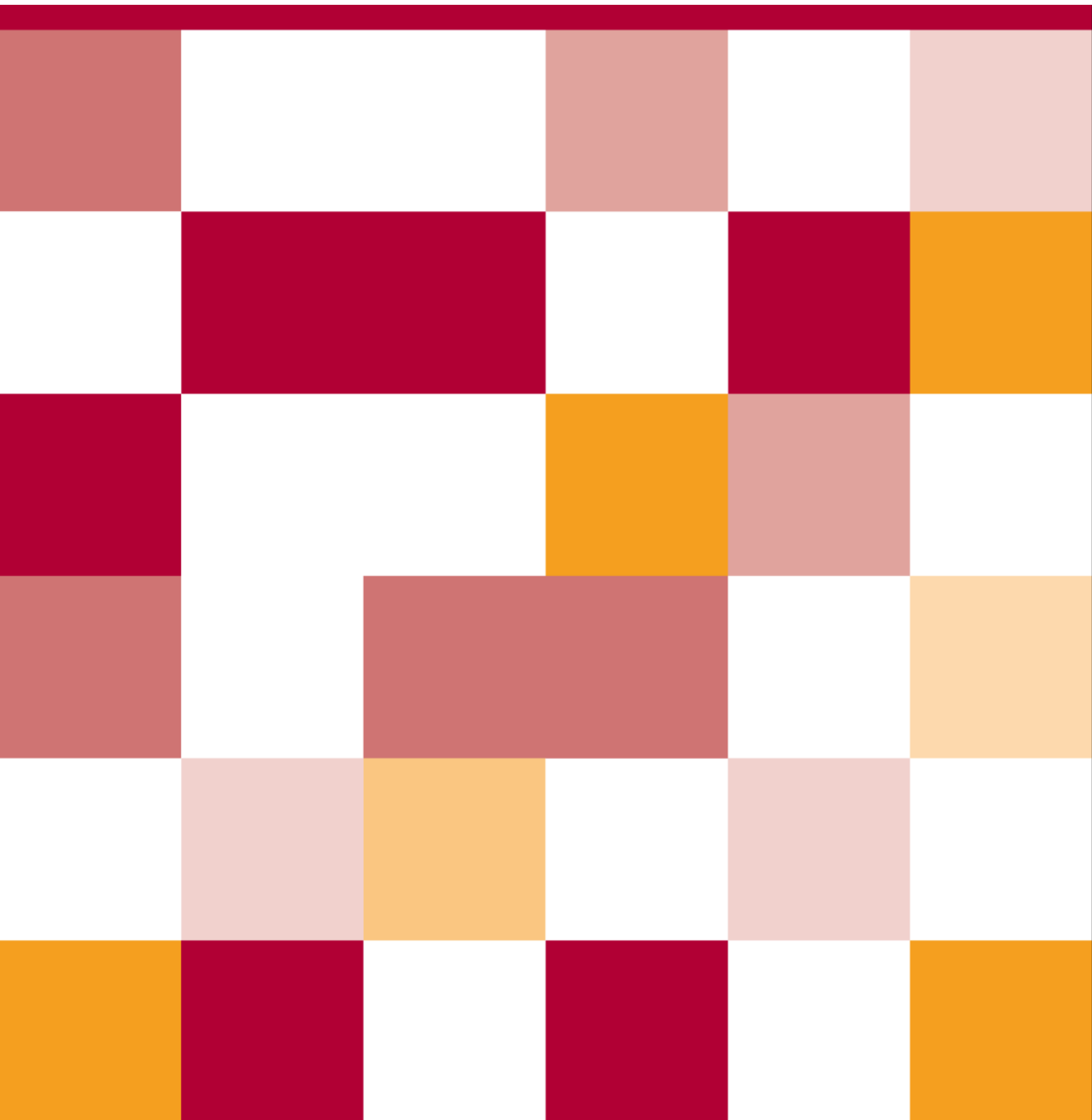




# Working in a consortium

A guide for third sector organisations involved in public service delivery



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## Foreword

Kevin Brennan,  
Minister for the Third Sector



As Minister for the Third Sector, I am delighted to introduce this guide for staff and directors of third sector organisations who may be considering, or already involved in, developing a partnership to deliver a public services contract.

In *Partnership in Public Services: An action plan for*

*third sector involvement* the Government acknowledged that, at their best, third sector organisations - especially those rooted in local communities - have an expert perspective on the needs of local people and how best to provide services that meet those needs.

This is why in the action plan we made a number of commitments to reduce the barriers that third sector organisations often face in tendering for and delivering public services. Indeed, we recognise that as well as sub-contracting, forming a consortium is another way in which smaller organisations can get involved in the delivery of public sector contracts.

This guide aims to provide information relevant to a wide range of third sector organisations but it will be of particular interest to smaller charities and local third sector groups.

The case studies included in the document offer an insight into how some organisations have already benefited from working in a consortium. There are also valuable lessons to be learned, not least, the importance of getting specialist legal advice from the earliest stages in the development of a consortium.

As we face up to the challenges of these difficult economic times, I do hope you find that the practical information offered here helps your organisation to work successfully in partnership to provide public services.

A handwritten signature in black ink that reads "Kevin Brennan". The signature is written in a cursive, flowing style.

**Kevin Brennan, MP**  
**Minister for the Third Sector**

December 2008

# Introduction to consortium working

Forming a consortium for the purpose of entering into a contract to deliver public services is in many respects like developing any other business relationship. If the relationship is to be satisfactory for all parties, it requires:

- a shared vision;
- good communication;
- sound policies and procedures;
- effective financial, risk and environmental management systems;
- a clear understanding of the practical details including potential risks; and
- access to regularly updated relevant legislation

## The first steps in consortium development

Before taking any steps in the development of a consortium to tender for a public service contract, or extending your operations to working closely with others, there are some key questions about your own organisation on which you should be clear:

- **Who you are** – what are your vision and values?
- **What is your aim** – what drives you or motivates you?
- **Why you want to extend your operations** - including what do you wish to achieve?
- **How you will measure your success** – what Key Performance Indicators have you set for the expansion activity?

Answering these basic questions will prepare you for making a decision about how being involved in a consortium will help your organisation to better achieve its goals.

## Why should you want to develop a consortium?

A key reason to form a consortium may be that it provides your organisation with new opportunities to secure contracts which would not otherwise be

available to you. This is, however, just one of a number of options. You may, for example, want to:

- extend your current activities to include new ones for different client groups;
- deliver your services in another geographical area
- tender for a contract where the specification includes areas of activity you are unable to deliver;
- respond to another organisation which has approached you with a view to joining a consortium; or
- to ensure your organisation continues to provide services to your particular client group

There is no single route into consortium development but you need to be clear about why being in a business relationship with others will help you to better achieve what you want for your organisation.

Nonetheless, it is important to remember that being involved in an effective consortium should not dilute your organisation's existing ethos or culture and importantly, this should not affect the quality of the services which you provide. Rather it will provide another vehicle for you to take your goods and services to market.

## What should you consider before starting to develop a consortium?

Forming an effective consortium which operates efficiently is time consuming, has costs attached, and requires good management over the longer term.

Both governance and senior management within your organisation need to think through and discuss the opportunities and the potential pitfalls involved in choosing this route. It is your Board members who will carry the liability should things go wrong and they should therefore be fully involved from the very earliest stages of consortium development.

If your Board is happy for you to proceed to investigate the development of consortium working it is a good idea to form a sub-group of Board members who are able to monitor developments as they occur and report back to the full Board as necessary. Board approval can be

critical to the success of some consortium tendering requirements.

The following are some key points for consideration when developing a consortium for tendering purposes as identified by practitioners:

- Be realistic about the risks, challenges and costs involved. It takes time, effort and resources to get a consortium up and running.
- Be clear about your motivation.
- Consortium development may require one organisation to drive the process forward.
- The differing operational systems and cultures of organisations can be a barrier to successful consortium working. Spend time understanding the working systems and procedures used by other potential consortium members.
- Agree roles and responsibilities early on in the process and develop mechanisms to review these roles and responsibilities as the consortium develops.
- Create agreements for consortium operations which set out clear decision making processes for the organisations involved. Agree specifically who can decide what and when as well as defining through what routes decisions are to be communicated.
- Agree how the consortium's finances are to be managed.
- Get specialist legal advice on the structure and operation of the consortium to ensure that it is 'fit for purpose' and there is no risk of contravening any area of legislation.
- Be clear about what you will do if you do not win the contract and how this will affect your future working arrangements.

- Do a credit check on all of the potential consortium members to ensure that their business and financial arrangements really are sound.

### What are the potential pitfalls in developing a consortium?

One of the most common potential pitfalls is around a lack of clarity of the purpose, structure and management arrangements for the consortium.

If your consortium wins the contract, you will be entering into contractual arrangements not just with the other consortium members but also with the public agency that is purchasing the service. This means that all of the contractual terms will be enforceable in the courts. There is therefore the potential that you and the other consortium members could incur financial liabilities if there is a failure to deliver or breach of contract. Even if you deliver your contractual requirements, you may still be liable because of the failure of one of the other members.

It is important that your senior staff and governance think through possible implications of potential legal actions and consider how to mitigate these risks and put the necessary safeguards in place at an early stage in the building of your consortium. A key area to explore is insurance. Most financial risks can be insured but costs may be a prohibiting factor.

The formation of a new corporate structure may appear to be an attractive option. However, new companies with no accounts, financial or business record (such as no evidence of the ability to deliver public sector contracts effectively) are generally seen as very risky in terms of tender appraisal.

**We recommend that specialist legal advice be taken from the earliest stages in the development of a consortium, not just in relation to the detailed drafting of the legal documentation for the consortium but also in ensuring that the formation of the consortium and the way in which the contract is to be delivered does not breach Competition Law.**

## Is working in a consortium right for you?

As mainstream opportunities in public service design and delivery open up there are a range of potential strategies that third sector organisations can pursue in relation to these significant changes in the market. These are in addition to direct tendering by individual organisations.

Given the moves within government to increase efficiency and ensure value for money, many contracts will be let to organisations operating at a large scale or over a broad geographical area. You may identify a contract opportunity that interests you but which you know you cannot deliver because of the size or scale of activity involved. Entering into a consortium might be the most appropriate method to enable you to respond to such a tender.

It is not within the scope of this guide to discuss the advantages and disadvantages of all of the strategies, suffice it to say that there is not one 'right strategy'. The external environment, value-base of an organisation, its approach to business, its financial and risk record taken alongside the views and decisions of its Board of governance will influence what it believes to be the right strategy.

Help may be needed in order to identify the best option and to put in place evidence necessary to enable the selected strategy to be successful.

The most common strategies are summarised below:

- **Scaling-up** - Pursuing a growth strategy to become a large-scale regional or national organisation that can compete with the current large-scale operators.

To achieve this scaling-up quickly may mean pursuing a strategy of acquisition of other third sector organisations operating in related markets. Scaling up too quickly might not have the desired effects in terms of tendering success. Appraisal of

an organisation's accounts looks for steady managed growth. Too rapid acquisition might be perceived in a way which is similar to mergers (please see below). Successful tendering by organisations who have adopted this approach will require a clear demonstration that the management systems and staff are in place to effectively manage the growth with minimal risk to the contract and the organisation as a whole.

- **Sheltering** - A third sector organisation could shelter under a larger "umbrella" organisation as a subsidiary.

There are examples of this arrangement where organisations shelter under other organisations from the third sector or private sector. This is for business effectiveness purposes. A wide range of formal contractual arrangements are possible in cases where the sheltered organisation might become a wholly owned subsidiary.

A key advantage of this type of arrangement is that the 'parent' organisation is able to act as a guarantee for financial risks, including those relating to potential breach of contract. Provided the financial status and other risk related assessments of the parent body are seen as sound this type of arrangement could be advantageous for a small organisation which is not in the position to demonstrate a low level of financial risk.

A further advantage is that the 'sheltered' organisation, although answerable to the umbrella body in business terms, retains its culture, ethos and method of service delivery.

- **Merging** - Similar to 'sheltering', third sector organisations could pursue a strategy of merging with related organisations to achieve sufficient scale to compete in the market.

Merging can take one of two forms. First, the absorption of one organisation by another; in this case appraisal is likely to ask why the absorption was necessary. Was there a financial weakness which has been addressed? If so, how have earlier difficulties been resolved? Or, secondly, the

coming together of two organisations with services which are complementary to each other.

Tendering successfully following such a merger can take a year or more. This is because tender appraisal will want to see that new policies and procedures have not just been adopted throughout the new organisation, but that these are fully implemented and embedded into a new culture. Appraisal will also look carefully at, and score the financial accounts of, both organisations. It will really be only when the newly merged organisation is able to present at least two sets of audited accounts that the scores in this area can reach a level which is likely to lead to the award of a contract.

- **Sub-contracting** - Third sector organisations can sub-contract their services to other organisations who submit the tender.

These organisations may be large, medium or even small in size of annual turnover. They may come from the third sector or private sector. The motivation for sub-contracting part of a contract lies in the tender specification. This sets out in detail exactly what the supply or service is that the purchaser wishes to buy. If the organisation preparing the tender has a gap in the range of supplies or services which it has available, then it is unlikely to secure the contract. In these circumstances the organisation will look around for a provider to fill the gap. This raises the question of to whom it might be advantageous for small organisations, or those of any size who have specialist skills, to direct their marketing.

Some organisations are wary of this approach as they believe that the contracting organisation will "cream off" all of the money. However, the key reason is that the main contractor needs the sub-contractor in order to win the contract. This puts the sub-contractor in a position of strength. The price charged for the sub-contract therefore becomes a matter of negotiation and, later if the tender succeeds, of a contract between the two organisations. Moreover it is the main contractor

which has to deal with all of the problems which are inherent in the tendering process.

- **Forming a consortium** - Third sector organisations could agree to work together and form a consortium to tender for contracts to deliver public services.

There are several models of consortium working. This method of working will not always be appropriate for organisations wishing to tender successfully for public sector contracts. As with all sound businesses, a variety or portfolio of working arrangements is a much safer approach than staying within a single contract with one customer. Functioning as part of one consortium does not stop you from offering other services to other consortia, tendering directly or entering into sub-contractual arrangements with other organisations.

### What are the advantages of working in a consortium?

The development of a successful consortium is usually driven by one organisation which has the motivation, determination and resources to undertake this role. This requires commitment and the full support of the Trustees. If the consortium is being built by a third sector organisation, then resources may originate from charitable funds. In these circumstances Trustees need to be certain that the activity is eligible for charitable support both in terms of charity regulations and also in terms of the organisation's constitution and/or Memorandum and Articles of Association

It takes time to build an effective business relationship, regardless of the model of consortium which is selected. Development over a period of nine months to a year before the consortium is ready to submit a tender is not unknown. Therefore start early. If you are interested in undertaking all or part of an existing contract find out when the current contractual arrangements come to an end. Follow closely the development of the relevant commissioning strategy. Above all, plan well ahead and build the time factor necessary for consortium development into the process.

There are a number of advantages to working as a consortium:

- The consortium will enable organisations to share relevant skills, experience and expertise in a way that complements one another in terms of the tender specification and later in relation to contract delivery. Your increased understanding of what works and shared experience should lead to a more effective service.
- It will give you the opportunity to gain experience or competencies that you might not otherwise have in terms of contract delivery and which you cannot afford to buy in just to secure the contract.
- The greater overall capacity of the consortium will enable you to improve outcomes for beneficiaries.
- Consortium members may deliver in other geographical areas to you. This will increase the scope of delivery whilst not over-stretching your own resources simply in order to be able to tender for the contract. In considering involvement in this style of consortium check the geographical areas of activity allowed in your charity registration and, if necessary, expand these to meet the specification requirements.
- Sharing your expertise and capabilities can be treated as a learning process which may help you to increase your chances of tendering success when you tender for contracts alone.
- The consortium approach may allow for shared development costs for example the pooling of "back office" costs. This might represent a significant reduction in overheads in relation to the contract.
- Whilst the liability for contract delivery by the consortium may be reduced for individual organisations as these are carried at the interface between the Lead Contractor and purchaser, risk and liability for contract delivery is likely to be spread across the member organisations.

### What are the disadvantages of working in a consortium?

There are some disadvantages to working as a consortium:

- Management costs may be increased for all of the organisations involved during the development, tendering and contract delivery phases. Appraisal officers will want to see that management of the consortium is consistent across the range of organisations involved.
- Consortium development is time consuming for all sections of an organisation, including governance and staff.
- Setting up a consortium usually involves more costs than when tendering for a contract as an individual organisation. For example it is essential that legal advice is obtained to ensure the structure of the consortium is fit for purpose and that the operational proposal does not contravene competition law.
- A failure in delivery or even breach of contract by another member of the consortium may seriously affect your organisation's future ability to tender either alone or with others through "guilt by association".
- If you are the Lead Contractor, then it is likely that you will be required to carry all of the risk and the liability.
- Consortium members may experience cash flow difficulties, particularly if the Lead Contractor is being affected by delays in payment.
- Differing values and cultures from other consortium members can cause friction in some consortium models.
- The Lead Contractor may undertake contract negotiations yet the impact of these will be felt by your organisation.



- Although you may have an understanding of the processes of developing a consortium do not underestimate the potential issues that can arise due to the 'people factor' and the differing work cultures of organisations that are embarking on working together in a consortium.

### What if you are asked to form or join a consortium?

If you are thinking of getting involved in a consortium, or joining one, these are some of the key questions that you should think about.

- **Consultation** – What is the view of your governing body and Trustees to working with other organisations? If you are to pursue a tender where the purchaser may require the formation of an entity will Trustees be happy to do so with the other proposed consortium members? If you are proposing undertaking the role of Lead Contractor are your Trustees willing to accept responsibility and liability? How far do Trustees wish to be involved in the discussions and development process?
- **Contract specifications** – What areas are there where you do not have the skills, expertise or experience to deliver but the potential consortium partners do? How will sharing the risks and sharing expertise help you to meet the tender requirements and also to deliver the contract more effectively?
- **Competition** – How will it be possible to structure the offers from the various consortium members in order to avoid contravening competition law? Who is going to deliver which aspects of the contract? To what standards?
- **Compliance** – How are you going to ensure that there is going to be full compliance with the contractual terms throughout the consortium? What monitoring, reporting and review systems are to be put in place? Who will own any Intellectual Property, including

copyrighted information developed by the consortium? How may this be used in the future, for example in tendering for future contracts?

- **Catastrophe** – What are the risks related to delivering this contract via a consortium? What are the implications of performance failure by the consortium as a whole? What will happen if one or more consortium members fail to reach the agreed standard? Will it be possible for a member to be required to leave the consortium, if so how? On what terms? What will happen if a member chooses to leave the consortium? On what terms will this be possible? What will happen if the Lead Contractor fails in terms of responsibility, for example making payments; or liability, for example, through inadequate insurance?
- **Community impact** – What is the impact of the decision to join a consortium on your community of interest? What community benefit will be produced from you delivering this contract? What fit is there between your mission/purpose and the mission/purpose of the consortium? What is the fit between the services you plan to offer to the consortium and the overall specification?
- **Continuation** – What is the contractual period for the proposed contract? What effect will delivery of services for the consortium contract have on your existing or future operations? What capacity issues does involvement in a consortium cause for your organisation? What other potential opportunities will it open up? What happens to the consortium when the contract finishes? Who will own any goods, leases and equipment purchased for the effective management or delivery of the contract? What happens if some members of the consortium do not wish to proceed on the same terms when the contract is re-tendered? What will happen to the contract if your governance decides that your organisation should merge with another? What is your exit strategy?

## Where to get more information and advice

If you are looking for help on working in a consortium there are a number of third sector organisations that offer support and advice on aspects of consortium development and public service delivery, including those listed below (\*\*\*)

As well third sector organisations, some private sector organisations also offer help. For example, *Tendering for Care* (a division of Project Development & Support Ltd) has produced a technical Guide to *Tendering as a Consortium* on disc. This includes details of the legal background as well as 'checklists for action' in consortium formation.

We have also provided some case study examples of different consortium arrangements at **Appendix F**.

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**ACEVO:** ACEVO's mission is to develop and support, connect and represent third sector leaders. That includes work to develop the skills third sector leaders need for successful partnership working, bringing third sector and private sector leaders together to discuss and evolve partnerships, and representing to Government the interests of those third sector leaders who want to work in partnership. ACEVO provides support on partnership working through guides, case studies and networking events.

For information contact:  
Tel. 0845 345 8481  
Email: [Ralph.michell@acevo.org.uk](mailto:Ralph.michell@acevo.org.uk)  
[www.acevo.org.uk](http://www.acevo.org.uk)

**Futurebuilders England:** The Consortia Fund, developed by Futurebuilders, offers a combination of loan finance and professional support specifically for consortia groups aiming to work together to win public service contracts. Investment packages are made to suit the individual needs of the each consortium and

may include a grant element. There is no upper limit to the size of investment but the minimum investment package is £50,000.

For information contact:  
Enquiry line: 0191 261 520  
Email: [info@futurebuilders-england.org.uk](mailto:info@futurebuilders-england.org.uk)  
[www.futurebuilders.org.uk](http://www.futurebuilders.org.uk)

**National Association for Voluntary and Community Associations (NAVCA):** The Local Commissioning and Procurement Unit (LCPU) at NAVCA provides support on matters relating to third sector commissioning and procurement, including consortia models of providing public services. Established in May 2008, the Unit provides support to local infrastructure organisations in England. It will provide information, advice and support capacity building through the provision of resources such as case studies, guides, briefings and training.

For information contact:  
Pauline Kimantas, LCPU Manager.  
Tel. 0114 289 3982  
Email: [pauline.kimantas@navca.org.uk](mailto:pauline.kimantas@navca.org.uk)  
[www.navca.org.uk](http://www.navca.org.uk)

**National Council of Voluntary Organisations (NCVO):** The Collaborative Working Team at NCVO offers good practice information and advice to help voluntary and community organisations make informed decisions about whether and how to work collaboratively. The Team aims to raise awareness of the range of collaborative working options, with a focus on more formal, long-term arrangements.

The Team provides support through guidance publications, answering enquiries and through bringing together useful case studies. It delivers presentations, workshops and training, and offers consultancy support to organisations. The Team also lobbies for a more collaboration friendly environment.

For information contact:  
  
Tel. 020 7520 2440  
Email: [collaborate@ncvo-vol.org.uk](mailto:collaborate@ncvo-vol.org.uk)  
[www.ncvo-vol.org.uk/collaborate](http://www.ncvo-vol.org.uk/collaborate)

**National Children's Bureau (NCB):** The NCB is a national membership and infrastructure support agency which undertakes research, policy and practice development, and provides information, support and advice to the whole of the children's sector – voluntary, statutory and private.

Partnership programmes and collaborative working are at the heart of the NCB approach and a key driver in how it operates. Through both the VCS Engage and Children's Centre Project, NCB has developed several publications<sup>1</sup> on collaborative working. They are also undertaking a series of 'collaborative working' workshops.

For information contact:

Tel: 020 7843 6000

Email: [websupport@ncb.org.uk](mailto:websupport@ncb.org.uk)

<http://www.ncb.org.uk>

**Social Enterprise Coalition:** The Social Enterprise Coalition is the UK's national body for social enterprise. It represents a wide range of social enterprises, regional and national support networks and other related organisations. The Coalition works with social enterprises to:

- Promote best practice amongst social enterprises through networks and publications. A key part of the Coalition's work is to enable social enterprises to share know how, network and do business. We publish a range of case studies<sup>2</sup>, 'how to' guides and training materials.
- Inform the policy<sup>3</sup> agenda working with key decision makers. Our aim is to improve the operating environment for social enterprise by advising government, informing consultations and hosting policy events.

For information contact:

Tel: 020 7793 2323

Email: [info@socialenterprise.org.uk](mailto:info@socialenterprise.org.uk)

[www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

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<sup>1</sup> [www.ncb.org.uk/books](http://www.ncb.org.uk/books)

<sup>2</sup> <http://www.socialenterprise.org.uk/pages/case-studies.html>

<sup>3</sup> <http://www.socialenterprise.org.uk/pages/policy.html>

# Appendix A: The regulatory and legislative frameworks

## EU Regulations

The regulations which form the rules for the purchasing of publicly funded services in the UK emanate from the European Directive 2004/18/EC which came into force on 31<sup>st</sup> January 2006<sup>4</sup>. This legislation resulted in the Public Contract Regulations 2006, known as the PCRs.

These rules dictate that in most cases requirements should be made available to bidders across the EU via a notice in the Official Journal of the EU (OJEU). They also set out the procedures for writing the specification of the requirement and the mechanism for the selection of those bidders who respond to the OJEU notice.

There are some services (known as 'Part B' services), which may include aspects of health, education and social care, to which only some of the Regulations apply. It is therefore important if you are delivering services to identify whether or not they come under the heading of 'Part B'<sup>5</sup>. The Office of Government Commerce (OGC) Procurement Policy & Standards Framework has a Legal Framework section which has the full details.<sup>6</sup>

The key Regulation regarding tendering as a consortium is Regulation 28. The Regulation defines a consortium as being two or more "economic operators" - that is to say contractors, suppliers or service providers. The PCRs also make clear that all economic

operators must be treated equally and in a non-discriminatory way. The purchaser must also act in a transparent way.

Regulation 28 tells the purchaser that they must not treat a tender submitted by a consortium as ineligible; neither must they exclude the tender for this reason. However, the purchaser may require the consortium to form a legal entity (such as a company or a co-operative) if this is justified for the effective delivery of the contract.

Your tender will be one among a number of others all of whom are competing to be awarded a contract or to be included in a "select list" of preferred providers. Your competitors may be single organisations large or small; some from the private sector, some from the third sector; and others may be consortia of various kinds. The purchaser must treat all equally.

Equal treatment means that tender appraisal will consider the same factors as they relate to every tender. Regulations mean that this consideration must be extended to every party to a tender. This means that the same information will be required from EVERY member of a consortium, not just the Lead Contractor. A weakness as assessed by tender appraisal in any one consortium member may affect the possible success of the tender as a whole.

The first or "selection" phase of tendering may be managed through the completion of a Pre Qualification Questionnaire" (PQQ). Many of the questions included in the PQQ are asked in order to meet the requirements of the Regulations. The OGC website has an example of a PQQ document<sup>7</sup> which sets out the standard questions and requirements which are likely to be required of all consortium members. The ability to answer all of these questions to the satisfaction of the appraisal officer is critical to the tendering success of the consortium. This is because the PQQ is the first filter. Failure to meet the required standards at this point means that the tender will not proceed to the second or "Award" phase.

<sup>4</sup> This was translated into the Law of England and Wales by Statutory Instrument No 5 of January 2006, and into Scottish law by Scottish Statutory Instrument No 1 also of January 2006.

<sup>5</sup> The services that fall within Part B are listed in Schedule 3 of the EU Procurement Regulations (which can be viewed at OGC's website – see below)

<sup>6</sup> OGC Website - Procurement Policy & Standards Framework - [http://www.ogc.gov.uk/procurement\\_the\\_bigger\\_picture\\_policy\\_and\\_standards\\_framework.asp](http://www.ogc.gov.uk/procurement_the_bigger_picture_policy_and_standards_framework.asp)

<sup>7</sup> [http://www.ogc.gov.uk/tools\\_services\\_pqq\\_4728.asp](http://www.ogc.gov.uk/tools_services_pqq_4728.asp)

The rules which apply to, and the standards required of, any single organisation tendering for a contract also apply to EVERY member of a consortium.

### **Competition law**

In forming a consortium organisations also need to consider the requirements of competition law.

For the UK, the Competition Act 1998<sup>8</sup> sets out precisely what public authorities may not do. They can be summarised as meaning that nothing may be done which in any way prevents, inhibits or distorts competition. Contravention of this legislation could have serious implications for organisations generally and in particular for the members of their governing bodies such as Trustees.

An example of a possible contravention of the Competition Act might be a group of organisations, all of whom deliver exactly the same service, getting together in order to remove competition.

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<sup>8</sup> Competition Act 1998;  
<http://www.berr.gov.uk/whatwedo/businesslaw/competition/law/competition-act/index.html>

The relevant legislation emanates from Treaty Articles agreed by all European governments and is to do with competition law. Article 85 of the Treaty of Maastricht is reaffirmed in Articles 81(1) and 82 of the Treaty of Lisbon (signed on 29th December 2007).

## Appendix B: The Policy Context

The Government recognises the value of third sector organisations in providing a voice for under-represented groups, in campaigning for change, in promoting enterprising solutions to social and environmental challenges and in transforming the design and delivery of public services.

For the Government, what matters is what works. Third sector organisations are invariably at the front-line of delivery and they know what works. At their best, third sector organisations bring creativity and innovation to public service delivery, build trust, extend choice and give a voice to the public.

As opportunities are opening up for the third sector to play a greater role in shaping and delivering public services, the government is committed to helping to create an environment which is conducive to more partnership working with the public sector.

Through the National Programme on Third Sector Commissioning, for example, the government is aiming to develop a better understanding among commissioning and procurement officers on how to develop strong working relationships with the third sector and get the best results for people using public services. This is underpinned by the Compact principles and commitment to the eight Government 'principles of good commissioning' (see below).

As the public sector strives for greater efficiency and effectiveness, however, some public service delivery contracts are becoming larger. Forming consortia among provider organisations is one option to meet this change in the public sector marketplace.

Consortium and sub-contracting structures provide opportunities for smaller organisations to tender for and engage in the delivery of public sector contracts.

In order for joint action by the public and third sectors to succeed, both sectors need to take action in order to work together effectively. For the public sector, this

means that commissioning and procurement processes should be structured in a way which allows a diverse range of suppliers to play to their strengths, whilst achieving value for money. The Government's eight principles of good commissioning set out what this means in practice (see below).

Third sector organisations which choose to work with the public sector may also need to adapt the way they work. This means getting the skills and qualifications needed in order to tender, being able to adapt to differing public sector requirements and working flexibly depending on the circumstances.

The Government is committed to ensuring that the way public services are commissioned allows for third sector participation and partnership working. These changes in the public sector are very important in ensuring the third sector can play to its strengths. They also offer organisations opportunities to become involved in a variety of business arrangements, thereby spreading the risks. There are inherent risks for any business which is dependent upon a single customer, regardless of the sector to which the purchaser belongs.

The *Partnership in Public Services: An action plan for third sector involvement*<sup>9</sup> provides the foundation upon which the Government will continue to build in order to transform public services through more effective working and by reducing the barriers that third sector organisations face in delivering public services. The action plan commits the Government to a series of actions, including:

- Ensuring that the third sector can be certain of high quality commissioning, through investing the skills of commissioners, committing itself to the eight principles of commissioning and driving continuous improvement under Compact<sup>10</sup> principles.

<sup>9</sup> *Partnership in Public Services: An action plan for third sector involvement*(2006) Cabinet Office: Office of the Third Sector [http://www.cabinetoffice.gov.uk/media/cabinetoffice/third\\_sector/assets/psd\\_action\\_plan.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/psd_action_plan.pdf)

<sup>10</sup> [www.thecompact.org.uk](http://www.thecompact.org.uk) – the Compact is the agreement between government and the third sector to improve their relationship for mutual advantage and community gain.



- Ensuring that procurement processes are fair and proportionate, through reducing the administrative burdens of contracting, promoting three-year contracts as the norm and ensuring that good practice principles are evident throughout the supply chain.
- Spreading the best of third sector innovation, through the Innovation Exchange<sup>11</sup>, stimulating innovation within the third sector and ensuring that public services learn from the best of the third sector.
- Developing the third sector's overall capacity through building the asset base of the sector, expanding the range of service provision eligible for the Futurebuilders Fund<sup>12</sup> and developing increased partnership working to design and deliver services where the Government believes the third sector has the greatest potential to contribute.

Individual Government departments are also working in their own service areas to encourage more third sector involvement. For example, the Department of Health has a cross-cutting third sector and social enterprise programme, which looks at the role of the third sector throughout the provision of health and social care. In the area of criminal justice, the National Offender Management Service (NOMS) has set up an Academy for Criminal Justice Commissioning, which will ensure that NOMS commissioners meet the needs and expectations of the full range of providers and partners.

### What are the key changes taking place in public service delivery?

The Government recognises that to achieve its vision of high-quality public services, there needs to be stronger and more effective commissioning based upon partnerships. Recent policy<sup>13</sup> has placed an emphasis on collaborative purchasing which sees public agencies working together to buy goods and services in order to

achieve cost savings and efficiencies. One result of this is that contracts are often becoming larger.

- Creating Strong, Safe and Prosperous communities: Statutory Guidance<sup>14</sup> gives local people and local communities more influence and power to improve their lives. It is about creating strong, safe and prosperous communities and delivering better public services through a rebalancing of the relationship between central government, local government and local people. It places an emphasis on the design and delivery of services at a level closer to the users, often allowing them to have an input into the priorities around design of local services. This puts the onus on service commissioners to make complex and multi-faceted purchasing decisions.
- The Social Exclusion Task Force<sup>15</sup> works within the Cabinet Office to co-ordinate the government's drive against social exclusion, ensuring that a cross-departmental approach delivers for those most in need. The Task Force champions the needs of the most disadvantaged members of society within government, ensuring that as with the rest of public service delivery reform, we put people first.
- The World Class Commissioning Programme<sup>16</sup> within the Department of Health is transforming the way health and care services are commissioned. World class commissioning will deliver a more strategic and long-term approach to commissioning services, with a clear focus on delivering improved health outcomes. The programme has four inter-linked elements: a vision for world class commissioning, a set of world class commissioning competencies, an assurance system and a support and development framework.

<sup>11</sup> [www.innovation-exchange.org](http://www.innovation-exchange.org) – the first two themes are independent living and excluded young people.

<sup>12</sup> [www.futurebuilders-england.org.uk](http://www.futurebuilders-england.org.uk)

<sup>13</sup> Releasing resources to the front line: Independent Review of Public Sector Efficiency (2004) Sir Peter Gershon, HM Treasury – [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

<sup>14</sup> Creating Strong, Safe and Prosperous Communities :Statutory Guidance

<http://www.communities.gov.uk/documents/localgovernment/pdf/885397.pdf>

<sup>15</sup> [www.cabinetoffice.gov.uk/social\\_exclusion\\_task\\_force.aspx](http://www.cabinetoffice.gov.uk/social_exclusion_task_force.aspx)

<sup>16</sup> [www.dh.gov.uk/en/managingyourorganisation/commissioning/worldclasscommissioning/index.htm](http://www.dh.gov.uk/en/managingyourorganisation/commissioning/worldclasscommissioning/index.htm)

- The Department of Work and Pensions<sup>17</sup> (DWP) commissioning strategy outlines the next steps to develop an integrated approach to welfare and skills. It is recognised that partnership is crucial to achieving this. The DWP acknowledges a key role for the private, public and third sectors in achieving the best outcomes for every customer.
- The Ministry of Justice National Offender Management System<sup>18</sup> (NOMS) is the system through which government commissions and provides the highest quality correctional services and interventions in order to protect the public and reduce re-offending. NOMS recognises that to manage offenders well, we must work closely with local, regional and national partner organisations. NOMS is committed to strong partnership working across government, with local government, employers, the third sector and local communities. Partnership working is in everyone's interest because tackling offender's behaviour tackles social exclusion and helps make society better and safer for everyone. The range of services provided for offenders includes healthcare, education, welfare benefits advice, debt/finance advice, drug treatment, employment, social and family links and housing support.
- Best Value<sup>19</sup> provides the statutory basis upon which councils plan, review and manage their performance in order to deliver continuous improvement in all services and to meet the needs and expectations of service users. As part of the performance management process, users are asked for their views and experiences of local government and local services. The government is aiming to promote improved performance in public service delivery through effective commissioning, developing markets and competition and improving user choice. A key driver of improved performance will be local authorities developing a commissioning perspective to local services and utilising the full capacity of alternative suppliers

(from the private sector and third sector, alongside excellent service providers from within local government)

- The Procurement Regulations implement European Directives into UK law. The Regulations meet EC Treaty requirements by opening up public procurement opportunities to bidders across the EU and reinforce principles on transparency and free movement of goods and services. This approach is essential in enabling the public sector to meet the challenge of improving services within the finance which is available. Government policy requirements to achieve value for money (vfm) mean that the lowest priced tender will not always win. To ensure that vfm is achieved most public purchasing will use the Most Economically Advantageous Tender award criteria which allows for the quality of the tender and other non price criteria to be appraised as well as price.

### Principles of Good Commissioning<sup>20</sup>

The Government believes that all commissioners of public services should:

- develop an understanding of the needs of users and communities by ensuring that, alongside other consultees, they engage with third sector organisations as advocates to access their specialist knowledge;
- consult potential provider organisations, including those from the third sector and local experts, well in advance of commissioning new services, working with them to set priority outcomes for that service;
- put outcomes for users at the heart of the strategic planning process;

<sup>17</sup> [www.dwp.gov.uk/publications/dwp/2008/com-strategy/cs-rep-08.pdf](http://www.dwp.gov.uk/publications/dwp/2008/com-strategy/cs-rep-08.pdf)

<sup>18</sup> [www.justice.gov.uk](http://www.justice.gov.uk)

<sup>19</sup> [www.communities.gov.uk/localgovernment/performanceframe/workpartnerships/bestvalue/bestvalue](http://www.communities.gov.uk/localgovernment/performanceframe/workpartnerships/bestvalue/bestvalue)

<sup>20</sup> *Principles of good commissioning* set out on p.17 in *Partnership in Public Services - An action plan for third sector involvement*, Cabinet Office, Office of the Third Sector, December 2006; [http://www.cabinetoffice.gov.uk/third\\_sector/~media/assets/www.cabinetoffice.gov.uk/third\\_sector/psd\\_action\\_plan%20pdf.a.shx](http://www.cabinetoffice.gov.uk/third_sector/~media/assets/www.cabinetoffice.gov.uk/third_sector/psd_action_plan%20pdf.a.shx)



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- map the fullest practical range of providers with a view to understanding the contribution they could make to delivering those outcomes;
- consider investing in the capacity of the provider base, particularly those working with hard to reach groups;
- ensure contracting processes are transparent and fair, facilitating the involvement of the broadest range of suppliers, including considering sub-contracting and consortia building where appropriate;
- seek to ensure long-term contracts and risk sharing wherever appropriate as ways of achieving efficiency and effectiveness: and
- seek feedback from service users, communities and providers in order to review the effectiveness of the commissioning process in meeting local needs.

## Appendix C: Developing a Consortium Agreement

The foundation of an effective consortium will rest on the quality of the Consortium Agreement. In the past there have been recommendations that a *Memorandum of Understanding* should be put in place. But UK case law has confirmed that a document of this type has the same status as a contract. So use this format only if you are certain that you are happy to treat and be bound by the content as contractual terms.

Legal advice is essential in order to get the wording of the Agreement right and avoid being bound by terms which were intended only as points for consideration.

### Essential Agreements – before you start

A major concern for organisations considering entering into consortium arrangements is that of sharing information. There is a tension around an organisation providing sufficient information for the other members to be able to make a business judgement about their inclusion in their arrangements and the organisation wishing to withdraw from the consortium at a later stage.

Whereas information provided in these circumstances is protected under UK law, securing compensation for a breach in these legal terms can be costly and time consuming. It is essential therefore that the organisation leading the development obtains a legally binding *AGREEMENT for the Sharing of Information*. All potential consortium members should be invited to sign up to this agreement as the first step before there is any serious discussion regarding the formation of the consortium.

The European Union has adopted a policy document on the sharing of information. This is based on

international advice from the OECD<sup>21</sup> and is worth considering.

In certain circumstances, the law will require the consortium members to keep matters confidential without there being a written agreement in place, but this can be difficult and costly to prove in court. It is always best when disclosing any kind of confidential information (particularly sensitive technical information) to have a *Confidentiality Agreement* in place and signed by potential consortium members.

This is particularly important if the information you are disclosing to other members of the consortium is not protected in any other way such as by copyright. It is important to remember that copyright protects the way information is set out, not the information itself. You cannot assume that copyright will protect your ideas and approaches to service delivery as set out in written documents or proposals.

### Business Considerations

Any consortium is essentially a business arrangement established for a defined purpose over a fixed timeframe. It is important therefore that the process of consortium development should be approached in a business-like way. This is essential to protect the long term integrity of your organisation. This approach recognises both the benefits and hazards of "association". It recognises that whilst there are benefits which arise from association with strong and successful organisations, the converse is true where consortium members get into trouble and this reflects on other organisations in the consortium.

It is therefore a good idea to undertake a set of checks on all those organisations with whom you are planning to associate within a consortium arrangement.

Here are some of the key questions that a new consortium should start to think through to get the foundations in place for joint working. These lists are

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<sup>21</sup> DECISION OF THE COUNCIL ON THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (adopted by the Council at its 982nd session on 26-27 June 2000 [C/M(2000)17/PROV])

not exhaustive, but rather are designed as a starting point for developing the consortium.

### Some specific checks to be considered by all organisations planning to join the consortium:

- undertake a financial credit check on all prospective consortium members;
- the quality standards each member holds for management, environment, health and safety;
- evidence of successful contract delivery including a check that no contracts have been terminated before their full term;
- the levels of insurance which are in place;
- policies and procedures for managing risk at all levels within each organisation

### Checks for the members of the consortium as a whole:

#### Business Standards

- What is our financial strength? What is our capacity to accept financial risk? Can we demonstrate financial sustainability?
- Do we have effective risk management policies and procedures in place at all levels within the member organisation? What types and levels of insurance do we have in place over and above the statutory requirements both as individual organisations and for the consortium as a whole?
- Do we have the capacity and capability to function effectively within a complex management structure?
- Do the boards of governance/Trustees of the member organisations fully support member organisations' involvement in consortium working?

#### Vision and Purpose

- What does each of the organisations want to achieve out of being in the consortium? What

does each organisation offer to the consortium?

- What fit is there between the vision for each of the partners' organisations and that of the consortium? Does this fit with the requirements of the specification?
- What are the core values of each of the organisations? Are they complementary? Will they enable consortium members to work together?
- What similarities of working culture exist between the partners? Are they compatible?
- How will working as a consortium allow the members collectively to deliver the services specified within the contractual terms?

#### Consortium Working

- What skills do we need to manage the consortium and ensure that it delivers contracts effectively?
- What management structure do we need to deliver this contract and ensure that we comply with all of the contractual terms?
- What monitoring, reviewing and reporting systems do we need to put in place?
- What kind of agreements do we need between consortium members?
- What decisions will be made by the consortium as a whole?
- How will decisions be made? What decisions may be made by whom and how must they be reported throughout the consortium? How will we ensure that decisions are made and communicated quickly and effectively?

### **Management**

- What management systems will be required in order to ensure that the contract is delivered effectively?
- What systems do we have in place to manage risk effectively at all levels?
- What is our approach to financial management?
- Do we have the right processes in place to manage the relationships between consortium members?
- What time have we set aside to address and deal with problems or issues?
- What systems do we have in place to manage disagreements?
- What Quality Management systems and standards do consortium members have in place?
- What are the potential cash flow implications for the consortium? What capacity do we have to deal with cash flow difficulties?
- How will we manage or allocate responsibilities/liabilities?
- What is the most appropriate communication system to manage delivery of the contract?
- What review has taken place of existing practices? What discussion has taken place around how things will work should we win the contract?
- What policies and procedures should the consortium have in place? What level of policy/procedure is delegated to the member organisations?
- Who will monitor and report on the quality of contract delivery? How and who will act on these reports?

### **Skills**

- What skills or competences does the consortium need to have to deliver this contract?
- What experience do the consortium members collectively need to deliver this contract?
- What additional staff do we need to deliver the contract?
- What contingency plans are in place for dealing with staff changes during the contract?
- What are the arrangements for payment and what are the payment implications of the agreed system for consortium members?
- Who will own any property, leases, etc. purchased for the delivery of the contract when the contractual period is finished?
- What arrangements are in place for the ownership of any Intellectual Property Rights or copyright of materials developed during and after the contract period is finished?

### **Systems**

- What financial systems do we have in place to ensure the effective delivery of the contract? Will one of the consortium members take responsibility for financial management? What are the implications for the member organisations if this approach is used?

### Standards

- What standards are required to deliver the contract? Do all consortium members have the required management, delivery, environmental and health and safety quality standards in place to win the contract?
- What standards and systems are in place for the management of Human Resources and staffing matters? Do you recognise any trade union(s) for any purpose, if so which trade union(s) and for what purpose(s)?
- What processes are in place for sharing learning?

### Stakeholders

- What effect will joining the consortium have on our relationships with our existing key stakeholders?
- How can we engage our key stakeholders in the process?
- How are our stakeholders able to assist us in pursuing this new strategy?
- What concerns will our key stakeholders have over any change in strategic direction?
- Will we form relationships with new stakeholders as a result of this decision and how will that affect existing stakeholder relationships?
- It may be that you need external facilitation to help you through the process of developing a consortium. Consultants can often help in this area.

## Appendix D: Models for working as a consortium

Where a number of organisations have decided to form a consortium, with a view to tendering for a contract to deliver public services, philosophical and business choices may ultimately dictate the organisational and structural decisions you take.

There are three main models for working as a consortium and, while there are some variations, the basic structure and governing principles for these remain the same, i.e.

- **Steering Group** – a contractual framework consisting of an agreement among the members of the consortium to work together and setting out their legal rights and obligations but without any additional legal entity being formed. The consortium is led by a joint steering group comprised of one or more consortium member organisations, one of whom will take the role of Lead Contractor for tendering and contracting purposes. Regulation 28 allows the purchaser to require the consortium to form an entity such as a company, Community Interest Company (CIC), co-operative, etc.
- **Lead Contractor** – a contractual framework, where a Lead Contractor is identified as being willing and able to undertake this role. This may be by virtue of size of organisation, the value of financial unrestricted reserves; expertise, etc. The consortium adopts and signs up to a general overarching Agreement. This is supplemented by a detailed sub-contract with each of the consortium members setting out the terms, benefits and contribution to the effective delivery of the contract.
- **Prime Contractor** – in this case organisations tender to undertake the management of a contract or range of services on behalf of a Government Department, PCT, Local Authority, etc. The role of the Prime Contractor is to then manage the supply

chain of several layers of sub-contracting. Each organisation contracts to the next layer up the chain, and finally to the Prime Contractor. This Prime role may be undertaken by a financial or corporate institution. The role is to ensure that all of the services covered by the Prime contract are delivered effectively and as specified as well as managing the supply chain. The Prime Contractor does not usually itself deliver services.

### Steering Group

The Steering Group model is at one end of a continuum of involvement for organisations in consortium management and working. It is the model where the philosophy, ethos and business approach of all members of the consortium must be taken into account by each of the other organisations concerned. The approach demands the development of close business and operational working relationships.

This model requires a high degree of integration among the partner organisations involved in the consortium. It is usually set up by two or more organisations forming a joint steering group, one of which eventually takes on the role of Lead Contractor for tendering and management purposes. The consortium arrangements are governed by a Consortium Agreement to which all members sign up.

The joint steering group may remain during the life of the consortium as a forum for joint decision-making on matters of detailed delivery and which would help to maintain the focus on the agreed objectives of the project.

The model can take a considerable time to develop as trust is a key element in future successful working. It is essential that all Boards of Governance/Trustees are involved from an early stage. The Public Contract Regulations may require organisations involved in this model of consortium, if successful in securing a contract, to form a legal entity.

The key features of this model are as follows, i.e. the consortium agreement will:

- recognise the role and functions of the joint steering group in the delivery of the contract by the consortium;
- set out in contractual terms the make-up and status of the consortium member organisations, i.e. who may join, their roles and responsibilities, method of payment, terms for leaving the consortium, Intellectual Property and copyright rights;
- contain provisions setting out the requirements which will govern when, how and why matters should be referred to all consortium members for a decision; and it will
- be a mechanism for guiding the detailed delivery of the contract, setting out the responsibilities and liabilities in contractual terms.

It will be necessary for the consortium to appoint one of its number as a Lead Contractor. This Lead organisation will be responsible for the actual submission of the tender and will usually be the organisation which enters into a contract with the purchaser on behalf of the consortium.

## Implications

This is a way of working which may lead to integration of the organisations concerned. Certainty regarding philosophy, ethos and culture will be paramount for all organisations involved if the consortium is to function successfully. Liability for contractual failure by one or more members may be shared across the consortium as a whole.

The intention of the partners will, however, be important in determining whether or not a legal partnership exists. Legal advice will determine whether or not this is the case and, if so, whether it would be helpful to include a statement in the consortium agreement to the effect that each party acts on its own account.

## What are the advantages of the Steering Group Model?

This model involves the development of very close working relationships, requires considerable levels of sharing and therefore trust.

The advantages are as follows:

- It allows for a close involvement of all members in the management and operation of the consortium.
- It can be a first step in integration either by merger or other mechanism thereby allowing organisations to test their options for the further development of a very close working relationship.
- It allows for flexibility of response as decisions can be taken jointly as the contract proceeds.

## The disadvantages of the Steering group Model

The disadvantages are as follows:

- There may be a greater exposure to risk for certain consortium members who could potentially be liable for claims and liabilities which are unlimited. These claims may arise from the negligent or reckless behaviour of the member organisation itself or as a result of the negligence/ recklessness of other consortium members. Adequate levels of insurance covering all potential risks are essential for each consortium member and for the consortium as a whole.
- The purchaser may require the consortium to form an entity prior to contract in the event that the tender is successful. Some consortium members may wish to retain their independence, whilst some Boards of Governance/Trustees may not be willing to form a company or similar structure with some or all of the other members.

- Some consortium members may not be happy working with others who do not share their philosophy, ethos, values and culture. It is essential that these are clarified at an early stage and always before an organisation joins the consortium. A non-corporate form of association can (despite the inclusion of a statement in the consortium arrangement to the effect that it is not intended to be a partnership) still be deemed to be a partnership.

## Lead Contractor

The most straightforward means of forming a consortium is on a purely contractual basis.

Under the contractual framework model, the parties will proceed on the basis of an unincorporated structure whereby the consortium rests on contractual rights and obligations among the members of the consortium.

The usual features of such a contractual arrangement would be as follows:

- each of the parties to the consortium enters into a general overarching set of contractual terms and conditions (consortium agreement). They agree to associate as independent contractors. The contract represents the key mechanism by which the parties participate in the project ;
- the general overarching agreement is supplemented by separate, detailed contracts between the Lead Contractor and each consortium member organisation. This contract sets out precisely what the organisation has agreed to contribute to the consortium in terms of service delivery, standards, numbers and levels. This also details the financial reward and terms of payment;
- liability for contractual compliance will rest with each consortium member organisation and this will be set out in the contract with the Lead Contractor;
- a declaration to the effect that it is not the intention of the parties to create a legal partnership; and

- the profits of the consortium arrangement will generally be shared on the basis of the contractual terms and will accrue separately to the parties. Each party will pay corporation tax on its own profits<sup>22</sup> and will be entitled to relief for its own costs.

## Implications

The integration of consortium members is less of a feature than under the joint steering group model and it is less likely that the purchaser will require a consortium structure using this model to form an entity. Liability for contractual failure is more likely to rest with each member organisations than to be shared across the consortium as a whole.

The approach does require a single organisation to take responsibility for the functioning of the consortium as a whole from the earliest stages in development and also to accept liability for the delivery of the contract. The model has been shown to work best where the consortium is comprised of between two and four members.

## The advantages of the Lead Contractor Model

This is a less involved model of working. Although there may be an overarching agreement which encompasses all consortium members, the relationships are essentially contractual with detailed working agreements set out between the Lead Contractor and each individual member, i.e.

- There is clear leadership whereby one organisation accepts responsibility and liability for the successful delivery of the contract as specified.
- There is a clear contractual relationship between the Lead Contractor and each consortium member. If a member finds themselves to be in breach of

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<sup>22</sup> Where the parties to the consortium are registered charities, then those bodies may not be liable to pay corporation tax on any profits accruing to them as a result of the project (provided that they are registered for tax relief) depending upon the nature of the work involved and whether it is such as to fall within the exemptions of section 505 of the Income and Corporation Taxes Act 1988.



contract, then the Lead Contract is usually able to replace the member who is at fault.

- The contracts between the Lead Contractor and each consortium member provide clear rules for working, including payment and other terms which must be adhered to.
- The general functioning of the consortium may be less time consuming for all members and decision making may be quicker and easier, but the model may also limit the contribution of the views of individual organisations to the operation of the consortium as a whole.
- The model enables consortium members to specify exactly which parts of their overall service delivery that are prepared to contribute to the consortium as a whole. This offers the opportunity for organisations to provide their services to a range of different purchasers.

### The disadvantages of the Lead Contractor model

The disadvantages are as follows:

- Entering into any contractual arrangement is risky. It is essential that thorough research is undertaken beforehand in order to confirm all aspects of the financial and business standing of the Lead Contractor. It is always advisable for organisations to obtain independent legal advice before signing any contract.
- There may be contractual terms which the Lead Contractor is unable or unwilling to change. Contracting is always a two way process and should be concluded through negotiation, or, if necessary, arbitration. If you have any doubts over your organisation's ability to comply with a set of contractual terms or to deliver the services as specified, then do not sign.
- You may find that in the actual functioning of the consortium you are unhappy with the way in which the Lead Contractor is operating. Make sure that the termination and/or exit clauses in the contract enable you to respond to difficulties of this kind.

### Prime Contractor

This model is quite long established in public purchasing, for example it has been used in the defence industry for almost 30 years.

The approach is being used by the Department for Work and Pensions for the procurement of services for the Welfare to Work and Flexible New Deal Programmes. Details are set out in the DWP Commissioning Strategy.<sup>23</sup>

Some Local Authorities are starting to use this approach. It can be anticipated that this model will become more common as contracts become larger - for example, single contracts which cover the purchasing of all adult and children's services; or contracts for services for all categories of vulnerable people.

The implementation of this model requires a tendering round to identify one or more "Prime Contractors". These organisations will tend to be large and may be from the third sector or private sector. They may be required to hold the total value of the entire contract in their unrestricted general reserves which will tend to exclude many registered charities. As with all tendering, the Prime Contractor agrees to secure the delivery of a set of services as specified. The main role of the Prime Contractor is to secure the required services through the operation of a "supply chain". It is unusual for the Prime Contractor to itself deliver services, although this may happen. Representatives of the purchasing body may sit on the Prime Contractor's management team for the contract. Indeed representation may also occur further down the chain.

Having secured the contract the Prime Contractor proceeds to purchase services from specialist major suppliers. At the first level these will be fairly general suppliers, and become more and more specialist as one proceeds further down the chain.

Smaller suppliers will contract with larger suppliers, not directly with the Prime Contractor.

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<sup>23</sup> <http://www.dwp.gov.uk/publications/dwp/2008/com-strategy/cs-rep-08.pdf>

Whilst all contractors down the supply chain must ensure that they comply with competition law, this becomes less onerous further down the chain. Indeed at the lowest levels this might amount to the simplest form of competition of all, i.e. the "Request for Quote" where potential suppliers are simply asked "how much will you charge to deliver the particular part of the service which has been specified?"

The key to successful working in the Prime Contractor consortium model is the identification of specialist services which the consortium requires in order to deliver the overall contract. The model offers many opportunities for even the smallest third sector organisation to become involved without the requirement to comply with the demands of direct tendering to the purchaser for public sector contracts.

In the Prime Contractor Model the consortium is "vertical" with all suppliers linked with each other up the chain through a series of contracts. It is considered to be good practice for the contracts lower down the chain to replicate that between the purchaser and the Prime Contractor; indeed some purchasers make this a requirement.

### Implications

The model provides an "arms length" relationship with other members of the consortium except with the immediate contractor and sub-contractors. Whilst it might be necessary for suppliers to demonstrate their business, financial and technical capability this requirement will become less stringent as one progresses down the chain. The model does not require any degree of integration with other suppliers. The question regarding an organisation's involvement in the consortium being certainty over the capacity and capability to deliver the contract as specified and for the price as agreed.

There is no necessity for consortium members to consider the matching of ethos and culture in order to work together for the successful delivery of the contract. However there is the question of association. Before joining a consortium of this type it is important to consider carefully who the other suppliers are in the chain. Questions might include what their reputations

might be in terms of business and service delivery? How these reputations may reflect on your beneficiaries as well as your general standing in the community. It is also wise to undertake the general checks which are suggested before joining any consortium on all organisations in the supply chain.

The main advantage of the model if you are a small or very small organisation is that where you deliver highly specialised services the supply chain as a whole may need those services in order to deliver the contract as specified. This places you in a position of strength when negotiating for the contract and the terms under which you might be prepared to undertake the work. It is therefore advisable to secure the help of someone who has experience of successfully negotiating business contracts from an early stage. Take time to consider your options; do not rush into any decisions. If you have any doubt as to your ability to deliver the contract as specified, then do not sign it, ask for changes and amendments where you believe them to be necessary.

### The advantages of the Prime Contractor model

This model offers flexibility in the degree and level of involvement of organisations in the delivery of large contracts providing opportunities for organisations from the very large to the very small. It provides a full arms length model of contracting whereby the "contract is king" with no further involvement in the operation of the consortium.

The advantages are as follows:

- It offers opportunities for large organisations who, because they have charitable status, may be limited in the amount of unrestricted general reserves they may hold and are, therefore, unable to tender for very large contracts.
- It offers opportunities to very small organisations who have the skills and expertise to deliver very specialised services.
- Very little time is spent in the management of the consortium, as a whole, although time might be

spent on contract management issues at all levels in the supply chain.

- Contractual terms should be reliable and provide a clear cash flow forecast which is dependable at all levels.
- Contract law, although complex, is well established; therefore arbitration or legal action is a possibility if there is a breach of contract by either side. For example, contractual terms for payment must be adhered to and should not be affected by any delays experienced by the Prime Contractor.
- Although questions of ethos, philosophy and culture tend not to arise for organisations using this model, there are questions regarding association with other providers. These should be considered from an early stage.
- The model provides opportunities for sub-contractors to negotiate on the price for the service which they are going to deliver with the consequent possibilities for securing financial margins and underpinning the financial sustainability of the organisation.
- Organisations may be involved in a number of different contracts.

### **The disadvantages of the Prime Contractor model**

The main disadvantages are as follows;

- As with any supplier-purchaser relationship, working arrangements between both parties may not work to the best advantage of everyone and may deteriorate over time. It is, therefore, essential that there are suitable exit and termination clauses in the contract.
- The business soundness of all organisations involved in the supply chain is of importance and time should be taken to undertake the relevant checks before any contract is signed. If any risks are identified and you still wish to proceed with the contract then ensure that adequate and appropriate insurance is in place to cover the risks.

## Appendix E: Acting as a lead contractor, contractor or consortium member

The Lead Contractor tends to be the organisation which drives the consortium development process. The role involves taking responsibility for the tendering process which includes obtaining the required information from each of the consortium members. It will also involve managing the consortium, accepting responsibility and liability for the contract delivery and, depending on the model adopted, entering into contracts with the consortium member organisations. The Lead Contractor is usually responsible for ensuring that contracts for both Information Sharing and Confidentiality are available.

### **The advantages of being a Lead Contractor in a consortium are that:**

- You compile and submit the tender to the public purchaser - this means that you will be involved in negotiating the contract with the purchaser;
- gain the experience of tender and contract management;
- receive payments from the purchaser and be required to comply with the contractual terms with regard to the payment of the consortium members - this means that you will be required to control and manage cash flow for the consortium;
- your organisation may have a slightly higher profile in terms of the consortium. Successful consortium management may feature in the experience which you will be able to offer in future tenders;
- you will be required to draw up and enter into contracts with the other consortium members. This provides opportunities to learn effective negotiating

skills as well as influencing the way in which the overall contract with the purchaser is delivered:

### **Implications**

The Lead Contractor in a consortium needs to have sound and effective management and leadership skills. The Lead Contractor should be able to communicate clearly and build trust not just with the staff of the member organisations but also with their Boards of governance/Trustees. There must be a high level of accountability within the organisation of the Lead Contractor as it is the Board of governance/Trustees who carry the total responsibility and liability for the successful delivery of the contract as specified.

It may be that one role for infrastructure organisations such as social enterprise intermediaries or Councils for Voluntary Service is to facilitate the development of consortia. This could range from setting up and managing a consortium through to providing capacity building support for consortia or sub-contractors. However, ultimately it is the Board of governance/Trustees of the Lead Contractor who accept responsibility and liability. It is for them to assess the risks which are involved in consortium working

### **The disadvantages of being a Lead Contractor in a consortium**

There are some disadvantages of being Lead Contractor which should be considered, including:

- You will be liable for any breaches of contract by your sub-contractors. This could lead to court action and payment of damages. You need to have clear contractual arrangements set up between yourself and each member of the consortium. It is also important to assess and quantify this area of risk, then ensure that it is covered through appropriate and adequate insurance;
- You may find that you spend a significant amount cash and human resources on managing the consortium. It is important that this is not underestimated and should be planned for and calculated at the tendering stage;

- If you are re-directing your business to include new areas of expertise you may require some help with business development and capacity building to ensure that you fully understand these new areas of business and/or activity, including the ways in which regulatory and similar bodies function, quality standard requirements, etc.
- If you plan to take on the Lead Contractor role in the future, it is a good idea to plan this progression, to train your key staff and Board of governance/Trustees so that all involved are fully aware of the implication and prepared to take this next step in the development of the business aspects of your organisation.

### **The advantages of acting as a contractor in a consortium or consortium member**

Consortium membership may involve a contractual relationship which is with the Lead Contractor or with the other consortium members.

You may have the capacity to undertake the Lead Contractor role but your Board of governance/Trustees may not wish to accept that role. It may be that you wish to contribute only a part of your overall service to a particular contract or you may be a smaller organisation wishing to become involved in the delivery of a larger contract. Functioning as contractor or consortium member tends to mirror the points set out above. Some of the advantages of not being the Lead Contractor are:

- You will have to contribute to the PQQ and to the tender, but you will not be required to do the overall preparation and submission of the tender.
- Your Board of Governance/Trustees will be responsible for the delivery of those aspects of the overall contract which have been agreed, but in most circumstances they will not be responsible and liable for the failure of others.
- You may use this route in order to secure contracts to undertake the delivery of services which might not otherwise be available to you.

- You may be interested solely in the process of service delivery and wish to avoid as many of the business aspects of tendering and contracting as possible.
- You may see working as part of a consortium as the most effective way of securing the long term sustainability of your organisation.

### **The disadvantages of acting as a contractor in a consortium or consortium member**

There are some disadvantages of acting as a contractor in a consortium, or as a consortium member, which should be considered alongside the advantages. These include:

- Your relationship with the public sector purchaser is unlikely to be direct but through the Lead Contractor. This means that their approach can dictate much of the working relationship with the purchaser. So that if that relationship deteriorates for any reason you may suffer through association.
- You may not be in a position to be become involved in negotiations or management discussions with the purchaser, however, the impact of these will be felt by your organisation.
- Your experience of the tendering process may be limited.
- There may be a default or even breach of contract by the Lead Contractor which might have a serious impact on your organisation. This underlines the importance of the business checks which you should carry out on the Lead Contractor before entering into discussions of any kind concerning consortium working.
- The management style of the Lead Contractor may not suit your culture and working methods. Ensure that you consider this aspect of the arrangement before making any commitment to consortium working.

## Appendix F: Case Study examples

We have included below some case study examples of consortia working, and lessons learned, arising from arrangements that proved successful or, as in a couple of the cases, failed to deliver all that had been hoped for.

### 1. 'Every Action Counts' - Defra

In early 2006 Defra issued a prospectus for the delivery of the Community Action 2020 programme, part of the UK sustainable development strategy. Community Action 2020 (since renamed 'Every Action Counts') aims to embed sustainable development principles into community organisations and those who work to support them.

In order to make the most of limited resources, and to maximise the links between the different parts of the programme, Defra proposed a consortium approach. They requested partnership proposals capable of delivering the whole programme and provided all second round applicants with the names of organisations who had submitted expressions of interest in the first round in order to encourage the development of partnerships.

A consortium of 25 organisations successfully applied to undertake the work. The consortium was developed by the Community Sector Coalition (CSC). It consisted of existing members of the CSC plus a number of specialist environmental organisations who had also expressed an interest in delivering the programme. The consortium partners approached the Community Development Foundation (CDF), a Non Departmental Public Body and member of the CSC with experience of running large grant programmes, to act as the accountable body.

The Every Action Counts consortium is not formally incorporated. The work is being delivered through a grant programme rather than as a commercial contract.

The primary financial and management relationship is between CDF and Defra in the form a grant agreement. All other partners in the programme operate through grant agreements with CDF. The roles and activities of each of the consortium partners was outlined in the original application.

The consortium approach to delivery was innovative for Defra and has provided an opportunity to develop a unique partnership between voluntary and community organisations in the social and environmental sectors. It has also enabled partner organisations to consider how the economic, social and environmental aspects of sustainability impact upon each other and how this affects their work and the communities they work with. It aims to leave a positive legacy of new partnerships and new ways of working across a number of the programme partners.

However the development of a large consortium to deliver a programme in a short space of time resulted in some lack of clarity about the roles and expectations of each of the partners. This has had an impact throughout the delivery of the programme.

#### Key learning points:

- Significant investment of time and effort in establishing the relationships and roles of the partners prior to the start of programme delivery. Once the work starts the focus shifts to delivery. Relationship building quickly becomes a lesser priority and relationships become more 'contractual'.
- Partners to have a clear understanding of their own organisations and how their structure, culture or mission may impact upon their role within the partnership.
- Management structures and systems that allow appropriate partners to input to both operational and strategic decisions – these may be different organisations within the partnership, or indeed other stakeholders.

## 2. Business Link Information, Diagnostic and Brokerage consortium for Yorkshire & Humberside – Community Engine

This case study provides two messages – firstly the scope and potential power of a consortium to bid for substantial public service delivery contracts. Secondly – and ultimately the failure of this consortium to win the contract, it highlights the importance of careful planning and the need for sufficient resource.

The regionalisation of many contracts has presented a requirement to change for the third sector, encouraging them to move from grant-funded bodies towards self-sustainability. This change has been achieved by many third sector bodies by seeking sub-contracts for delivery with larger organisations (often private sector) with varying levels of success. Within Yorkshire & Humber, an opportunity arose to tender for the entire Information, Diagnostics and Brokerage for the Business Link brand.

Community Engine is a third sector organisation which identifies opportunities, draws consortia together to bid on their behalf into a legal entity and then delivers the 'back office' services within the partnership framework on behalf of the Steering Board (made up of representative of each partner within the consortium). They identified this opportunity as strategically important to the third sector in Yorkshire & Humber and with support from the Regional Forum and some forward thinking Councils for Voluntary Services developed a consortium which included 15 local third sector organisations to deliver their specialist individual elements. The structure provided a lead body, with a Steering Group overseeing overall delivery with each partner delivering their individual element according to agreed SLAs with the lead body.

The timescale for tendering for this service was limited to four weeks and this proved to be an insurmountable problem – the tender got written but the quality was insufficient to win the contract due to the large amount of time and limited resource available. Much of this time was taken up approaching the individual partners and addressing any concerns.

### Key learning points:

- There is a need to be proactive and identify *upcoming* opportunities to allow a consortium to come together in advance of the actual tendering specification being released.
- The tender was rushed as a result of this limited time and didn't reflect the true potential of the delivery model proposed by the consortium.



### 3. Private/Third Sector consortium for delivery of employability support in North London - DWP

This case study highlights the added value and performance benefits of consortium delivery, including using the skills of small community organisations as a gateway to wider delivery.

In 2006, DWP sought tenders for a pilot to encourage uptake of employability and training by Pakistani, Bangladeshi and Somali partners. ProDiverse, a high performing organisation with experience of existing delivery in North London to this customer group recognised the need to deliver in partnership with the Third Sector and ensure that services in North London were seamless and accessible. They therefore entered into a consortium (as lead body) with a number of local Third Sector organisations to ensure that each customer could access services locally through the partners and in a familiar environment.

Initial delivery was therefore provided by organisations with which many customers were already familiar, greatly improving the uptake of services. ProDiverse supported this gateway with their experience in employer engagement, linking jobs with training and support in their local community and enabling the customer to build confidence and so pace their move to employment.

This approach works – ProDiverse and the consortium repeatedly exceed contractual targets as well as providing significant added value through complementary programmes delivered by their partners, including vocational training and ESOL/Basic Skills. The consortium members meet monthly as a Steering Board and analyse the Management Information, quality of the provision and identify any changes necessary. Many of the partners have grown, drawing experience and resource from their sub-contracts to identify and win contracts that they wouldn't have previously considered.

#### Key learning points:

- The importance of clear understanding and communication between partners (irrespective of the specific nature of the consortium).
- Sub-contractors know what needs to be changed and what works and a sensible lead body will listen to this and take it into account.
- Equally, careful agreement of the sub-contracts provided the community organisations with a framework to deliver against clear objectives. They knew what they needed to do, when they needed to do it, how and when they would be paid and the overall goal of the contract before delivery started.



#### 4. 'Ensuring Positive Futures' – Positively Women - DWP

The Ensuring Positive Futures Partnership was formed in July 2005 to deliver employability projects for people living with HIV under the European Social Fund's Equal programme. Partnership working was a condition of Equal funding, and this consortium was formed by five agencies who had worked in partnership previously. Partners were a combination of small, medium and large charitable organisations, all working in HIV and sexual health.

One organisation, The UK Coalition of People Living with HIV (UKC), adopted the role as lead body for the partnership. This entailed entering into agreement with DWP who administered ESF funding and managing finances on behalf of the partnership. A legal agreement setting out the formal partnership arrangements was ratified by all partners. A Steering Group was formed, chaired by the Director of partner agency Positively Women and another, Positive East, took on the role of auditing UKC.

In July 2007 the UKC announced it had insufficient funds to continue operating and entered into liquidation. ESF monies had been received by UKC and utilised as cash flow for the organisation, resulting in the misappropriation of partner agencies' funds totalling £92,686.

##### Key learning points:

- The active involvement of all partners was beneficial and meant agencies were pro-active and able to mobilise quickly, recovering £32,000 of payments before the UKC entered into liquidation.
- Nevertheless the bureaucracy set by funding bodies was overwhelming, with partners focusing on internal systems and left with insufficient time or capacity to effectively scrutinise the lead body. An audit of the lead body by an external auditor could have been undertaken mid-way through the partnership to reveal financial problems.
- Separate bank accounts could have been established for the partnership requiring the signatories from 2 partners. This would prevent the

lead body appropriating funds without the full knowledge of the partnership Steering Group.

- The turnover of an organisation, diversity and sustainability of its funding base should be considered when agreeing the lead body. The lead partner being solely dependent on one income stream, in this case ESF funding, led to instability and the organisation's collapse.

## 5. 'SOAR Build' – Social Enterprise

SOAR BUILD is a joint venture, social enterprise between a large private sector construction company Keepmoat and a neighbourhood regeneration partnership SOAR Enterprises.

Mission:

*"To be a successful business supporting the construction industry through local employment and construction training programmes thus creating opportunities for wealth and economic regeneration in the local community"*

SOAR Enterprises is a wholly owned trading arm of SOAR (Southey and Owlerton Area Regeneration), a community led neighbourhood regeneration organisation. Keepmoat is a private construction company of which Frank Haslam Milan are a part of.

Southey and Owlerton Area Regeneration (SOAR) approached construction firms back in December 2002 around the possibility of a joint venture construction training social enterprise. At the time central government had announced a massive investment in local housing stock through the Decent Homes initiative.

The idea was developed into SOAR Build, working with Frank Haslam Milan (FHM), a part of Keepmoat. The enterprise was incubated with assistance from FHM and incorporated in March 2006. The new enterprise utilises a joint venture company (JVC) share capital model, with 50% owned by Keepmoat and 50% by SOAR Enterprises, the trading arm of charitably registered SOAR.

The partnership has benefited both sides with SOAR Build gaining experience and the benefit of Keepmoats cash flow in the early days, as well as supporting with HR requirements, internal management systems, and quantity surveying skills and assisting with the launch event.

SOAR has been able to help with the social aspect of the new enterprise, working with construction job match, raising the profile of Keepmoat in the area,

provide trainees and adding to Keepmoats' agenda on Corporate Social Responsibility.

In SOAR Build's 3 key services they recently received 98% customer satisfaction which either matched or exceeded Keepmoats average. In 2006 14 trainees were taken on 2 year training contracts, as well as other permanent staff. At the end of the 2 year contracts trainees are helped with their future careers which have ranged from remaining within the company and moving up to a supervisor role, moving on to other construction companies, or self employment. SOAR Build see these unique personal exit strategies as a link into BIG, Sheffield's Local Enterprise Growth Initiative.

The projected turnover in 2007 was £1million, which is set to rise to £1.5million by 2008. SOAR Build has recently picked up contracts outside of the Keepmoat family, and outside of the Decent Homes programme. These are key challenges for their sustainability. Also future plans involve expanding beyond just north Sheffield.

### Key learning points:

- In a very competitive market you need to keep focused on the ethos of the company, employing and training local labour from disadvantaged wards helping to create sustainable communities.
- Remember, teaching a trade is relatively easy compared to teaching the people "Life Skills"
- In working closely alongside Keepmoat it helps their business achieve "not only physical regeneration but much needed social enterprise, training and employment and capacity building for local communities"

## 6. 'White Horse Green People' – Social Enterprise

Established in early 2006, WHGP is an innovative social enterprise that provides high quality green space management and landscape services - design, build and maintenance – across Sheffield. The business delivers a range of activities supporting the work of the local authority as well as a number of private contracts. All profits from WHGP are reinvested in the community, principally for the maintenance of local green space. WHGP also place a strong emphasis on employing and training local people, currently employing eight staff.

However, in order to bring in significant initial investment WHGP decided to employ a *Company Limited by Shares* model. This enabled three third sector organisations to invest in WHGP, and hold an ongoing stake in the new company that would not have been possible under a different structure.

One of the shareholders is Key Fund Yorkshire who exist to provide flexible finance to community initiatives and third sector organisations. In this case instead of providing purely loan investment (that would have saddled the new organisation with large debt) Key Fund took an equity investment in WHGP which would gradually be paid back through a percentage share in profits through a dividend-style payment. This patient capital investment equates to a 10% preference share.

The other two shareholders are Groundwork Sheffield and Heeley Development Trust who both made a 45% ordinary share investment into the new enterprise. All three investors brought a different specialism to the table and made their investment in different in different forms. Heeley Development Trust's investment was made in terms of set up costs, staff and equipments including transferring existing contracts to the new company.

Groundwork Sheffield invested in cash and in kind, while Key Fund invested in cash and some pump priming grants.

Despite these differences the monetary value of each investment was agreed, allowing the model to function.

The investment enabled WHGP to scale up to a size where they could increase their capacity and deliver larger pieces of work. Investment was made in equipment and staff employing up to eight employees and establishing a suitable staff structure. WHGP has become more than the sum of its parts.

At present a representative from each company sits on the Board of Directors. Accordingly, the three main roles on the board (Chair, Treasurer and Secretary) are shared equally. At present the board meets every two months, which includes the yearly legal requirement of an Annual General Meeting (AGM). The directors are appointed and reappointed on an annual basis at the AGM.

*“As a social enterprise, White Horse Green People contribute to the local economy by employing local people, investing in community owned green spaces, investing in children and young people's activities and engagement and by creating apprenticeship opportunities.”*

## 7. The Communication Trust – DCSF

The Communication Trust, funded mainly by the DCSF, was established in April 2007 with the specific aims of:

- Raising awareness of speech, language and communication across the entire children's workforce
- Enabling the children's workforce to gain access to the skills and knowledge to support the speech, language and communication development of all children
- Encouraging collaborative working both within and across relevant sectors

The Trust was founded by Afasic, The BT Better World Campaign, the Council for Disabled children and I CAN. This small group is supported by a consortium of 26 voluntary and community groups which deliver services and support to children with speech, language and communication needs. In addition the Trust is supported by an Advisory Panel made up of 10 lead bodies in the field of workforce development.

The Trust is run by a small programme board made up of the founders. The Consortium and the Panel have very clear roles and responsibilities, including quality assurance and ensuring the relevant expertise is used in all the projects of the Trust. In addition, the panel ensures that the Trust is not duplicating any existing work. A small project team are responsible for delivering all the products. To ensure cost-effectiveness, any additional support that is needed is bought in from the consortium and panel based on relevant experience and expertise and paid a representative consultancy fee.

In the first 18 months the Trust has achieved the following:

The Trust developed a Speech, Language and Communication Framework (SLCF) - a clear, comprehensive framework which sets out the skills and knowledge needed by practitioners to support the speech, language and communication development of all children, including those specific to supporting children with SLCN. It can be used by individuals and managers across the children's workforce to assess skills and plan effective professional development in

this area and it has been accessed by over 1500 practitioners to date.

We mailed 19,000 primary schools with information about speech, language and communication and directed them to high quality, relevant resources. This generated over 4,000 requests for a particular resource.

The consortium agreed a shared language and understanding of speech, language and communication (SLC), enabling clearer communication between different sectors who were using different terminology to describe similar issues.

We ran two very successful conferences, raising awareness of the issues and highlighting current resources for over 300 delegates made up of managers and practitioners from a wide range of sectors.

The Trust is working with Government and in particular presenting a cross-sector position on the Bercow Review and its subsequent implementation

The Trust has been asked to represent SLCN organisations on government reviews

### Key learning points

An independent evaluation of the Trust has recently been completed and the Trust has received high praise from the DCSF and its partners. The report also identified key learning points to strengthen the work of the consortium, i.e. to:

- Increase clarity of definition and purpose. As the Trust has been so successful and the programme of work has extended, it is important to revisit initial aims with all members.
- As the Trust looks to its next programme of work we need to clarify the funding or tendering process to ensure that it is transparent and fair.
- As the Trust grows we need to enhance our membership and ensure the right organisations are invited to support our work.

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### Disclaimer

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**We recommend that specialist legal advice be taken from the earliest stages in the development of the consortium, not just in relation to the detailed drafting of the legal documentation for the consortium but also in ensuring that the formation of the consortium and the way in which the contract is to be delivered does not breach Competition Law.**