



**Norfolk** County Council

Broadband Delivery Framework

**Call Off ITT Part 1:**

**Introduction and Instructions**

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# 1 Introduction

## 1.1 Purpose

1.1.1 The purpose of this ITT (Invitation to Tender) is to invite Bidders to submit tenders in response to the Local Body Call Off Requirements. For brevity, Norfolk County Council is referred to in this document as 'the Local Body'.

1.1.2 This ITT has four parts:

- Part 1 – Introduction and Instructions
- Part 2 – Requirements
- Part 3 – Call Off Contract
- Part 4 – Instructions for Submission of Financial Information

1.1.3 This Part 1 comprises:

- Introduction
- Guide to the Call Off Process
- Overarching Instructions for Acknowledgement and Completion of Tender
- Legal Instructions
- Definitions (Appendix 1)
- Data Room Access Information (Appendix 2)
- Certificate of Non-Collusion (Appendix 3)

## 2 Background Information

### 2.1 Strategic Ambitions

- 2.1.1 Better Broadband for Norfolk will provide broadband infrastructure across Norfolk that is capable of directly supporting the Local Body's long-term aspirations to be:
- An inspirational place with a clear sense of identity
  - A vibrant, strong and sustainable economy
  - A location for aspirational people with high levels of achievement and skills]

### 2.2 Benefits from Broadband

- 2.2.1 Two thirds of companies in the project area are located in rural areas, with most employing less than 10 staff. The Better Broadband for Norfolk programme, over both contracts is expected to deliver:
- Over 1,500 additional jobs over 10 years
  - £88 million in additional annual GVA (Gross Value added) by 2021/22, equivalent to 0.64% of Norfolk's current total GVA
  - Discounting at 3.5%, as per HM Treasury guidance, the present value of the net GVA impact is over £500 million over a ten year appraisal period
- 2.2.2 Children in rural areas are disadvantaged because they do not have access to broadband at home; this impacts both their ability to do homework and learn independently, but also deprives them of the social networking world that young people rely upon. Improved broadband will have significant impact on educational and wider well-being for children in rural communities.
- 2.2.3 Compared with the rest of England, the project area has a relatively elderly age profile with around one fifth of the population aged 65 and over, and one in ten people aged 75 and over. Broadband services will play an increasingly important role in supporting older people by:
- Providing access to on-line services, e.g. shopping, banking
  - Enabling people to stay in touch with family and friends
  - Supporting people to stay at home for longer by supporting the introduction of new health and Social Care services, such as, telemedicine and tele-care
- 2.2.4 Carbon dioxide as a result of road transit is higher in the project area than the national average. Nearly half of total employment within Norfolk is provided by a small number of very large companies; senior representatives from these businesses identify poor broadband coverage in rural areas as a key constraint to their aspiration to encourage more home working.

## 2.3 Major works and permit scheme

### 2.3.1 Information on the Authority's approach to:

- Classification of major works and, in particular, whether it is anticipated that the deployment work being funded under the Call Off Contract will be classified as major works;
- Permit schemes operated by it or on its behalf, including process and costs involved, can be found in the Data Room (see 2.4 below).

## 2.4 Further Information

2.4.1 Further information on the Project aspirations is available in the Local Body's Local Broadband Plan which is available in the Data Room, see Appendix 2 to this Part 1 for details on how to access the Data Room.

2.4.2 Bidders are obliged to seek any clarification they require regarding the information provided in the Data Room prior to submission of their proposals. It is, in any event, each Bidder's own responsibility to ensure it fully reviews and understands the information provided in the Data Room.

## 3 Guide to the Call Off Tender Process

### 3.1 Introduction

- 3.1.1 The aim of this Call Off tender process is to competitively select a Bidder to deliver the Project.

### 3.2 Principles of the Call Off Tender Process

- 3.2.1 The Call Off tender process has been designed based on the following principles:
- A Framework pre-procurement supplier engagement phase has taken place prior to issue of this ITT, involving:
    - o A project overview
    - o Issue of draft ITT
    - o Access to the Data Room
  - Alignment with the Framework, (i) to prevent areas that have been covered at Framework level being re-visited at Call Off stage; and (ii) with variations (including changes, additions and removals) only where these are necessary to accommodate the specific Local Body Call Off Requirements
  - A 3.5 month Call Off tender process

- 3.2.2 The following process and timescales apply:

Activity	Elapsed Time	Start Date 2014	End Date 2014
Issue of this Invitation to Tender (ITT)	1 day	22 Aug	
Bidder access to the Data Room	8 weeks	22 Aug	17 Oct
Clarification Question process	7 weeks	1 Sept	10 Oct
Bidder 'Data Requests' to BT Openreach	2 weeks	1 Sept	12 Sept
Bidder Clarification Days	6 weeks	1 Sept	10 Oct
Bidders prepare responses	10 weeks	22 Aug	31 Oct
Evaluate bidder response and clarify where required	3 weeks	3 Nov	24 Nov
Bidders notified of evaluation outcome	-	24 Nov	
Local Body initial governance processes	N/A		
Standstill period (Alcatel) – see section 3.2.3	2 weeks	25 Nov	8 Dec
DCMS and Other Funding Approvals	2 weeks	25 Nov	8 Dec
State Aid Approval process	2 weeks	25 Nov	8 Dec
Contract Award	-	9 Dec	

- 3.2.3 If the other Bidder withdraws from (or elects not to participate in) the Call Off process by providing the Local Body with written notice, or otherwise has not submitted an ITT response, the Local Body may enter into the Call Off Contract with the successful Bidder without following a standstill period. Additionally, the Local Body may enter into the Call Off Contract with the successful Bidder without following a standstill period if the successful Bidder is the only remaining Framework Supplier on the Framework.
- 3.2.4 The Authority reserves the right to commence bid evaluation prior to the date specified in this ITT in circumstances where:
- Either: (i) it has received formal confirmation from all bidders, save one, that they will not be bidding for the contract; or (ii) there is only one (1) remaining Framework Supplier on the Framework; and the remaining bidder provides its tender response prior to the tender return date.
  - If the circumstances above apply and the Authority wishes to accelerate the timetable, it will do so by providing notice to all relevant tenderers to that effect.

## 4 Overarching Instructions for Acknowledgement and Completion of Tender

### 4.1 Intention to Bid (or otherwise)

- 4.1.1 Bidders MUST provide an initial indication of whether or not they intend to submit a tender in response to this ITT by 29 August 2014 via the formal communication channel provided under section 4.2 below.
- 4.1.2 Any Bidder subsequently intending to withdraw from the Call Off process MUST promptly advise Karen O’Kane and confirm the decision via the formal communication approach provided under section 4.2 below.

### 4.2 Bid Communication

- 4.2.1 The Local Body is using an email account [karen.okane@norfolk.gov.uk](mailto:karen.okane@norfolk.gov.uk) for the purposes of exchanging bid communications (including issuing tender documentation and exchanging clarifications).
- 4.2.2 Bidders must nominate a single point of contact and provide an email address for that contact. All correspondence from the Local Body concerning this procurement will take place via that single point of contact’s email address.
- 4.2.3 From receipt of this ITT, Bidders MUST not communicate with (i) any member of the Local Body’s team; (ii) DCMS (including BDUK); and/or (iii) any person acting as an advisor thereto, in relation to this ITT, other than using the communication route described above unless other communication routes for such purpose are notified in writing by the Local Body. The foregoing requirement shall not apply to Bidder communications with DCMS (including BDUK) as part of the general operation of the Framework pursuant to the governance and reporting arrangements set out in the Framework Agreement between DCMS and the Bidder <sup>1</sup>(including any associated ad hoc Framework level meetings and correspondence between DCMS and the Bidder). It is also recognised by the Local Body, that any such discussion of the whole or any part of the Local Body’s ITT by the Bidder with DCMS (including BDUK) will not be a breach of the Local Body’s confidentiality, as DCMS (including BDUK) is already in possession of the Local Body’s ITT.

### 4.3 Tender Responses

- 4.3.1 ITT responses should be prepared in accordance with the instructions provided in Part 2 of this ITT.
- 4.3.2 All ITT responses shall be treated in accordance with the Procurement Legislation throughout the Call Off process.

## 4.4 Clarification

- 4.4.1 Clarification questions may be submitted by a Bidder between 1 September and 10 October 2014. All clarification questions must be communicated in accordance with section 4.2 above.
- 4.4.2 The Local Body shall provide clarification question responses within 5 working days of their receipt, save that if this timescale cannot be achieved in the circumstances the Local Body shall communicate this to the Bidder(s).
- 4.4.3 The Local Body may itself issue clarification questions to Bidders. These will be communicated in accordance with section 4.2 above.
- 4.4.4 The Bidder shall provide clarification question responses within 5 working days of their receipt, save that if this timescale cannot be achieved in the circumstances the Bidder shall communicate this to the Local Body.
- 4.4.5 Bidders should refer to section 5.1.3 regarding wider circulation of clarification questions and responses.

## 5 Legal Instructions

### 5.1 Confidentiality

- 5.1.1 Bidders are subject to the confidentiality obligations set out in the separate Non-Disclosure Agreement entered into between the Local Body and each Bidder as a condition of access to the Data Room.
- 5.1.2 The Local Body is subject to the duty of confidence set out in the Procurement Legislation in relation to information provided by Bidders. The Local Body may, in connection with the Framework, disclose documents relating to and/or detailing Bidders' proposals or tenders on a confidential basis (and take reasonable steps to ensure such confidentiality) to any member, director, officer, employee or agent of the Local Body, DCMS (including BDUK), any other local body using or intending to use this Framework Agreement or any person acting as an adviser for any of those parties. Save that,<sup>2</sup>the Local Body shall not disclose to other local bodies (a) the Call Off Bid Financial Model; or (b) any other bid material which the Local Body has agreed with the Bidder is to be treated as 'Commercially Sensitive Information'. This shall not prevent (a) or (b) being disclosed to DCMS (including BDUK), or any person acting as its adviser, provided DCMS shall then treat such material as Supplier Confidential Information under and in accordance with the Framework Agreement.
- 5.1.3 The Local Body also reserves the right to disseminate information that is materially relevant to all Bidders, even if the information has only been requested by one Bidder. Should Bidders wish to avoid such disclosure (for example, on the basis that the request contains, or the likely response will contain, commercially confidential information or may give another Bidder a commercial advantage) the request must be clearly marked "In confidence – not to be circulated to other Bidders" and the Bidder must set out the reason or reasons for the request for non-disclosure to other Bidders. The Local Body shall act reasonably regarding the protection of commercially sensitive information relating to the Bidder subject to its duties under the Procurement Legislation, FOIA and EIR.

### 5.2 Freedom of Information and the Environmental Information Regulations

- 5.2.1 The Local Body is subject to the requirements of the Audit Commission Act 1998, the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR), the subordinate legislation made under FOIA/EIR and any guidance and/or codes of practice issued (from time to time) in relation to such legislation.
- 5.2.2 Bidders are advised that documentation provided by them in response to this ITT and other documentation supplied by them in connection with this procurement may be the subject of a request for information under the FOIA or the EIR.

- 5.2.3 Bidders are required to specify (with reasons) any information contained in their proposals or tenders which they regard as falling within any of the exemptions from disclosure specified under FOIA/EIR including information provided in confidence. Bidders are required to state which provisions of FOIA/EIR apply to the information identified above.
- 5.2.4 Bidders are to make sure any information that is considered commercially confidential is clearly marked as such. The front page of the document must be clearly marked "In confidence – not to be circulated" (and any document, submission or each relevant page of the document must also be marked "commercially confidential"). Information marked as confidential should be limited to that which is genuinely confidential and which may be exempted from disclosure under FOIA/EIR. Bidders are to be aware that any document, submission, proposal or tender that indicates that all of the information provided in it is confidential, without a clear and substantive justification, is unlikely to be acceptable to the Local Body. Bidders are to also be aware that even where information is identified as confidential and/or commercially sensitive the Local Body may be required to disclose such information in accordance with FOIA or the EIR.
- 5.2.5 If the Local Body receives a request under FOIA or the EIR for the release of information which has been provided by a Bidder, the Local Body shall consult with the relevant Bidder to inform its decisions regarding any exemptions as they may relate to the Call Off Bid Financial Model (being the detailed populated financial spreadsheets submitted in response to Part 4 of this ITT and including any subsequent iterations of that detailed bid financial model) submitted by a Bidder to the Local Body in the course of this procurement but otherwise use reasonable endeavours to consult with the relevant Bidder as soon as practicable where it considers that the requested information may include exempt information relating to that Bidder. Where the Local Body consults with the Bidder, the Bidder must respond to the Local Body's requests within 3 working days (unless otherwise agreed by the Local Body), in order that the Local Body may comply with its obligation to answer the request within the relevant time limit.
- 5.2.6 The Local Body shall be responsible for determining, at its absolute discretion, whether such exemption is to apply and Bidders agree to comply with any such decision taken by the Local Body.
- 5.2.7 The Local Body shall not be liable for any loss, damage, harm or other detriment however caused arising from any disclosure of information under FOIA, the EIR or other legislation governing access to information (including guidance notes and codes of practice issued by the Information Commissioner).
- 5.2.8 Bidders are recommended to take their own independent legal advice regarding the effect of the FOIA and the EIR.

## 5.3 Publicity

- 5.3.1 No Bidder will undertake (or permit to be undertaken) at any time, any publicity activities with any section of the media in relation to the ITT Documents, this procurement process or the Project or any data coming from the Project without the prior written agreement of the Local Body (including as to the content of any such publicity). In this section the meaning of the word 'media' shall include radio, television, print, newspapers, trade and specialist press, the internet, email or mobile content accessible by the public at large and representative of such media.

## 5.4 Transparency

- 5.4.1 Bidders are to be aware that the Local Body may comply with the Government's Transparency Agenda by publishing procurement documentation and contracts on appropriate publically accessible websites. The procurement documents, the fact that the Bidder has submitted a bid and the text of any Call Off Contract awarded may therefore be published (subject to possible redactions at the Local Body's discretion, relating to information which is exempt from disclosure under the FOIA and the EIR).

## 5.5 Copyright

- 5.5.1 Bidders are reminded that the copyright in the ITT Documents is vested in the Local Body and/or the DCMS. Bidders shall not reproduce in any material form (including photocopying or storing it in any medium by electronic means), any of these documents without written permission of the Local Body other than for use strictly for the purpose of preparing proposals.
- 5.5.2 All information supplied by or on behalf of the Local Body, including any software, electronic media or data relating to the Project, must be returned on demand, without any copies being retained.
- 5.5.3 Should a Bidder (i) decide not to submit a tender or to discontinue its participation in the procurement process; or (ii) not be awarded the corresponding Call Off Contract, all documents and other material supplied by or on behalf of the Local Body, together with all such copies thereof as may have been taken, shall be returned to the Local Body immediately and all electronic data supplied by or on behalf of the Local Body shall be immediately permanently deleted from the Bidder's storage devices and from the storage devices of any other persons to whom the Bidder may have passed the same (whether or not permitted by the Local Body). Nothing in this paragraph shall require the return or destruction of such electronic or other records as are required to be retained to fulfil a legal, regulatory or professional obligation.

## 5.6 Canvassing and Anti-Bribery

5.6.1 The Local Body reserves the right to disqualify from this tender process (without prejudice to any other civil remedies available to the Local Body and without prejudice to any criminal liability which such conduct by a Bidder may attract) any Bidder who, in connection with this ITT:

- offers any inducement, fee or reward to any member, director, officer, employee or agent of DCMS (including BDUK) or the Local Body or any person acting as an adviser for the Local Body or DCMS (including BDUK) in connection with this ITT
- does anything which would constitute a breach of the applicable anti-bribery legislation or Section 117(2) of the Local Government Act 1972
- directly or indirectly obtains or attempts to obtain information from any member, director, officer, employee or agent of the Local Body or DCMS (including BDUK) or any person acting as an adviser for the Local Body or DCMS (including BDUK) save in accordance with the ITT Documents
- canvasses any member, director, officer, employee or agent of the Local Body or DCMS (including BDUK) or any person acting as an adviser for the Local Body or DCMS (including BDUK) in connection with this ITT
- contacts any member, director, officer, employee or agent of the Local Body or DCMS (including BDUK) or any person acting as an adviser for the Local Body or DCMS (including BDUK) prior to the conclusion of this procurement process about any specific aspect of the ITT Documents in a manner not permitted by the ITT Documents (including without limitation contact for the purposes of discussing the possible transfer to the employment of the Bidder of such officer or other employee), save that the Bidder may contact DCMS (including BDUK) about the general operation of the Framework pursuant to the governance and reporting arrangements set out in the Framework Agreement between DCMS and the Bidder

5.6.2 The Local Body reserves the right to disqualify (without prejudice to any other civil remedies available to the Local Body and without prejudice to any criminal liability which such conduct by a Bidder may attract) any Bidder who, in connection with this ITT:

- fixes or adjusts the amounts stated in its proposal or tender by or in accordance with any agreement or arrangement with any other person (save for legitimate agreements and/or arrangements with a member of its own consortium or supply chain, professional advisors, proposed subcontractors and/or proposed consultants necessary for the purposes of preparing the bid or submission) (other than a member of its own consortium or supply chain)
- enters into any agreement or arrangement with any other Bidder to the effect that he shall refrain from submitting a proposal or tender or as to the amount of any proposal or tender to be submitted

- causes or induces any person to enter any agreement or arrangement referred to above or to inform the Bidder of the amount or approximate amount of any rival proposal or tender
- communicates to any person, other than with the written consent of the Local Body or DCMS (including BDUK), the amount or approximate amount of their proposal or tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of a proposal or tender)

## **5.7 Anti-Competitive Behaviour**

- 5.7.1 In order to create a level playing field for Bidders, the Local Body may require evidence from Bidders that their arrangements are not anti-competitive. The Local Body reserves the right to require Bidders to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.
- 5.7.2 Any evidence of any anti-competitive behaviour could result in Bidders being disqualified from the procurement process.
- 5.7.3 The above requirements are supplementary to the requirement to provide a Certificate of Non-collusion, a copy of which is provided at Appendix 3.

## **5.8 The Bidder's Team**

- 5.8.1 The members of the Bidder's Team, and the principal relationships between the team members, may be changed in relation to this procurement process only with the prior consent of the Local Body, and subject to any replacement team member being satisfactorily pre-qualified by the Local Body. The Local Body reserves the right to take this into account when determining whether or not to continue with the evaluation of a tender, and whether or not to award the Call Off Contract to a Bidder, where there has been a change in the ownership of the Bidder prohibited by the Framework Agreement or any members of the Bidder's Team (direct or indirect) or a change in the principal relationships between the team members. For the avoidance of doubt, this section does not concern changes in bid team personnel (i.e. individuals), unless the individual is a sole trader comprising part of the Bidder's Team – rather, it concerns changes at the Bidder's Team corporate/organisation level.

## **5.9 Bidding Costs**

- 5.9.1 Bidders are solely responsible for their costs and expenses incurred in connection with the preparation and submission of proposals or tenders and all future stages of this procurement process.
- 5.9.2 Neither the Local Body or DCMS (including BDUK) nor any of their representatives or advisers of those parties will be liable in any way to any Bidder or any other person for any costs or expenses incurred by any Bidder or any related party in connection with this procurement process, whether or not the procurement proceeds.

## 5.10 Conflicts of Interest

5.10.1 The Local Body is concerned to avoid conflicts of interest. In particular but without limitation, the Local Body may consider a conflict of interest as arising where:

- a subcontractor or advisor put forward by one Bidder is the same firm, company or a member of the same group of companies as that put forward by another Bidder
- a subcontractor or advisor is currently advising or has previously advised the Local Body at any time in any capacity in respect of the Project

Bidders are to note that the Local Body reserves the right to disqualify Bidders where there is an actual or potential conflict of interest. Bidders are therefore advised to review carefully the prior or current involvement of the Bidder including Subcontractors, consortium members and each and any of their advisers with the Local Body or DCMS (including BDUK), its members, officers, employees, agents and advisers and to contact the Local Body in accordance with section 4.2 above (notwithstanding when the conflict is identified) prior to submission of any tender response to discuss actual or potential conflicts they have identified.

5.10.2 Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of the Local Body could result in a Bidder being disqualified.

## 5.11 Provision of Further Information by Bidders Prior to Submitting a Tender

5.11.1 The Local Body is relying on the information provided by Bidders in the Pre-Qualification Questionnaire (including information concerning the Bidder's Team and structure) for appointment on the BDUK Framework.

5.11.2 If, at any time during this procurement process, there are any changes to the same, the Bidder must advise the Local Body as soon as practicable (even if this is prior to the submission of a proposal or tender). The Local Body reserves the right to remove the Bidder from this tender process if the changes impact on its evaluation in this procurement process.

5.11.3 The Local Body reserves the right to require Bidders to confirm that their Pre-Qualification Questionnaire information remains accurate at all future stages of this procurement process in order to confirm that Bidders remain prequalified and to take the appropriate action if that is no longer the case.

## 5.12 Local Body's Right to Reject a Tender and/or Disqualify a Bidder

5.12.1 In addition to its rights set out in the other provisions of this section 5, the Local Body reserves the right to reject a proposal or tender and/or disqualify a Bidder where:

- a tender is submitted late, is completed incorrectly, is materially incomplete, is submitted in any other format other than using the approach provided in section 4.2 of this Part 1 or fails to meet the Local Body's submission requirements which have been notified to Bidders
- the Bidder and/or members of the Bidder's Team are unable to satisfy the terms of Article 45 of Directive 2004/18/EC and/or Regulation 23 of the Public Contracts Regulations 2006 and/or Regulation 23 of the Public Contracts (Scotland) Regulations 2006 at any stage during the procurement process
- the Bidder and/or members of the Bidder's Team are guilty of material misrepresentation or false statement in relation to its tender and/or the process
- the Bidder and/or members of the Bidder's Team contravene any of the terms and conditions of this ITT
- there is a material change in identity, control, financial standing or other factors impacting on the selection and/or evaluation process affecting the Bidder and/or members of the Bidder's Team (including a change in the Bidder's Team from the members who completed the Pre-Qualification Questionnaire)
- the Bidder introduces a material change to any commitment or statement contained in any previous submission at any stage of the procurement process (including the Pre-Qualification Questionnaire)
- the Bidder breaches the terms of the Non Disclosure Agreement referred to at section 5.1 above
- the Bidder breaches the terms and conditions of use for the communication approach provided under section 4.2 of this Part 1 or any supplementary terms and rules of use for the Data Room

5.12.2 The disqualification of a Bidder will not prejudice any other civil remedy available to the Local Body and will not prejudice any criminal liability that such conduct by a Bidder may attract.

## 5.13 Right to Cancel or Vary the Process

5.13.1 The Local Body reserves the right at any time:

- not to consider proposals or tenders other than those submitted in accordance with the terms of the ITT
- to cancel or withdraw from the procurement process at any stage

- to issue or make available amendments or modifications to the ITT Documents during this procurement process
- to amend the terms and conditions of this tender process
- to alter the timetable of any aspect of this procurement including any award of the Call Off Contract
- not to award the Call Off Contract as a result of this procurement process and provides no commitment that any Call Off Contract will be entered into
- to require a Bidder and/or members of the Bidder to clarify their submission in writing and/or provide additional information (failure to respond adequately may result in a Bidder being disqualified)

## 5.14 Governing Law

5.14.1 All tender discussions with Bidders will be conducted, and all documents, proposals and tenders will be prepared, in the English language. The procurement process and any Call Off contract arising will be subject to English law and the exclusive jurisdiction of the English courts.

## 5.15 Specification of Standards

5.15.1 Where reference is made to an International, European or British Standard then a Bidder may propose an equivalent to any of these, provided that its proposal offers equivalent guarantees of safety, suitability and fitness for purpose to those specified.

## 5.16 Disclaimer

5.16.1 Whilst prepared in good faith, the ITT Documents are intended only as a background explanation of Local Body activities and plans.

5.16.2 The ITT Documents do not purport to be all inclusive or to contain all of the information that a Bidder may require.

5.16.3 Any persons considering making a decision to enter into contractual relationships with the Local Body following receipt of the ITT Documents is to make their own investigations and their own independent assessment of the Local Body and their requirements for the Project and is to seek their own professional financial and legal advice.

5.16.4 Neither the Local Body or DCMS (including BDUK) or their advisers, or the directors, officers, members, partners, employees, other staff, agents or advisers of any such body or person:

- makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT Documents
- accepts any responsibility for the information contained in the ITT Documents or for its fairness, accuracy or completeness

- shall be liable for any loss or damage (other than in respect of losses that cannot be excluded by law including fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication save to the extent set out in any written Call Off Contract which is entered into by the Local Body
- 5.16.5 Without prejudice to the legal requirements applicable to this ITT, only the express terms of any written Call Off Contract, the subject matter of which is envisaged in these ITT Documents, shall (as and when such Call Off Contract is executed) have any contractual effect in respect of that contract's subject matter.
- 5.16.6 Nothing in the ITT Documents is, or is to be, relied upon as a commitment or a representation as to the Local Body's ultimate decision in relation to the Project. The publication of the ITT Documents in no way commits the Local Body or DCMS (including BDUK) to award any contract or pursue any tender process for the Project.
- 5.16.7 The Local Body reserves the right to vary or change all or any part of the basis of the procurement process at any time or not to proceed with the procurement at all.

# Appendix 1: Definitions

## A1.1 Definitions Table

A1.1.1 For the purpose of this ITT the following terms and their meanings shall apply:

Term	Meaning
<b>Basic Broadband</b>	broadband which delivers access line speeds of at least 2 Mbps;
<b>Broadband Guidelines 2013</b>	<a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF</a>
<b>Bidder</b>	a Framework Supplier that is or was involved in this Call Off ITT process – this includes each Supplier recipient of this ITT unless the context of the use of this term in this ITT otherwise demands;
<b>Bidder's Team</b>	the (corporate/organisational level) team bidding for the Project, including where the Bidder is: (i) a sole organisation (ii) a consortium member (iii) a prime contractor, the prime contractor and each Subcontractor (iv) a partnership, each member of the partnership (v) an incorporated company, the incorporated company (vi) a co-operative, the co-operative
<b>Busy Hour Committed Rate</b>	the applicable minimum Service Frame (as defined by NICC ND 1030) throughput rate (as specified in the Speed and Coverage Template) that each Retail Service Provider shall be able to consume on a wholesale basis for at least 90% of the time during the busiest (i.e. highest total traffic load) three (3) hours of each day during the term of the Call Off Contract;
<b>Call Off Bid Financial Model</b>	this will comprise the detailed populated financial spreadsheets submitted in response to Part 4 of this ITT, which shall become the Project Model (as defined in Schedule 1 of the Call Off Contract) upon signature of a corresponding Call Off Contract.  Where the context allows, this term shall (when used in this ITT) include any iterations of those spreadsheets submitted by a Bidder to the Local Body pursuant to this Call Off process;
<b>Call Off Contract</b>	a contract for the deployment of broadband access and related services, made between the Local Body and a Supplier pursuant to the Framework;
<b>Data Room</b>	the data room made available to Bidders as described in Appendix 2 of Part 1 of this ITT;
<b>Framework</b>	the broadband delivery framework arrangement, awarded by DCMS on 29 <sup>th</sup> June 2012, of suitably qualified appointed suppliers with the capability to provide broadband access and related services. Reference to the " <b>Framework Agreement</b> " specifically means the agreement between DCMS and a Framework Supplier underpinning that Framework;
<b>Framework Supplier</b>	a supplier appointed to the Framework;
<b>ITT</b>	this invitation to tender, including all the ITT Documents;
<b>ITT Documents</b>	all Parts and Appendices, all associated tender documentation, guidance, clarifications, project documentation and information issued or made available by the Local Body and/or its advisers as part of this procurement process;
<b>Key-Subcontractor</b>	has the meaning set out in Schedule 1 of the Call Off Contract;
<b>Local Body</b>	as identified in section 1.2.1 of Part 2;
<b>Local Body Call Off Requirements</b>	the requirements of the Local Body for its Project, as identified in Part 2 of this ITT and further detailed in the wider ITT Documentation;
<b>Intervention Area</b>	the area defined in section 2.3.2 of Part 2, which is in scope for NGA Network intervention as part of the Solution;
<b>National Broadband Scheme</b>	<a href="http://ec.europa.eu/competition/state_aid/cases/243212/243212_1387832_172_1.pdf">http://ec.europa.eu/competition/state_aid/cases/243212/243212_1387832_172_1.pdf</a>
<b>NGA Network</b>	means access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over existing copper networks. In this context NGA networks must be

Term	Meaning
	capable of delivering access line speeds of at least 30 Mbps;
<b>Out of Scope Area</b>	the area defined in section 2.3.1 of Part 2, which is out of scope for intervention as part of the Solution;
<b>Overall Geographical Area</b>	the area defined in section 1.3.1 of Part 2;
<b>Pre-Qualification Questionnaire</b>	the pre-qualification questionnaire satisfied as part of qualification for inclusion as a Supplier under the Framework;
<b>Procurement Legislation</b>	means Directive 2004/18/EC of the European Parliament and of the Council and Council Directive 89/665/EEC of the European Parliament and of the Council (as amended by Directive 2007/66EC) or any legislation implementing either or both of them;
<b>Project</b>	the local broadband project to be delivered pursuant to this ITT;
<b>Reference Financial Model</b>	the Supplier financial model as included in the Framework;
<b>Reference Supplier Solution</b>	the Supplier technical and operational solution as included in the Framework;
<b>Solution</b>	the Bidder's solution, to the Local Body Call Off Requirements, proposed (or to be proposed) pursuant to this ITT;
<b>Speed and Coverage Template</b>	the spreadsheet to be completed by Bidders, set out at Appendix 3 to Part 2;
<b>Subcontractor</b>	has the meaning set out in Schedule 1 of the Call Off Contract;
<b>Superfast Broadband</b>	an access line speed of greater than 24Mbps;
<b>Template Call Off Contract</b>	the template Call Off Contract within the Framework;

## A1.2 Interpretation Rules

### A1.2.1 In the ITT Documents:

- A1.2.1.1 any definitions set out in Schedule 1 of the Call Off Contract shall, for the purposes of the Call Off Contract content in Part 3 of this ITT, take precedence over the above meanings;
- A1.2.1.2 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- A1.2.1.3 references to any statute, enactment, order, regulation, instrument, code, standard or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, instrument (including any EU instrument), code, standard, or other similar instrument as amended, replaced, consolidated or re-enacted;
- A1.2.1.4 the term "MUST" is used in Part 2 and Part 4 to help guide the reader to where responses are required as part of an ITT tender. However, it should not be assumed to be exhaustive of all response requirements and this ITT should be read in detail to identify all elements of responses and communications required from Bidders under this ITT.

## Appendix 2: Data Room Access Information

### A2.1 Introduction

#### A2.1.1 Purpose of this Document

- A2.1.1.1 The Local Body is making a Data Room available as part of the Call Off process.
- A2.1.1.2 The Bidders' attention is specifically drawn to Clause 5 of the Call Off Contract concerning this due diligence Information and section A2.2 below concerning changes to the content of the Data Room.

### A2.2 Data Room Access and Restrictions

#### A2.2.1 Access to Data Room

- A2.2.1.1 The Data Room can be accessed by Bidders subject to the terms of Non Disclosure Agreement entered into between the Bidder and the Local Body.

#### A2.2.2 Data Room Content

- A2.2.2.1 Please refer to the index contained within the Data Room for a full list of the information supplied within the Data Room.
- A2.2.2.2 The content of the Data Room may change over time.

#### A2.2.3 Restrictions

- A2.2.3.1 Each Bidder must, for the avoidance of doubt, adhere to the terms of the Non-Disclosure Agreement and this ITT in respect of the Data Room content.
- A2.2.3.2 Furthermore, the following supplementary (i.e. in addition to the other terms of the Parts of this ITT) restrictions and conditions apply in respect of the content of the Data Room which is available by emailing [karen.okane@norfolk.gov.uk](mailto:karen.okane@norfolk.gov.uk)

#### A2.2.4 Reliance on Content of Data Room

- A2.2.4.1 The Bidders are referred to Clause 5 of the Call Off Contract concerning reliance on the content of the Data Room.
- A2.2.4.2 No representation or warranty is made concerning the completeness or accuracy of the Data Room, save to the extent expressly set out in the Call Off Contract.

## Appendix 3: Certificate of Non-Collusion

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### Certificate of Non-Collusion

The Bidder must sign and return to the Local Body the following Certificate of Non-Collusion:

We the undersigned do hereby certify that:-

- (a) Our tender is bona fide and intended to be competitive and we have not fixed or adjusted the amount of the tender by or in accordance with any agreement or arrangement with any other person;
- (b) We have not indicated to any person other than the person calling for the tender amount or approximate amount of the proposed tender except where the disclosure in confidence of the approximate amount of the tender was necessary to obtain insurance premium or other quotations necessarily required for the preparation of the tender;
- (c) We shall have not entered into any agreement or arrangement with any other person that they shall refrain from tendering or asked the amount of any tender to be submitted;
- (d) We have not offered to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the nature specified and described above;
- (e) We further undertake that we will not do any of the acts mentioned in (b), (c) and (d) above before the hour and date specified for the return of the tender.

For and on behalf of: .....

Signed:.....

Position held:.....

*(Duly authorised agent of the Bidder)*