

# North East Fund

Supported by the European Regional Development Fund

## **Invitation to Tender and Tender Specification To Provide Legal Services to The North East Fund Limited**

**Tender Reference: TNEFL/2022/01**

**11 April 2022**

**Suite D  
Fifth Floor  
West One  
Forth Banks  
Newcastle upon Tyne  
NE1 3PA**



## 1. INTRODUCTION

The Contracting Authority for this Tender is **The North East Fund Limited (TNEFL)**, a company limited by guarantee with its registered office at Suite D, Fifth Floor, West One, Forth Banks, Newcastle upon Tyne, NE1 4PA: <https://www.northeastfund.org/>. TNEFL is seeking to appoint a small panel of two firms of solicitors to provide legal advice regarding various aspects of its operations, on an ad hoc basis as required.

The North East Fund has been established with funding from: the England European Regional Development Fund (**ERDF**) as part of the European Structural and Investment Funds Growth Programme 2014-2020 (for which the Department for Levelling Up, Housing and Communities is the Managing Authority); the European Investment Bank and from returns on previous North East based, publicly supported investment funds.

The members of TNEFL are the seven North East Local Authorities: Durham County Council; Gateshead Council; Newcastle City Council; The Council of the Borough of North Tyneside; Northumberland County Council; South Tyneside Council and Sunderland City Council. These represent the geographic area in which The North East Fund operates and are the Local Authority members of the North East Local Enterprise Partnership, which supported the establishment of TNEFL.

TNEFL is the holding fund manager for a venture capital and loan programme which invests in Small and Medium sized Enterprises (**SMEs**) based in the North East of England. It is the principal investor and a limited partner in five funds which are set up as limited partnerships and which are managed by four independent, FCA authorised fund management companies: Maven Capital Partners; Mercia Asset Management; NEL Fund Managers and Northstar Ventures.

The North East Fund began operating in March 2018 and to date its funds have invested c.£80m in c.350 companies and are expected to invest a further £40m in the period to December 2023 – with the potential to continue investing until 2025. The realisation phase of the five funds will continue at least until 2028, with the potential to be extended to 2032 – to allow time for the loans and investments made to be repaid and realised. Further information regarding the background and objectives of TNEFL is set out in section 2, below.

Details are set out below of what to include in your tender and how to ask any questions you may have regarding the process. **The closing date for tender submissions is 12 noon on Monday 9<sup>th</sup> May 2022.**



The contents of this Invitation to Tender are as follows:

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## 2. BACKGROUND OF THE NORTH EAST FUND

The North East Fund Limited (**TNEFL**) is an independent, publicly-funded organisation which was established in March 2018 to act as the holding fund manager of a £120m venture capital and loan fund programme designed to improve the supply of finance to SMEs based in the North East of England.

There was an acknowledged market failure in the provision of risk capital and growth finance for SMEs, which was exacerbated by the global financial crisis of 2007-2008. The Department for Levelling Up, Housing and Communities (**DLUHC**) therefore allocated a proportion of the 2014-2020 European Regional Development Fund Operational Programme for England to be used in Financial Instrument projects, in accordance with Title IV of the EU's Common Provisions Regulation No. 1303/2013. TNEFL was entrusted by government to operate as a “fund of funds” as defined in that Regulation.

This means that TNEFL has overall responsibility for the delivery of the programme and for ensuring that it meets its objectives. TNEFL was responsible for appointing the managers of the five funds and oversees their delivery, monitoring the fund managers' performance against their targets and their compliance with the contractual and regulatory framework. TNEFL secured commitments to provide £120m of investment capital from the programme's funders, which is channelled via the five investment funds (to which the fund managers also contribute some of their own capital) to SMEs – as loans, equity or quasi-equity investments on commercial terms, often alongside private investors who typically invest on the same terms as TNEFL's funds.

TNEFL therefore does not have a direct role in making investments in SMEs, which is done by the fund managers detailed below. TNEFL provides the investment capital to the funds; the fund managers are responsible for sourcing, negotiating and completing the investments and for monitoring them and assisting their investee companies to grow and to return the capital. TNEFL helps to promote the programme as a whole, to help maximise awareness across the seven Local Authority areas of the availability of this source of funding to the region's SMEs.

TNEFL contracted with and is directly accountable to the providers of the £120m of investment capital, which has been provided as:

- a loan of up to £60m from the European Investment Bank (**EIB**);
- repayable grant funding of up to c.£50m from the European Regional Development Fund (**ERDF**);
- repayable grant funding of up to c.£10m from North East Access to Finance Limited (**NEA2F**), as custodian of the returns on previous North East based, publicly supported investment funds – with the support of the Department for Business, Energy and Industrial Strategy, DLUHC and the British Business Bank.



NEA2F and ERDF also provide additional repayable grant funding to TNEFL to support the programme's operating expenses.

TNEFL made initial capital allocations to the five funds totalling 90% of the £120m of capital committed by the funders, the full amount of which was due to be invested by the end of March 2023. TNEFL is in the process of agreeing with its funders that the deadline for initial investments can be extended to December 2023. That is the latest date by which any initial investments utilising the 2014-2020 ERDF funding can be made, but there is potential for follow-on investments to be made subsequently utilising that capital and for new or follow-on investments to be made with alternative sources of funding, including regional legacy funds, up until 2025. TNEFL will allocate the remaining £12m of the £120m across the five funds during 2022 / early 2023.

The five funds, the fund managers and brief characteristics of each fund are as follows:

Fund Name	Fund Manager	Principal Type of Investment
Innovation Fund	Northstar Ventures	Equity and convertible loan notes.
Venture Fund	Mercia Asset Management	Equity.
Growth Capital Fund	NEL Fund Managers	Unsecured loans / quasi-equity.
Development Capital Fund	Maven Capital Partners	Mezzanine debt / quasi-equity and equity.
Small Loan Fund	NEL Fund Managers	Unsecured loans.

**Innovation Fund:** provides proof-of-concept, seed and venture capital funding, targeting early-stage businesses with high growth potential, including start-ups and university spin-outs. Maximum investment per funding round typically £500k. Links to: [fund site](#) and [portfolio](#).

**Venture Fund:** provides venture capital funding, targeting early-stage and more established businesses with high growth potential and investing principally in equity. Maximum investment per funding round is £1m. Links to: [fund site](#) and [portfolio](#).

**Growth Capital Fund:** provides unsecured loans / mezzanine finance typically between £100k and £500k to established, trading businesses. Link to: [fund site](#).

**Development Capital Fund:** provides equity finance and secured and unsecured quasi-equity/mezzanine finance, typically between £400k-£1m. Seeks companies with high growth potential; mainly established, mature businesses and some earlier-stage propositions. Links to: [fund site](#) and [portfolio](#).

**Small Loan Fund:** provides unsecured loans on standardised terms from £10k to £100k to trading businesses of all stages and sectors. Link to: [fund site](#).



TNEFL is the successor to the North East JEREMIE fund which was delivered by North East Finance and invested £160m in 950 companies in the North East and Teesside between 2010 and 2016, creating or safeguarding over 7,000 jobs and leveraging £300m of additional private investment alongside its funding. Financial returns from that fund, and previous publicly-backed venture capital and loan programmes, form part of TNEFL's funding.

Generating a self-sustaining, 'evergreen' SME finance programme for the region was and remains a key objective of TNEFL and its predecessor programmes. In addition to overseeing the delivery of the current suite of five investment funds, TNEFL therefore works with stakeholders on projects relating to SME finance in the region, with a view to ensuring the continued provision of finance and to helping to sustain the start-up, spin-out and general SME finance ecosystem in the region.



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### 3. SPECIFICATION OF REQUIREMENTS

TNEFL is seeking to engage two fully accredited law firms to provide legal services on an ad hoc basis as required over the next two years. TNEFL will engage two firms, to facilitate competitive quotes for individual pieces of work to ensure cost competitiveness and so that TNEFL has an existing relationship with an alternative firm in case the other is representing a different party involved in a relevant piece of work and it is not appropriate for it also to act for TNEFL.

The ownership, funding and operational activities of TNEFL are summarised in the preceding section and the Company's requirements for legal advice will derive from these. A substantial portion of the capital being invested by TNEFL's funds is ERDF funding. The EU-UK Withdrawal Agreement stipulated that it must continue to be used in accordance with EU law and so TNEFL may require advice on the regulations governing the utilisation of ESIF funds and on EU state aid law – for operational delivery purposes and/or to input to TNEFL's responses to ERDF or other funders' audit processes.

TNEFL's principal requirements are therefore for the provision of legal advice and assistance in relation to the following **Four Service Areas**:

**1. Investment Funds & Corporate Finance**

*Advising on: Limited Partnerships; Fund Management Agreements; Loan Facility Agreements; Grant Funding Agreements, including re ERDF Funding Agreements.*

**2. EU Law & Its Post-Brexit UK Successor Laws**

*Advising on the law relating to: State Aid/Subsidy Control; Public Procurement; ESIF Regulations*

**3. General Commercial Advice**

*Including advising on: employment law; commercial contracts; data protection; commercial property law.*

**4. Corporate Governance and Structures**

*Including advising on: corporate governance, including compliance with standards relating to public bodies; advising on the establishment of, and adjustments to, corporate structures.*



#### 4. TENDER RESPONSE

If your firm is interested in providing the services required by TNEFL, please submit a **tender proposal document** which provides all of the information requested below. Your **tender proposal document** must be a maximum of 20 pages long and must set out your firm's capabilities to deliver the services specified at Section 3, above, and the relevant qualifications and prior experience of the individuals who will provide the services.

TENDER RESPONSE REQUIREMENTS	
Tender Response Section	Max score
<b>1) Ability to Deliver the Services</b> <ul style="list-style-type: none"><li>- Provide an overview of your firm's capabilities, detailing relevant experience of delivering services of the type required by TNEFL.</li><li>- Provide a summary of your understanding of TNEFL's business, and of any added-value aspects which your firm can offer in providing its services.</li></ul>	20
<b>2) Delivery Team</b> <ul style="list-style-type: none"><li>- Specify the individuals who will deliver the services across the 4 service areas identified in Section 3, providing summary CVs which detail their relevant prior experience/qualifications. Please also specify the individual at your firm who will have lead responsibility for managing your firm's relationship with TNEFL.</li></ul>	40
<b>3) Charge Out Rates</b> <ul style="list-style-type: none"><li>- Please provide the hourly charge-out rates for all categories of fee earners. These will be scored as set out in section 5, below, in summary:</li><li>- Hourly rate for the most senior fee earners (partners or equivalent):</li><li>- Hourly rate for second most senior fee earners (associates or equivalent)</li><li>- Hourly rate for other fee earners.</li></ul>	15 15 10
<b>Total</b>	100

As requested below, please also include in your tender proposal document a copy of (or link to) your firm's standard terms and conditions and confirmation of the professional indemnity insurance held and any limits to it which will be applicable when providing services to TNEFL.



## 5. BASIS OF TENDER EVALUATION AND CONTRACT AWARD CRITERIA

### 5.1 Selection pre-conditions

Appendix 1 sets out 10 statements that all parties which submit a tender proposal are deemed to confirm are accurate as regards their firm and the basis on which it has tendered. If any of the statements set out at Appendix 1 are not accurate as regards your organisation or tender, your firm will be excluded from the process. Failure to disclose any fact which contradicts the statements in Appendix 1 (e.g. your firm is the subject of material litigation or one of its partners/members/senior managers has an unspent conviction for fraud) will, if discovered following the award of the contract, entitle TNEFL to terminate the contract with immediate effect.

It is also a selection pre-condition that bidding firms are regulated in the UK as solicitors and that they hold appropriate professional indemnity insurance, and that any limits imposed on potential liability under that insurance are acceptable to TNEFL.

### 5.2 Award Criteria

Bids which satisfy the selection pre-conditions will be assessed against the award criteria below.

TNEFL will enter into engagements with the firms which achieve the highest and second highest scores, as determined by the application of the following award criteria:

Award Criteria	Max Score
1. Ability to Deliver the Services	20
2. Delivery Team	40
3. Charge Out Rates	40
Total:	100

In relation to Criteria 1 and 2, above, tender proposals will be scored as follows:

- **Outstanding:** meets all of the requirements to / demonstrates abilities which are of... a very high standard: 100% of Max Score;
- **Very Strong:** meets all of the requirements to / demonstrates abilities which are of... a high standard: 80% of Max Score;
- **Good:** meets all of the requirements to / demonstrates abilities which are of... a good standard: 60% of Max Score;

- **Acceptable:** meets all or most of the requirements to / demonstrates abilities which are of... an acceptable standard: 50% of Max Score;
- **Weak:** meets some of the requirements to / demonstrates some abilities which are of... an acceptable standard but most are at an unacceptable standard or are not met at all: 25% of Max Score;
- **Unacceptable:** fails to meet any of the requirements to an acceptable standard: nil.

Criteria 3, Charge Out Rates, will be scored as follows:

Three different categories of fee earners will be scored, with the lowest priced proposal(s) receiving the following maximum points:

- Most senior fee earners (partners or equivalent) – 15 points
- Next most senior fee earners (associates or equivalent) – 15 points
- All other fee earners – 10 points.

Your response must specify all applicable charge-out rates, which will apply for the duration of the engagement. Where different charge-out rates are charged by fee earners in the same category (e.g. different partners have different charge-out rates), the average charge-out rate for that category will be used to score proposals. It is anticipated that “all other fee earners” will be an average of e.g. the charge-out rate of solicitors and trainees. If no charge-out rates are provided for the “all other fee earner” category, the score awarded will be based on the rates quoted for the second most senior (associate) category.

For each category of fee earner, the bidder(s) with the lowest priced proposals will receive the maximum points and the other bidders will receive a score which is proportionately less, based on the lowest priced proposal and the weightings shown above. For example, the bidder(s) which propose the lowest hourly charge-out rate for partners will receive 15 points and the other bidders will receive a score calculated as follows:

Amount of Lowest Bid ÷ Amount of Higher Bid x 15

The same approach will apply to the scoring of charge-out rates proposed for the “associates” and “all other fee earners” categories.

## 6 CONTRACT TERMS AND DURATION

Each successful bidder's contract with TNEFL will comprise: (1) the contents of this Invitation to Tender (including the appendix); (2) the proposals and prices set out in the successful bidder's tender submission; (3) those of the bidder's standard terms and conditions which are accepted by (and/or as adjusted by agreement with) TNEFL. In the case of conflict or contradiction between terms, the relevant provision imposed by the documents listed in the previous sentence will apply in that order of precedence. The hourly rates tendered will be fixed for the duration of the contract and will not be index linked or otherwise increased.

As stated, the successful bidders' standard terms and conditions will form part of the contract with TNEFL – subject to agreement to amend any such terms which are not acceptable to TNEFL and to the insertion of any additional terms required by TNEFL. (In the absence of agreement of terms, TNEFL reserves the right not to award the contract and to offer it instead to the next-highest scoring bidder.) Please therefore submit a copy of your standard terms and conditions with the tender, or provide a link to them. It is a requirement that your firm is, and the services it provides to TNEFL are, covered by an appropriate professional indemnity insurance policy and that any limits imposed on your potential liability to TNEFL are acceptable to TNEFL. If any such limits are not specified in your standard terms and conditions, please specify in your tender submission what they will be in relation to the services required by TNEFL as summarised in this Invitation to Tender.

Engagements entered into pursuant to this Invitation to Tender will endure from the date of appointment until 30<sup>th</sup> June 2024, unless terminated earlier either by TNEFL or the appointed firm by one month's written notice. The term of appointment may be extended by agreement between TNEFL and the relevant firm for up to a further year (to 30<sup>th</sup> June 2025) - in the event only that the total actual expenditure during the initial c.2 year period of the contracts let pursuant to this Invitation to Tender is substantially below the Threshold Level of £213,477 (inclusive of VAT) and if the cumulative spend anticipated by the end of year 3 is also below that level.

## 7. BASIS OF ENGAGEMENT / OPERATION OF PANEL

As summarised above, the purpose of this Invitation to Tender is to enter into engagements with two firms of solicitors, to act as a small panel for TNEFL to access on an ad hoc basis as required.

TNEFL anticipates that it will generally request quotes from both firms for individual pieces of work, and will instruct the firm which provides the lowest quote.

However, TNEFL may, at its absolute discretion, request a quote for an individual piece of work only from the firm which achieved the highest score in the evaluation of the tenders received in response to this invitation to tender.



By entering into an engagement with any firm pursuant to this Invitation to Tender, TNEFL does not commit to any minimum level of expenditure and it is possible that a firm with which TNEFL enters into an engagement will not receive any instructions. TNEFL also reserves the right, at its absolute discretion, to seek legal advice from firms with which it engages other than as a result of this Invitation to Tender.

## **8. SUBMISSION OF QUESTIONS, EXPRESSIONS OF INTEREST & TENDERS**

If you intend to bid, **please register an expression of interest** by emailing [alastair.smith@northeastfund.org](mailto:alastair.smith@northeastfund.org). Responses to any questions received and/or any supplementary information issued will be emailed to all parties which register an interest. They will also be posted on the news section of TNEFL's website: <https://www.northeastfund.org/category/news/>

**The closing date** for tenders to be received is **12.00 noon on Monday 9<sup>th</sup> May 2022**. Your tender should be limited to a maximum of 20 pages of A4, including the CVs of team members.

**Please email your tender document**, with the subject '**Confidential - Tender ref TNEFL/2022/1**' to [alastair.smith@northeastfund.org](mailto:alastair.smith@northeastfund.org). Any questions about this tender should also be emailed to Alastair Smith at this address and should be received no later than Monday 2<sup>nd</sup> May.

## **9. CONFIDENTIALITY AND TRANSPARENCY**

To ensure a fair and transparent process, no approach of any kind should be made to anyone associated with TNEFL in connection with this tender other than your formal tender documentation and any clarification requests submitted to Alastair Smith as detailed above. Failure to comply with this may result in disqualification.

You must not disclose to anyone else any prices or other information contained in your submission before the decision on award of the contract is notified to you, and you must not make any arrangement with another party about whether or not they should bid. You must not try to obtain information about anyone else's tender before the decision on award of the contract is notified to you.

TNEFL will keep confidential and not disclose to any third party the tender proposal documents submitted by bidders, except as may be required in conjunction with audits undertaken by or on behalf of its funders and/or as may be required by any lawful authority.



## **10. FURTHER CONDITIONS APPLICABLE TO TENDER PROCESS**

Tender submissions should remain open for acceptance for 30 days from the tender submission deadline.

TNEFL reserves the right to cancel the tender process and reject all tenders at any time prior to the award of the contract(s). The issue of this invitation to tender in no way commits TNEFL to enter into any contract pursuant to this tender process or to make any minimum level of expenditure with any appointed firm.

TNEFL shall not accept any liability for any costs resulting from the cancellation of this tender process nor for any other costs incurred by those tendering, who do so entirely at their own expense.

Any contract awarded as a result of this process will be awarded by the application of the evaluation criteria set out in Section 5 of this Invitation to Tender. Accordingly, TNEFL will not be bound to accept the lowest-price, or any, tender.

**11<sup>th</sup> April 2022**

## **Appendix 1 – Selection Pre-Conditions**

Each party which submits a tender proposal document (Prospective Supplier) is deemed to agree that each of the following statements are accurate in respect of that party, unless it indicates otherwise within its tender proposal document or any accompanying covering letter:

1. The Prospective Supplier has prepared and submitted its tender in good faith, and has not fixed or adjusted the pricing or other proposals of the tender in accordance with any agreement or arrangement with any other person or party;
2. The Prospective Supplier has not communicated to any person other than TNEFL the amount or approximate amount of the pricing proposed in the tender;
3. The Prospective Supplier has not entered into any agreement or arrangement with any person or party that they shall refrain from tendering, that they shall withdraw any tender once offered or vary the amount of any tender to be submitted;
4. The Prospective Supplier has not and shall not make any offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person or party outwith its own organisation (or, if applicable, its subcontractors/joint venture or consortia partners named in the tender proposal document) for the purposes of securing any of the actions referred to in paragraphs 1 to 3, above, or to seek to influence in any way the outcome of this tender process;
5. The Prospective Supplier is not subject to any insolvency proceedings (including petitions for winding up; winding up orders from the Court; appointment of receivers or administrators);
6. The Prospective Supplier is not subject to any material litigation which could affect its ability to deliver the services sought by this Invitation to Tender or which might reasonably be expected to undermine perceptions of its integrity or appropriateness to provide the services to TNEFL;
7. Neither the Prospective Supplier nor any of its directors, partners, members or senior managers has any convictions, nor been subject to sanction by any regulatory body for, any offences relating to: business and professional activities; professional misconduct; fraud; social security or taxation laws or obligations;
8. The Prospective Supplier operates its business in accordance with the requirements of the Equality Act 2010 and the principles of anti-discrimination and equality of opportunity;
9. The Prospective Supplier has in place the human and technical resources to perform the contract to ensure compliance with the Data Protection Act 2018 and to ensure the protection of the rights of data subjects;
10. If, and to the extent, applicable to it, the Prospective Supplier satisfies all requirements under the Modern Slavery Act 2015.