quality mark’ for interventions by setting standards, undertaking quality control, and seeking to avoid dis-benefits.

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<sup>1</sup> In relation to Nutrient Neutrality

## Scope of Work

The partners require legal advice in order to gather enough information to produce a detailed business case for a Cumbria Nature SPV, and to subsequently formally sign up to a legally binding agreement. The legal advisor will provide sound expert advice and information to the partners in relation to:

- Stage 1: Governance and structural options assessment, to include:
  - a) Kick off meeting - Meeting with partners to discuss the brief and to consider matters and associated documentation.
  - b) Advice on the appropriate governance structure options for the proposed SPV.
  - c) Advice on the accountability of the SPV including who the SPV is accountable to if Board members are representatives from partner organisations and, how the SPV could be held to account to for delivering against the principles of the formal Memorandum of Understanding (see 'Deliverables' below).
  - d) Advice on the recommended company structure of the SPV.
  - e) Advice on how to address any conflicts of interest arising as a result of the planning authority partners potentially being the bodies responsible for granting planning permissions which may not be granted without BNG/NN issues being addressed, undertaking enforcement activity against breaches of planning matters, and potentially being the regulatory body for monitoring compliance with covenants, etc.
  - f) Production of Key Company documentation including Bespoke Articles of Association.
  - g) The identification of risks to partners and solutions to mitigate these.

Deliverables to include:

1. Governance structure options appraisal note.
2. Finalised company structure.
3. Bespoke Articles of Association for the SPV (Shareholder Agreement and Investment Agreement).
4. To prepare a formal Memorandum of Understanding suitable for SPV operations and based on the aspirations of our initial draft. The refinement, co-design and iteration of this document should be done in close consultation with SPV partners, including holding two face to face SPV partner meetings to agree options to overcome any challenges for the partnership, alongside one face to face meeting with legal advisors of the partners to ensure that proposals align with the differing legal requirements for councils, national parks and companies limited by guarantee.

Should the detailed business case and legal agreements produced as a result of Stage 1 provide all partners with the confidence to develop the Cumbria Nature SPV further, then the following scope would be required as Stage 2:

- Stage 2: Template agreements, heads of terms and company incorporation documentation, to include:
  - a) Preparation of land management / tenure agreement or covenant arrangement between the SPV and landowners

- b) Preparation of a sale and purchase agreements for the SPV to enable the sale of ecosystem service units to developers and other private off-takers.
- c) Management service agreements for the contracting of services to SPV including:
  - Site maintenance and management
  - Sales
  - Project development
  - Management and executive function of business
  - Back-office support functions
- d) Flowchart for processes and the type of agreement required at all stages of work between the SPV and landowners, taking in to account different approaches required for Nutrient Neutrality, BNG and stacked NN & BNG eg S106 agreements, S33 agreements and formal contracts with landowners before the SPV carries out feasibility work etc.

Deliverables to include:

- 5. Template land management/ conservation covenant agreement.
- 6. Template ecosystem service sale agreement.
- 7. Template management services agreement.

## Submission requirements

Consultants should submit a proposal containing the following information:

1. **Company Information:** background and experience with particular reference to case studies relating to the above scope of work and net zero.
2. **References:** supply two references for comparable commissions
3. **Methodology:** details of the consultant's approach to delivering the work.
4. **Staff Resources and experience:** to include CVs with names, qualifications and experience of the key individuals who will be undertaking the work.
5. **Fees:** Where in-person meetings are required costing should identify all the associated fees (accommodation, subsistence etc.). A breakdown of the key tasks, activities and costs should be provided for all fees, which are fixed.
6. **Programme:** A brief programme setting out the key tasks and timescales together with any assumptions and risks. The programme should ideally be aligned with the timescale noted above but if the Consultant considers this is not achievable, an alternative programme should be provided.

## Tender Documents:

This document - Invitation to Tender document

Annex 1 - Form of Tender

Annex 2 - Declaration of non-collusion

Annex 3 – References

Annex 4 – Company information, case study, C.V and proposals

Annex 5 – Partner's Pre-Procurement Memorandum of Understanding

Annex 6 – Example business model options

## 1.0 Submission of Tenders

## 2.0 Timeline

All tenders are to be uploaded to The Chest by **12 noon on the 28<sup>th</sup> June 2024**  
Tender documents uploaded late will not be considered.

Date	Activity
30 <sup>th</sup> May 2024	Publication of Tender Documentation
12:00 noon 28 <sup>th</sup> June 2024	Tenders return deadline
w/c 1 <sup>st</sup> July 2024	Tender evaluation and shortlisting
5 <sup>th</sup> July 2024	Notification to successful supplier
19 <sup>th</sup> July 2024	Contract Award (after 10 working day cooling off period)

## 3.0 Evaluation

Tender documents will remain unopened until after the closing date, after which time they will all be passed to the originating department. All tenders submitted will be verified to ensure that the information requested has been provided before they are evaluated. Any tender that is valid will be evaluated based on the information submitted, in accordance with the following criteria:

Evaluation Criteria	Potential Score
<b>Price</b> <ul style="list-style-type: none"><li>Fixed fee proposal including breakdown of costs</li></ul>	50
<b>Quality</b> <ul style="list-style-type: none"><li>Quality of tender submission (presentation and relevance of content)</li><li>Demonstration of ability to deliver within the required timescales (programme/schedule)</li><li>Compliance with the specification and adherence to the brief</li></ul>	10 10 10
<b>Skills and Experience</b> <ul style="list-style-type: none"><li>Demonstration of organisational ability in delivering similar services, using a description of methods and organisational experience</li><li>Evidence of prior experience delivering similar services (case studies, references)</li></ul>	10 10
<b>Maximum Possible Score</b>	<b>100</b>

## **4.0 Award of Tender**

The Authority will decide to whom the contract shall be awarded based on the evaluation criteria outline above. The Authority does not bind itself to accept the lowest or any tender/quotation and reserves the right to accept the whole or parts of tenders/quotations. The Authority will notify acceptance of the tender to the successful tenderer as soon as is reasonably practicable.

If you have any difficulties submitting your invitation to tender or if you have any technical difficulties please contact Due North ([support@due-north.com](mailto:support@due-north.com) 01670 597120).

The details of these documents and all associated documents are to be treated as private and confidential for use only in connection with the Tender process and funding application.

## **5.2 Freedom of Information**

The Authority is committed to meeting its legal responsibilities under the Freedom of Information Act 2000. Accordingly all information submitted to the Authority may need to be disclosed in response to a request under the Act. If you consider that any of the information included in your tender is commercially sensitive, please identify it and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. You should be aware that, even where you have indicated that information is commercially sensitive, we may be required to disclose it under the Act if a request is received. Please also note that the receipt of any material marked 'confidential' or equivalent by the public authority should not be taken to mean that the public authority accepts any duty of confidence by virtue of that marking. If a request is received, we may also be required to disclose details of unsuccessful tenders.

## **5.3 Anti Fraud and Corruption Policy**

The Authority has an Anti Fraud and Corruption Strategy which sets out the responsibilities of officers and action to be taken in cases of theft, corruption, irregularity, or when damage is suspected. The Confidential Reporting Code, (Whistle Blowing Policy), forms part of this Strategy which provides a mechanism for staff to report suspected wrong doings confidentially. In the event of such an issue, an investigation would be carried out and action taken as necessary.

## **5.4 Costs and expenses**

The Authority will not be responsible for, or pay for, expenses or losses which may be incurred by a tenderer in the preparation of their tender. The Authority does not bind itself to accept any of the tenders as a result of the tendering process.

## **5.5 Preparation of Tenders**

For the preparation of their tender and entering into a contract with the Authority, tenderers must ensure that they have all the information required and must satisfy themselves of the correct interpretation of terminology used in these documents.

## **5.6 Queries on the tenders**

If any points in these tender documents are considered by the tenderer as unclear, the tenderer should address their queries via the Chest. Their query will be responded to via The Chest and the answer sent to all tenderers, but it shall not be construed in a way that adds to, modifies or takes away from the meaning and intent of the contract and/or the obligations and liabilities of the contract.

## **5.7 Alterations**

None of these documents may be altered by the tenderer. If the tenderer wishes to propose modifications to any of the documents (which they may consider would provide a better way to achieve the contracts objectives) they must provide details in a separate letter accompanying the tender response on The Chest.

## **5.8 Prices**

All prices must be net and, where applicable, carriage paid with all cash and trade discounts allowed for.

## **5.9 VAT**

All prices and/or rates shall be exclusive of Value Added Tax.

## **5.10 Validity of tenders**

Tenders shall be valid for a minimum of three calendar months from the closing date for receipt of tenders.

## **5.11 Sub-contractors**

The names and addresses of any sub-contractors the tenderer proposes to employ must be provided with the tender.

## **5.12 Quality of goods / services**

Tenderers must ensure that the persons responsible for completing work tendered for have the necessary experience and skills as outlined in this tender brief.

## **5.13 Conflict of Interest**

The Authority requires all tenderers to confirm whether any actual or potential conflicts of interest that exist which may prevent them undertaking this work, and a description of measures they would adopt if a potential conflict of interest arose during or following completion of this work.

## **5.14 Treatment of tender**

The acknowledgement of receipt of any submitted tender shall not constitute any actual or implied agreement between the Authority and the tenderer.

## **5.15 Debriefing**

All unsuccessful bidders will be offered the opportunity to be given a debriefing. Requests for debriefing are to be made in writing.

### **Contact:**

All correspondence regarding feedback and debrief should be made with Nicholas Hall:  
[nick.hall@lakedistrict.gov.uk](mailto:nick.hall@lakedistrict.gov.uk) 07775116219

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