

Our Common Cause: Our Upland Commons

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INVITATION TO TENDER

From Foundation for Common Land (on behalf of the National Trust)
For Common Understanding Project, Derwent Common
Contact Alan Robinson, Project Officer (Lake District), Foundation for Common Land:
alan@foundationforcommonland.org.uk Tel: 07890 052407
Date 24/05/2022

Overview

With the move to public payment for public goods, to access business critical funding, farmers including commoners are increasingly being asked to understand their farming in terms of delivery of public benefits. This can require access to knowledge, skills, and methodologies lying outside the traditional sector expertise.

As well as acting as a barrier to the take up of funding, variance in access to the methods and language of 'public benefits' can create an imbalance between those administering schemes and farmers delivering on the ground.

This project seeks to employ a consultant to develop a methodology and accompanying training package by which commoners can map actual and potential delivery of DEFRA public goods on their commons. This methodology and accompanying training in its delivery should:

- Enable commoners to understand the current and potential delivery of public benefits, predominantly habitat assessments on their commons - thereby increasing their ability to access ELM funding
- Enable commoners to access and deliver SFI moorland standards in-house, enabling them to access and retain this funding
- Increase commoners' ability to participate actively on an equal footing in conversations with stakeholders on habitat condition, Local Nature Recovery, and public benefits delivery.

This contract will test and implement the methodology on one common: Derwent, but the methodology, training and resources produced should be scalable. A train the trainer model would be preferred to ensure scale and relevance and enable dissemination of expertise peer to peer as effectively as possible. In this way the contract will support the roll out to other common land as appropriate and build on the test and trial work by the Foundation for Common Land.

The emphasis of the project will be on commoner led collaboration, the consultant appointed will need to work with commoners and other stakeholders to ensure that the work meets their needs.

The consultant does not need to possess all relevant skills to carry out this work but would be expected to identify and utilise additional consultants and expertise where required to ensure complete delivery of the proposal.

There is a separate budget available to pay commoners for their time for participating in this trail.

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Tender value

£34,000 exc. VAT.

This excludes a separate budget to pay for 100 days of commoner time participating in the project which will be administered by the project officer.

Background

The Foundation for Common Land and a broad partnership of organisations have secured a Heritage Grant from the National Lottery Heritage Fund to deliver a landmark project that will conserve and enhance the cultural and heritage of commons and commoning in upland England, working in the Lake District, Dartmoor, the Yorkshire Dales, and Shropshire Hills. The project will be delivered between March 2021 and April 2024.

You can find out more about the Our Upland Commons Project at www.foundationforcommonland.org.uk/our-upland-commons

Specification

Activity 1: **Developing a method**

Building on existing work carried out by the Foundation for Common Land (Mapping Public Benefits on Commons) and YDNP (Farmer-led habitat assessment), collate existing material and consult with commoner led organisations such as the Federation of Cumbria Commoners and project partners, including but not limited to National Trust, Lake District National Park, and Natural England. Form a methodology that enables commoners to map public goods on their commons and understand their current and potential condition.

OUTPUTS:

- Draft methodology and assessment criteria in line with stakeholder requirements
- Sign off from stakeholders on relevance and success measures

Activity 2: **Trial methodology**

Trial the use of the methodology focussing on commons within the Lake District, predominantly Derwent Common, fine tuning the methodology considering the trial. The methodology should focus on scale and delivery engagement, ideally following a train the trainer model as the successful candidate sees fit.

OUTPUT:

- Full habitat and public goods assessment methodology trial
- A refined, scalable methodology

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Activity 3: Implementation and legacy

Ensure the methodology can be scalable to other commons undertaking similar work. This will include resources to fit under the FCL test and trial portal and more widely disseminated between partner organisations in the form of how to guides and online tools. Use these along with the methodology to directly train 5 partner organisations to support others delivering this assessment method.

Roll out delivery to other commons subject to additional funding for commoner time and external expertise (through SFI, from National Trust looking to commission public benefits analysis, or FIPL). Others delivering this method should be representatives of farmer led/farm industry bodies. Run a webinar or webinars to promote and explain the use of the method

OUTPUT:

- Commons assessment resources available under FCL portal
- At least 5 people trained to support others in delivering this methodology (i.e. others who will support farmers to deliver this. This could include designated spaces representatives, farmer clusters or local farmer owned co-operatives).
- At least 1 webinar on the use of the methodology.

Project finance

The total value of this tender is £34,000 exc. VAT.

This excludes 100 days of budgeted commoner time.

Please provide a breakdown of costs and allocation of time for your intended activities. This should include any costs associated with delivering the project including venue hire (if required), any external consultants required to fill skills gaps, fees associated with soil or water testing, cost of any equipment and materials needed to deliver the project. Support that will be provided for delivering the contract is outlined below.

A purchase order will be issued by the project co-ordinator and the project should be invoiced quarterly (or monthly by agreement) in arrears based on work completed. Invoices will be approved by the Lake District project officer before being processed, payment 30 days from receipt of invoice. Costs over the total value of the purchase order will not be approved.

Support Provided

Stakeholder engagement, communications, promotion and support; The Project Officer will be available to assist with stakeholder engagement of the project along with the Project Officer and wider FCL team supporting with communications of the project, promotion of events and webinars to the wider commoning community.

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Delivery Timetable

Please provide a timetable for the events outlined in the proposal. These will be intended timescales, but we are aware of the constraints of the project and willing to discuss proposals. Please note that the project does have to be finished by June 2024 and will not be extended.

Contract Management

This contract will be managed by the Our Common Cause Project Officer, Alan Robinson, who is employed by the National Trust and seconded to the Foundation for Common Land. The contract will be with the National Trust, as the project's accountable body, and will need to comply with the Trust's General Terms & Conditions (appendix 1).

Intellectual Property

All intellectual property produced under this contract will be in the joint ownership of The Foundation for Common Land, the National Trust and the consultant and should be freely available to either party to use themselves or through partners to promote training and development. This extends to after the project to ensure legacy.

Selection Criteria

There are several areas that will specifically be considered in the selection process. These include but are not limited to:

Demonstration by doing:

- Proposed engagement approach to learning and development
- Identification of working with specified stakeholders
- Maximising learning and wider influence
- Quality of proposed training materials

Proposed method of delivery:

- How will the above aims and outcomes be delivered?
- Identification of potential skills gaps and proposals to bring in external consultants
- Can the specification be met within the timescales?
- What is different about this delivery method that makes it stand out and engage

Value for money:

- Day rate
- Volume of Outputs (e.g. numbers trained; number of farms taken through the methodology)

Suitability for the Work:

- Experience of delivering similar projects
- Farmer engagement experience
- Skills and qualifications of team
- Sector knowledge

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Health & Safety and Insurance

The contractor will be responsible for the health and safety of its employees and will have a duty of care to those it is instructing during training courses, trailing the methodology etc. The common is open access land so the health and safety of the public is also paramount during the work. The contractor will need to provide suitable risk assessments covering its activities before delivery of the contract commences.

Before appointment the contractor will need to demonstrate evidence of the following insurance policies:

- Employers' liability £5 million
- Public Liability £5 million
- Professional Indemnity Insurance £1 million

Tender Submission

Tenders should be submitted to Alan Robinson via the email alan@foundationforcommonland.org.uk by 12 noon on 14th June 2022.

Award of contract

We will aim to award the contract on 17th June 2022.

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Appendix 1

NATIONAL TRUST GENERAL TERMS AND CONDITIONS OF PURCHASE

1 INTERPRETATION

In these Contract Terms, the following definitions apply:

"Contract" means each contract for the supply of Goods and/or Services in accordance with the Contract Terms;

"Contract Terms" means these general terms and conditions of purchase and any special conditions agreed in writing between the Purchaser and the Supplier;

"Goods" means the goods (or any part of them, including any instalment, component, part of or raw materials used in such goods) described in an Order; "Materials" All copy, design work, art work, reports, information and other materials generated or supplied by the Supplier in the course of providing the Goods and/or Services.

"Purchaser" means the company or body within the Purchaser Group which is named on the Order;

"Purchaser Group" means the National Trust for Places of Historic Interest or Natural Beauty, registered charity number 205846 (the "National Trust") and any company or legal entity controlling, controlled by or under common control with the National Trust. In this definition "control" means the ownership directly or indirectly of 50% or more of the voting shares or the power to direct or cause the direction and management of the affairs and policies of a company or legal entity in accordance with its wishes;

"Order" means the Purchaser's purchase order for Goods and/or Services;

"Services" means the services (if any) described in the Order;

"Specification" means any description or specification for the Goods (including related plans and drawings) or Services agreed in writing by the Purchaser and the Supplier; and

"Supplier" means the person, firm or company from whom the Purchaser purchases the Goods and/or Services.

2 BASIS OF PURCHASE

2.1 An Order constitutes an offer by the Purchaser to purchase the Goods and/or acquire the Services subject to the Contract Terms.

2.2 The Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier accepting the Purchaser's Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Order, including (a) the commencement of any work by the Supplier, or (b) the delivery of any Goods or the performance of any Services by or on behalf of the Supplier, on which date the Contract shall come into existence.

2.3 The Contract Terms shall apply to each Contract to the exclusion of any other terms and conditions which the Supplier purports to incorporate, including any terms and conditions on any quotation which has been given to the Purchaser or to which the Supplier refers when accepting the Order.

2.4 No variation to the Contract, including to an Order or to the Contract Terms, shall be binding unless agreed in writing by the Purchaser's authorised representative.

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2.5 To the extent that any special conditions agreed in writing between the Purchaser and the Supplier are inconsistent with these general terms and conditions of purchase, the provisions of the special conditions shall prevail.

3 SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with the Order (including as to quantity and description) and any applicable Specification and/or sample;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser, expressly or by implication;

3.1.3 be free from defects in design, materials and workmanship; and

3.1.4 be marked in accordance with the Purchaser's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination undamaged and in good condition.

3.2 Goods made to the Purchaser's bespoke Specification shall not be manufactured for or supplied to any other party.

3.3 The Supplier shall inform the Purchaser of any information relating to possible risks to health and safety and environmental issues related to the Goods. The Supplier shall provide to the Purchaser on request such other information about the Goods as the Purchaser requires.

4 SUPPLY OF SERVICES

4.1 The Supplier shall for the duration of the Contract supply the Services to the Purchaser in accordance with the terms of the Contract, any applicable Specification and the instructions of the Purchaser.

4.2 The Supplier shall meet any performance dates specified in the Order or that the Purchaser notifies to the Supplier and time is of the essence in relation to any performance dates.

4.3 The Supplier shall:

4.3.1 perform the Services diligently and with all due skill and care and in accordance with good industry practice in the relevant trade(s);

4.3.2 ensure that the Services are performed by appropriately trained and qualified personnel; and

4.3.3 not do or omit to do anything which may cause the Purchaser to lose any licence, authority or other permission upon which it relies for the purpose of conducting its business.

5 INSPECTION AND TESTING

The Purchaser shall be entitled to inspect and test the Goods prior to dispatch and to test the Services at any time during performance, without relieving the Supplier of the Supplier's obligations under the Contract. The Supplier shall provide the Purchaser with such reasonable assistance as it may require in order to carry out such inspection or testing. If following such inspection or testing the Purchaser considers that the Goods and/or Services do not comply or are unlikely to comply with the Contract, the Supplier shall promptly take such remedial action as is necessary to ensure compliance.

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6 PRICE

6.1 The price of the Goods and Services shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of any applicable VAT and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery. Any additional charges agreed with the Purchaser before delivery, such as overnight or small order charges, must be shown separately on the Supplier's invoice.

6.2 No increase in the price may be made for any reason without the Purchaser's prior written consent.

6.3 In respect of the Services, the price shall be the full and exclusive remuneration of the Supplier in respect of its performance of the Services, including all costs and expenses of the Supplier incurred in connection with the performance of the Services, unless otherwise agreed in writing in advance by the Purchaser.

7 PAYMENT

7.1 Unless otherwise stated by the Purchaser, the Purchaser shall pay the price of the Goods and/or Services 30 days from the later of (a) the date of invoice, or (b) the date the Goods and/or Services are received, provided that a valid invoice, quoting the Order number, is received by National Trust Supplier Invoices at PO Box 352, Darlington, DL1 9QQ or supplierinvoices@nationaltrust.org.uk and provided that the Supplier has complied with clause 7.4.

7.2 Time of payment shall not be of the essence.

7.3 The Purchaser may set off against the price any sums owed to the Purchaser by the Supplier.

7.4 The Supplier will sign up to the Proactis portal using the process set out by the Purchaser to enable payment to be made using the Purchaser's systems. The Supplier shall keep their Proactis account details confidential at all times.

8 DELIVERY

8.1 The Supplier shall deliver the Goods on the date specified in the Order or such other date as agreed in writing between the parties.

8.2 Delivery shall be deemed to be made on receipt of the Goods and/or Services by the Purchaser at the place of delivery specified in the Order during the Purchaser's normal business hours in accordance with the terms of the Contract.

8.3 Time of delivery of the Goods is of the essence.

8.4 A delivery note quoting the Order number must accompany each delivery.

8.5 The Supplier must not deliver the Goods in instalments unless previously agreed in writing with the Purchaser. If Goods are to be delivered in instalments, the Contract will be treated as a single contract and not severable.

9 RISK AND TITLE

9.1 Risk of damage to or loss of the Goods shall pass to the Purchaser on delivery in accordance with the Contract.

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9.2 Title to the Goods shall pass to the Purchaser on delivery or, if earlier, when payment for the Goods is made.

9.3 If the Purchaser properly rejects any Goods the risk in and title to those Goods shall revert to the Supplier.

10 COMPLIANCE

10.1 The Supplier shall comply with all applicable statutory and regulatory requirements, regulatory policies, guidelines or industry codes relating to the manufacture, product safety, packaging, labelling, sale, storage, handling and delivery of the Goods and performance of the Services, including concerning hazardous substances.

10.2 The Supplier shall not engage in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010 or the Modern Slavery Act 2015 and shall notify the Purchaser promptly in the event that it is subject to any investigation in respect of bribery or modern slavery.

10.3 The Supplier shall have and maintain in place throughout the term of this Agreement policies and procedures relating to (anti) modern slavery and supply chains and anti-bribery.

10.4 The Supplier shall ensure that the Purchaser's use of any Materials will not infringe the intellectual property rights of any third party.

10.5 The Supplier shall at all times whilst on the Purchaser's premises (and shall procure that its employees, agents and subcontractors) observe and comply with all health and safety rules and regulations and any other security and safety requirements and rules that apply to those premises, copies of which shall be supplied on request.

10.6 The Supplier shall ensure that at all times it has and maintains any licences, permissions, consents or other permits it requires to carry out its obligations under the Contract.

11 RIGHTS AND REMEDIES ON DEFAULT

11.1 Without prejudice to any other right or remedy available to the Purchaser, if any Goods are not supplied or Services are not performed on the due date or in accordance with the Contract then the Purchaser shall be entitled to:

11.1.1 terminate the Contract or Order (or any part of an Order) with immediate effect by giving written notice to the Supplier;

11.1.2 reject the Goods (in whole or in part) whether or not title has passed and return those Goods to the Supplier at the Supplier's expense;

11.1.3 require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days;

11.1.4 treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the price already paid whether or not on previous occasions of the Supplier's breach the Purchaser has required or given the opportunity to the Supplier to repair the Goods or to supply replacement Goods or Services;

11.1.5 purchase substitute items or services elsewhere and recover from the Supplier any loss or additional costs incurred; and/or

11.1.6 claim damages for any additional losses or expenses incurred by the Purchaser arising from the Supplier's failure to supply Goods or Services in accordance with the Contract.

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12 INDEMNITY

12.1 The Supplier shall indemnify the Purchaser in full against all liabilities, losses (whether direct or indirect and including loss of profits) and expenses (including legal expenses) awarded against or incurred by the Purchaser as a result of or in connection with:

12.1.1 a breach of any warranty relating to the Goods or the Services;

12.1.2 any claim that the Goods infringe the intellectual property rights of any person;

12.1.3 any claim made against the Purchaser in respect of any breach or alleged breach by the Purchaser of any statutory provision, regulation or other rule of law arising from the Supplier's acts or omissions or those of the Supplier's employees, agents or sub-contractors;

12.1.4 any liability under legislation relating to consumer protection, product liability, health and safety at work, or environmental protection in respect of the Goods and/or the Services; and

12.1.5 any act or omission of the Supplier or the Supplier's employees, agents or sub-contractors in supplying, delivering or installing the Goods or in performing the Services, including (but not limited to) any injury, loss or damage to persons caused or contributed to by the negligence of the Supplier, the Supplier's employees, agents or sub-contractors or by faulty design, workmanship or materials.

13 FORCE MAJEURE

Neither the Supplier nor the Purchaser shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of their respective obligations if the delay or failure was beyond their reasonable control. Illness or shortage of the Supplier's staff or subcontractors or the failure or delay by any of the Supplier's sub-suppliers to supply goods, components, services or materials shall not be regarded as causes beyond the Supplier's reasonable control.

14 CONSTRUCTIONLINE

The Supplier will sign up to and maintain registration with Constructionline and a Safety Scheme in Procurement accredited company on the Purchaser's request.

15 TERMINATION

15.1 Any Order and / or any Contract may be cancelled at any time by the Purchaser giving the Supplier notice in writing. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, if all such work is delivered to the Purchaser. The Purchaser's liability is strictly limited to work in progress, and no further loss or liability will accrue.

15.2 The Purchaser shall be entitled to terminate the Contract immediately without liability to the Supplier, and reserving all rights, by giving notice to the Supplier at any time if:

15.2.1 the Supplier is in material breach of any of the Supplier's obligations and that breach cannot be remedied or if that breach can be remedied but the Supplier fails to do so within 30 days starting on the day after receipt of notice from the Purchaser;

15.2.2 the Supplier commits more than one breach of any of the Supplier's obligations and the cumulative effect of such breaches is that the Purchaser reasonably believes that the Supplier will continue to deliver a substandard performance;

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15.2.3 the Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or bankruptcy or an encumbrancer takes possession or a receiver is appointed of any of the Supplier's property or assets, or the Supplier is unable to pay its debts as and when they fall due; or

15.2.4 the Purchaser reasonably believes that any of the events mentioned in this clause 15.2 is about to occur and notifies the Supplier accordingly.

16 CONFIDENTIALITY

16.1 All information supplied to the Supplier at any time is and remains the Purchaser's property and must be returned on request.

16.2 The Supplier shall not at any time disclose to any person any confidential information concerning the business or affairs of the Purchaser, other than to such of its employees, representatives or sub-contractors who need to know such information for the purposes of carrying out the Supplier's obligations under the Contract or as otherwise may be required by law or a court or regulatory authority. The Supplier shall not use the Purchaser's confidential information for any purpose other than performing its obligations under the Contract. The Supplier shall ensure that its employees, representatives and sub-contractors comply with this Clause 16.2.

16.3 The Supplier may only refer to the National Trust being a customer of the Supplier for so long as it continues to be a supplier to the Purchaser Group. The Supplier may not use the Purchaser Group's logos for its own marketing purposes.

17 FURTHER ASSURANCE

17.1 If the Services involve the production of bespoke Materials for the Purchaser, the Supplier shall assign the intellectual property rights to the Purchaser on request and undertakes to execute all documents and do all acts and things as may, in the opinion of the Purchaser, be necessary or desirable to vest those intellectual property rights in the Purchaser, including procuring any necessary licence from third parties.

18 DATA PROTECTION

18.1 The parties do not expect that the Supplier shall process personal data on behalf of the Purchaser under the Order. In the event that the Supplier does process personal data on behalf of the Purchaser the Supplier shall notify the Purchaser immediately in writing and the Supplier shall enter into a data processing agreement, and where necessary complete a Data Protection Risk Assessment, with the Purchaser, in the form specified by the Purchaser.

18.2 The Supplier shall ensure that it complies with any applicable legislation relating to data protection and privacy ("Data Protection Legislation") and shall not do anything (by any act or omission) to place the Purchaser in breach of the Data Protection Legislation.

19 GENERAL

19.1 Nothing in this Purchase Order is intended to create an exclusive relationship between the Supplier and the Purchaser to procure a minimum or maximum number of Goods and/or Services from the Supplier from time to time.

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19.2 Orders are personal to the Supplier and the Supplier shall not transfer, assign, charge, dispose of or deal in any manner, or purport to do so, with any of its rights or beneficial interests under the Contract.

19.3 The Supplier shall not without the Purchaser's prior written consent subcontract, assign, transfer or deal in any other manner with all or any of the Supplier's obligations under the Contract.

19.4 Any waiver by the Purchaser of any breach is not, and shall not be deemed, a waiver of any subsequent breach.

19.5 Failure or delay by the Purchaser in exercising any right or remedy under this Contract shall not operate as a waiver of, or otherwise prejudice, any of the Purchaser's rights or remedies.

19.6 If any provision of the Contract Terms is held by any competent authority to be invalid or unenforceable in whole or in part that shall not affect the validity of the remaining provisions.

19.7 The Supplier shall at all times maintain insurance cover with a reputable insurer against its liabilities under the Contract (including product liability and public liability insurance) for a minimum of five million pounds sterling (£5,000,000) per claim (or such other amount as agreed with the Purchaser) and shall produce the insurance policy and latest premium receipt to the Purchaser on demand. Any limitation, monetary or otherwise, in such policy shall not be construed as a limitation on the Supplier's liability and the Supplier shall notwithstanding such limitation remain liable to the Purchaser without offset or counterclaim.

19.8 The Contract shall be subject to English law and to the exclusive jurisdiction of the courts in England.

19.9 The Contract does not create or confer any benefit or right enforceable by any person not a party to it. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term, other than the National Trust who may enforce the rights as if were another member of the Purchaser Group.