

Joint Bidding / Forming a Consortium



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Introduction/Background

The local economy in Gwynedd is dominated by SME's with 98% falling into this category and 94% of these registered as Micro SME's. Therefore one of the main restrictions for the local market to capitalise on public sector tender opportunities is their capacity to both deliver the services required and to compete in tender processes.

One way this lack of capacity can be overcome is where two or more businesses or organisations work together to submit a Joint Bid (or form a Consortium) to bid for work that could otherwise be beyond their expertise or capacity as individual tenderers.

In order to support potential tenderers to investigate the possibility of forming a Consortium/Joint Bidding Gwynedd Council has created this summary document to highlight some of the main points for consideration (this list is not exhaustive and should be used as a starting point to identify points for discussion. **We strongly advise that specialist legal advice is sought from the outset.**

1. Advantages of working in a consortium

- a. Share relevant skills, experience and expertise to compete for additional contracts outside the scope of any one member.
- b. Increased capacity & possibly geographical coverage to compete for larger contracts.
- c. The skills learnt from working within a consortium could benefit each member when they tender alone in future.
- d. Shared development costs e.g. pooling of back office costs.

2. Disadvantages of working in a consortium

- a. Management costs can increase
- b. Consortium development can be a time consuming, complex and costly.
- c. The liability for the failure to deliver or breach of contract by any one member will be carried by all through "guilt by association" and could seriously affect all members' ability to compete for future tenders as a stand alone organisation or as part of another consortium if the issue is not rectified.
- d. The differing values and cultures of consortium members can cause friction.

3. Point to consider before forming/entering into a consortium

- a. Be clear about your motivation for forming/joining the consortium
- b. What additional skills, expertise or experience do the potential consortium partners hold that you do not and how this will open up additional opportunities for you?
- c. What capacity issues does involvement in a consortium cause for your organisation and what affect will this have on your existing or future operations?
- d. Allocate time to identify the risks and challenges involved.

4. Establishing a Consortium

- a. Allocate time to develop good collaborative relationships between members.

- b. Take time to understand the working systems and procedures of other members.
- c. Establish what each member wants to achieve out of being in the consortium and how each member's mission/purpose fits with that of the consortium as a whole.
- d. Establish what each organisation offers/brings to the consortium.
- e. Consider establish a legally binding *Confidentiality Agreement* that all members will sign before any serious discussions occur. This could elevate concerns regarding data sharing which often stops many consortiums form getting off the ground.
- f. We recommend that specialist legal advice is sought on the structure and operation of the consortium as well as establishing a consortium agreement from the earliest stage in order to avoid contravening competition law.
- g. Establish a steering group consisting of authorised representatives from each party.
- h. You may need to consider appointing a lead organisation who has the motivation and resources to drive the process forward.
- i. Agree policies and procedure that every member of the consortium will need to adopt/adhere to in order to compete for specific contracts.

5. Managing a Consortium

- a. Establish a clear decision making process, specifically who can decide what and when, as well as how this will be communicated to manage consortium operations.
- b. Establish defined communication channels between members.
- c. Establish a process to deal with any issues or disagreements between members.
- d. Be clear about what you will do if you do not win the contract
- e. Agree on what terms and how a member can leave the consortium.

6. Manage Contract Delivery

- a. Identify what experience, skills or competencies does the consortium collectively need to deliver the contract.
- b. Agree the roles and responsibilities of each member in terms of contract delivery, with a set procedure of review these responsibilities.
- c. Asses staffing requirements i.e. are their additional staff required, what contingency plans are in place for dealing with staff changes during the contract.
- d. Agree what quality management, monitoring, reporting and review systems will be established to ensure compliance with contract terms and requirements.
- e. Agree how any rectifying action will be taken and who will be responsible for this.

7. Manage the Consortiums Finances

- a. Agree financial management systems e.g. will one of the consortium members take responsibility for this or will this fall under the steering group or both.
- b. Consider how you will mitigate issues such as cash flow if one consortium member is responsible for payments released to other members.
- c. Can the consortium demonstrate financial sustainability and capacity to accept risk?
- d. Carry out a credit check on all consortium members.
- e. Allow time to establish a consortium back account as this can be complex.

8. Manage the risks and challenges

- a. Allocate time to identify the risks, challenges and costs involved.
- b. Identify what are the implications of performance failure by one or more of the members on the consortium as a whole and how this can be managed.
- c. Agree actions to be taken if the lead contractor fails in terms of their responsibilities.
- d. Agree monitoring and management procedures to identify and rectify any issues.
- e. Allocate time to establish insurance for the consortium as this can be complex.
- f. Ensure insurance levels exceed the statutory requirements as individual members and for the consortium as a whole.

9. Point to consider regarding what happens at the end of a contract

- a. Agree what happens to the consortium at the end of the contract, does it continue?
- b. Agree who will own any assets, goods, leases and equipment purchased for the effective delivery of the contract once the contractual period is finished.
- c. Agree what processes will be followed if some members of the consortium do not wish to proceed on the same terms when the contract is re-tendered.
- d. Agree arrangements regarding intellectual property and copyright once the contract period is finished i.e how this may be used in the future, for example in tendering for future contracts.
- e. Establish an exit strategy:- consider establishing a Sustainability Sub Group whose responsibility will be to plan for the future development of the consortium.

10. Additional Information and Support

- a. When establishing a consortium we recommend that you utilise the Welsh Government Joint Bidding Guide. Follow the link below :-
<http://gov.wales/topics/improvingservices/better/vfm/publications/jointbidding/?lang=en>
- b. Support in setting up a consortium to bid for a public contract can be found through the Wales Cooperative Centre (www.walescooperative.org) and Business Wales (www.business.wales.gov.uk).
- c. Appendix 1 of this document includes a basic template for a consortium agreement. This document should only be used for information and guidance purposes to identify points for initial discussions. **Legal advice should be sought to obtain an official consortium agreement.**
- d. In addition, video interviews on joint bidding can be viewed on the Sell to Wales web site using the following link:- www.sell2wales.gov.uk/video/video_main.aspx
- e. Information on tender opportunities, requirements and processes can be found on the Councils Procurement Website :- www.gwynedd.gov.uk/procurement