

# Collaborate To Compete

Developing consortia to deliver contracts



## Introduction

In the current economic and policy climate, many civil society organisations that have previously accessed funding from government organisations, through grants and service level agreements (SLA), may be carefully planning their futures. As opportunities for grants and SLA reduce they may consider that their way forward is to compete for public service contracts through open tenders. They may also be aware that many tendering opportunities will be for larger and more complex public service contracts which they may not be able to access unless they 'collaborate to compete'.

The purpose of this paper is to help civil society organisations better understand:

- Why we need to 'collaborate to compete'
- The options there are for working in a consortium: The models of consortium working
- What we need to do to build our capacity to compete
- Where to go for help

Written by Ian Curtis, Collaborative Working Officer and Procurement Lead at CVS Bedfordshire.

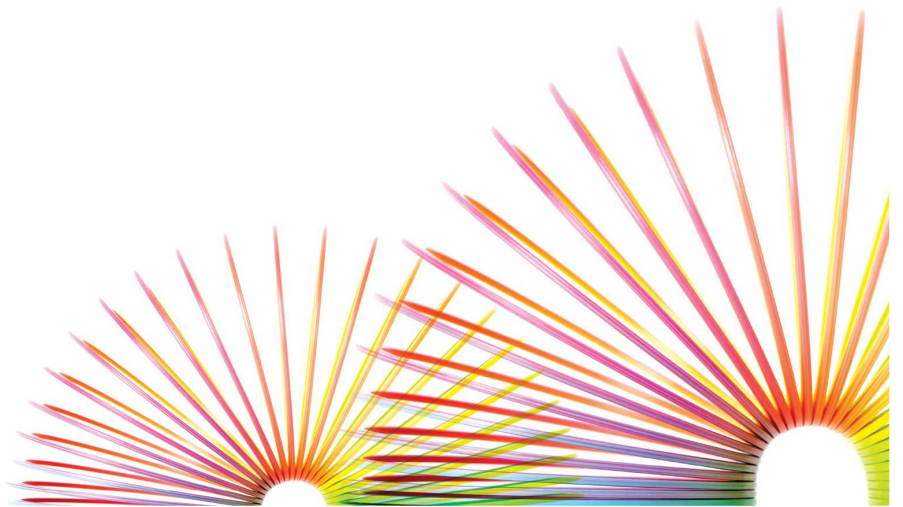
## Why do we need to collaborate to compete?

### Collaborative purchasing leads to consortia supply:

#### The 'aggregation agenda'

As part of its efficiency reviews of central government in 1998 and local government in 2004 Sir Peter Gershon recommended that substantial savings could be made to the public purse through 'aggregated purchasing'. Instead of government agencies each buying goods and services separately from their many suppliers they found that if they aggregate their needs and pool their budgets and tender larger and more complex contracts they can:

- Reduce the number of tenders they need and hence reduce their procurement costs
- Reduce their legal costs, as they need to prepare, negotiate and hold far fewer contracts



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- Reduce their contract compliance costs. Additionally as they can now concentrate their compliance effort on a lesser number of contracts they can be more effective in making sure they are getting what they are paying for
- Reduce the number of cheques they send out to suppliers

These together represent substantial savings to the public purse.

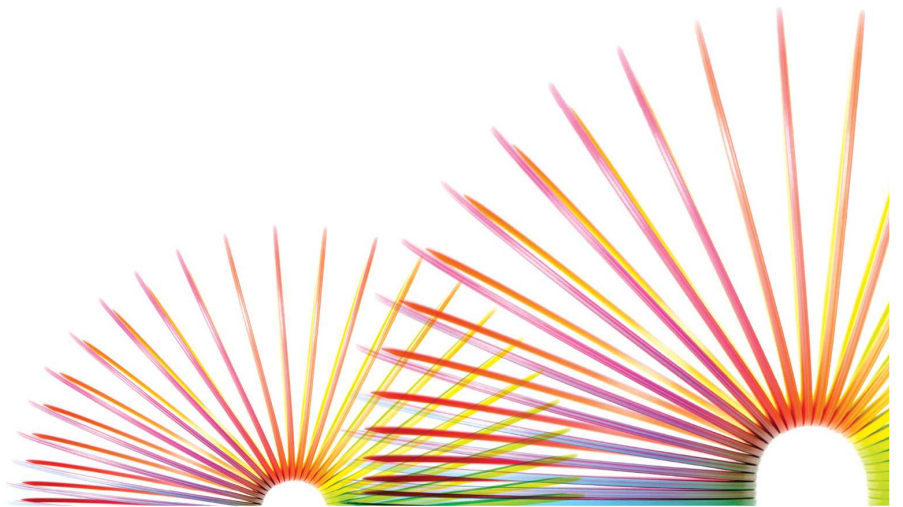
### The 25% test

Many government organisations, as part of their tendering procedure, ask a series of questions to make sure potential provider organisations have the capacity to hold and deliver public service contracts. Some of these questions are about financial resilience. One across Europe'. Now the pace of bringing public services to the market has quickened due to the current economic climate ['the cuts'] as well as shifts in policy. Many of these initiatives will become larger public service contract opportunities and civil society organisations are being encouraged by the government to tender for them.

of the tender appraisal criteria often used is the 25% test (this percentage may vary). This test calculates the annual value of a contract being tendered as a percentage of an organisation's annual turnover. If the value of the tender turns out to be more than 25% of an organisation's annual turnover then such an organisation is not likely to be selected as a provider as this is regarded as too high a risk. Commissioners consider that organisations above this 'threshold' are too small to handle these 'larger' contracts. They fear that if the organisation loses income from, say, the loss of another large project stream which, under full cost recovery, helps support its governance and management on-costs, then the organisation and their contracted services may be at threat.

### Externalisation of public services

Many will already be aware that government organisations are tendering out public services which they have previously delivered themselves. Government organisations have been carrying out the externalisation of their public services for many years spurred on by the need to gain 'value for money' by bringing their services to the market and ensuring there is 'free and open competition to deliver public services



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## Summary: Why do we need to collaborate to compete?

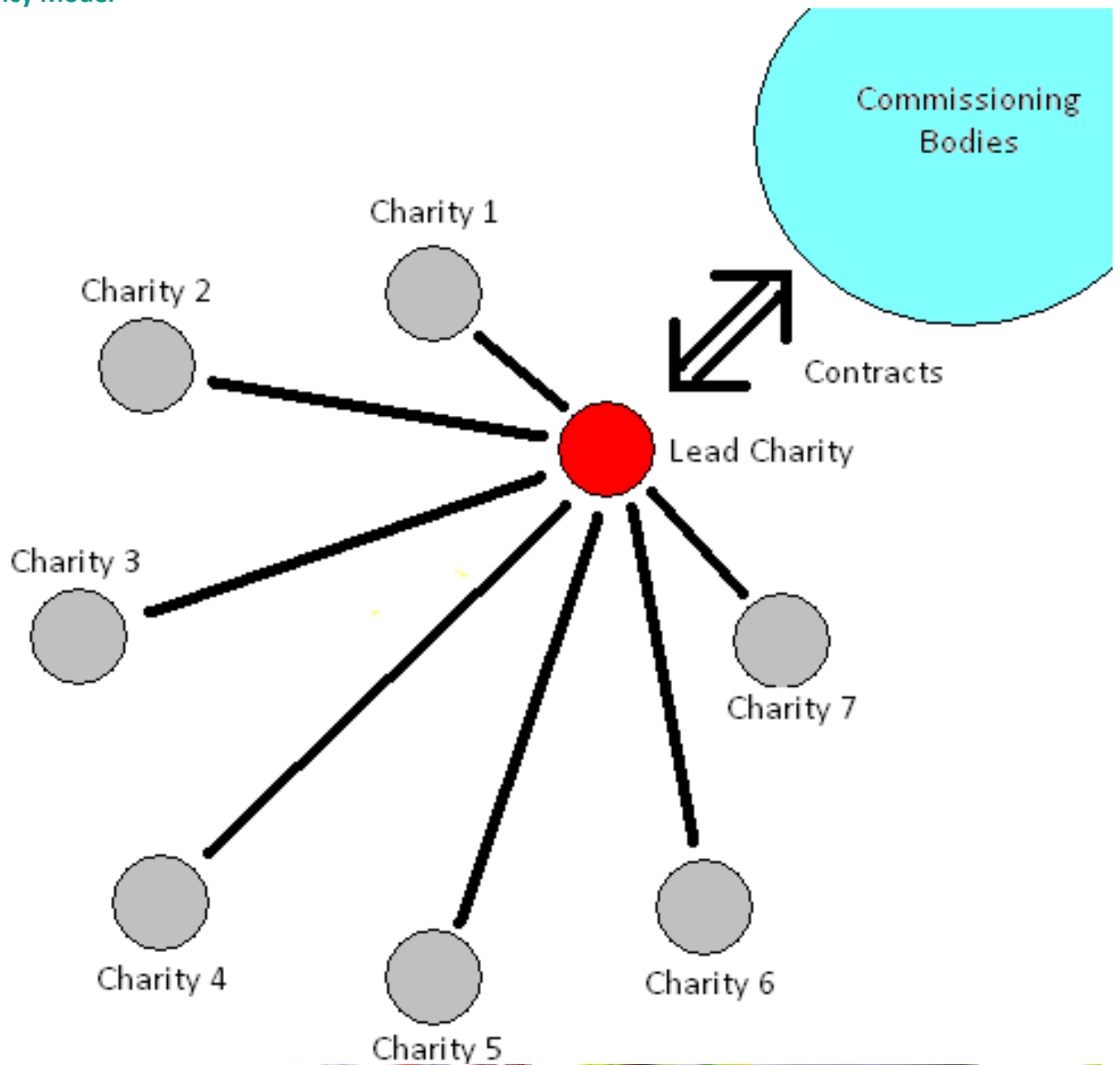
In the current economic climate government organisations will strive to ensure that public services are as cost-effective as possible and provide maximum impact. This pressure will drive them to procure public services through open and competitive tendering to drive down cost and increase quality of service. Often they will aggregate their purchasing, pool their budgets, offer fewer but larger and more complex contracts to win further economies. They will bring to the market services that they previously delivered and these are very likely to be 'larger and more complex'. As a result of the size of many civil society businesses, many will not be able to access these larger and more complex tender opportunities on their own. However by 'Collaborating to Compete' they can. Collaborative purchasing leads to consortia supply!

## What options do we have for working in a consortium?

### The consortium working models

In this paper we will not deal with merger [although this is also a rational response to these changes] but with consortium options only.

#### 1. The Lead Agency Model

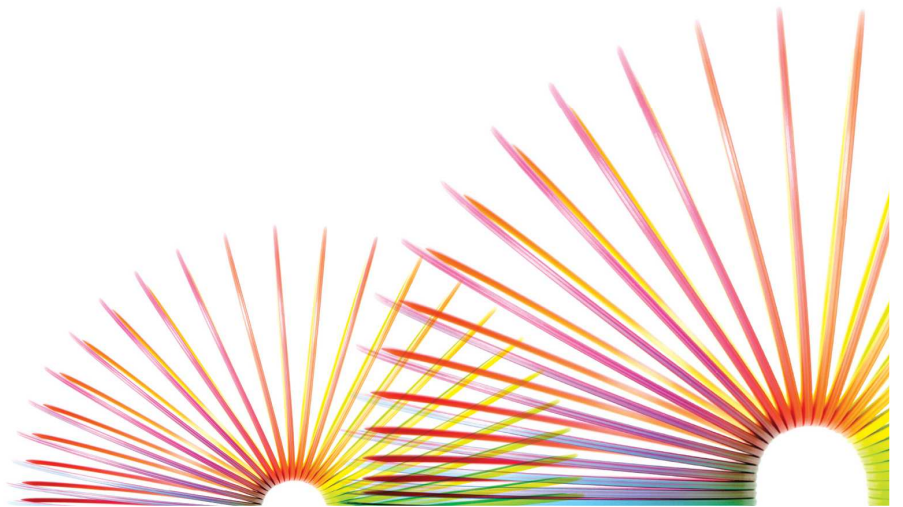


In this model the lead agency has supported the development of the tender in a consortium and won the contract. It has entered into sub-contract arrangements with its consortium members and they together deliver the services.

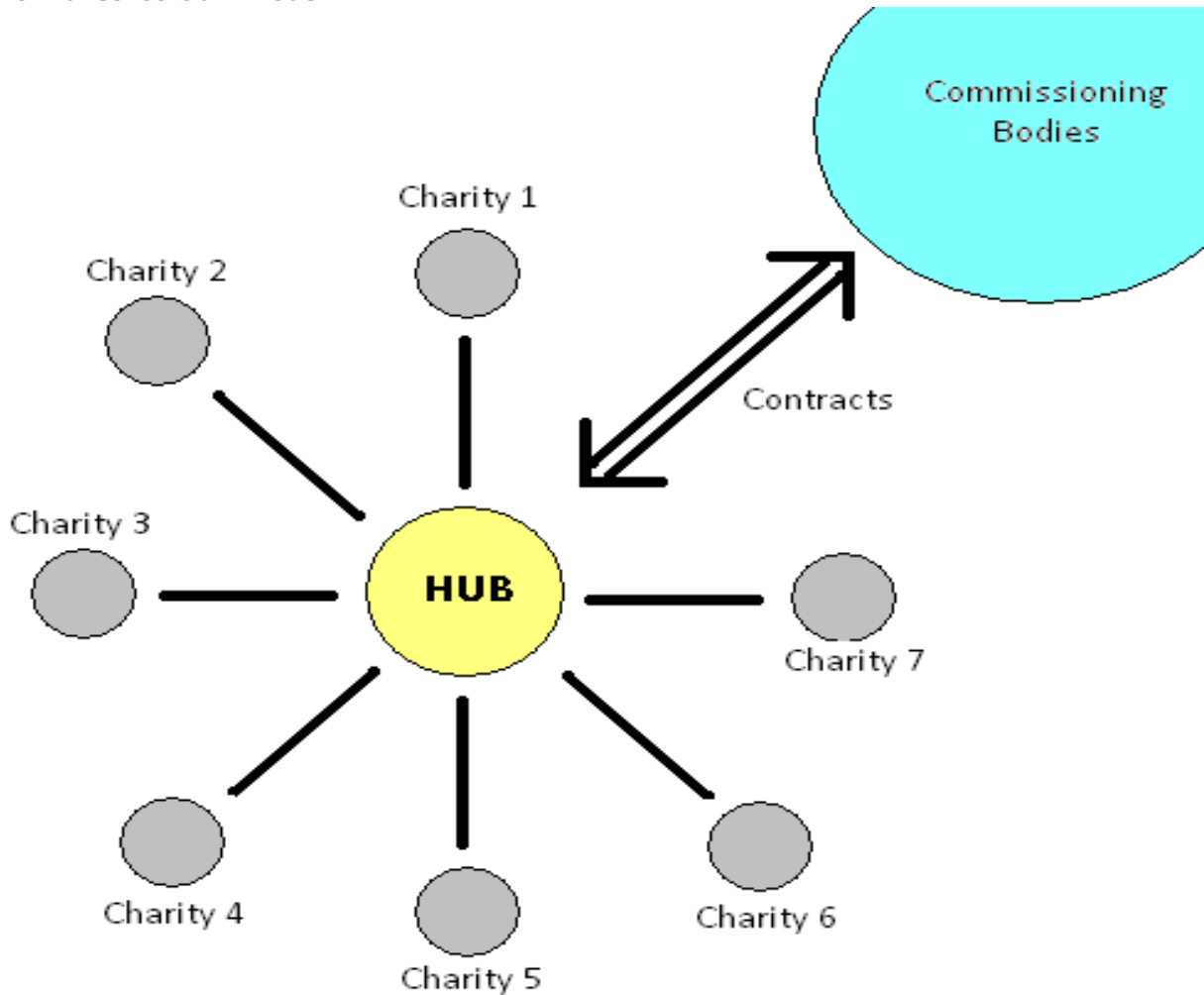
Lead agency organisations are often larger organisations that already have a good track record in delivering public services under contract, are 'financially resilient' and overall possess the capacity to lead on the delivery of the contract. They work together with their sub-contracted consortium organisations to deliver the contract.

All sub-contracted suppliers should also have a good track record in delivering public services, be financially resilient and have the capacity to deliver their sub-contract. All consortium members usually deliver the contracted services but the lead agent takes on the following responsibilities:

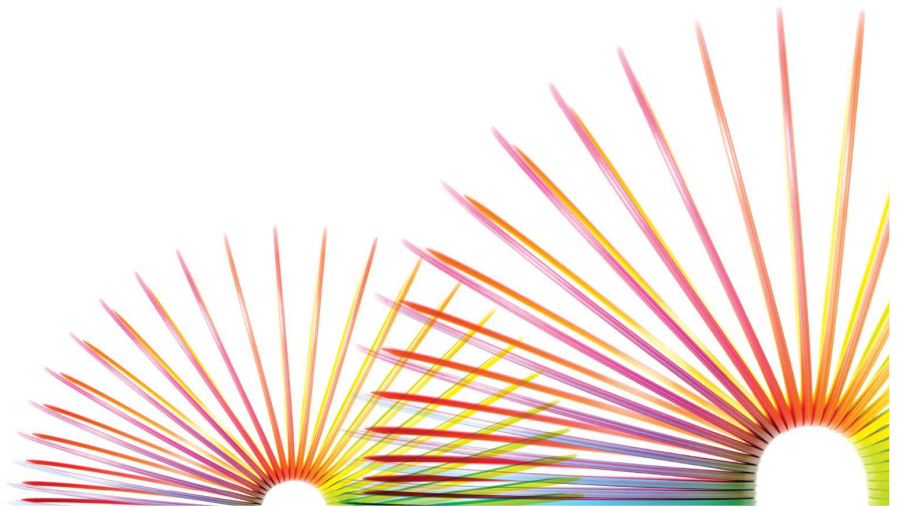
- To periodically report progress about service delivery to the commissioners on behalf of the consortium after aggregating information gathered from themselves and each of their sub-contractors into a single report
- To receive payment and act as an exchequer on behalf of the consortium, sending out required payments to its sub-contractors
- To support contract compliance: to receive and take part in contract compliance carried out by the commissioners and carry out contract compliance with their sub-contractors
- To manage the coordination of the delivery of the contract with the support of the sub-contractors
- To negotiate contract variations on behalf of the consortium through the life of the contract



## 2. The Formal Consortium Model



In this model the hub has been created as a 'special purpose vehicle' often referred to as a 'super contractor'. It is equally and jointly owned by its member organisations. The hub's board of directors are elected at the AGM and are representatives of the member organisations. They hold the responsibility for the running of the hub organisation on behalf of the wider membership.



The hub usually carries out the following:

- To establish tender alert systems and when a tender becomes available to bring this to the attention of the consortium membership. Following discussions those member organisations who wish to consort to contract are supported to co-develop their tender by the hub contracts manager
- On winning the tender the hub holds the main contract to deliver public services and the members concerned operate under sub-contract
- The hub carries out the same responsibilities as the lead agency model described above but usually the hub does not deliver public services but specialises in supporting its members to win contracts and deliver them

Membership of such consortia is usually free or low cost and is based on agreed membership criteria.

### 3. Revolving Lead Agency Model

This is a variation of the lead agency model described previously in point one. In this model, as further contract opportunities arise, member organisations take it in turns to carry out the 'lead agency' responsibilities. By doing this, both business risks and rewards are shared rather than resting with the one lead agency.

## What do we need to do to build our capacity to collaborate to compete?

Overall this is a two-step process

**The first step** is to make your organisation as ready as possible to compete for contracts. A quick way to test your readiness is to ask government organisations for their standard Pre-Qualification Questionnaires (PQQ) to see if you can answer all their questions and meet all their requirements. If you can't, then use the 'weaknesses' you identify as an action plan to develop your organisation until it can 'tick all the boxes'. This sounds easy, but can be quite challenging.

PQQs are often used by commissioners as an initial sifting stage to reduce the number of organisations expressing interest in a tender to a manageable number. The PQQ enables the commissioners to evaluate the provider's ability to meet their requirements and will seek information about an organisation's financial resilience, reputation, service track record, policies and capabilities to deliver the contract on offer.



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Commissioners score your PQQ with those of other potential providers and those that score well are invited to tender (ITT). If you fail to score well, you are rejected at this stage so it is critically important that your organisation builds its capacity to match all PQQ requirements.

In addition it is recommended that you make sure your trustees and key staff are fully aware of the changes in your organisation's business operating environment, how commissioners are far more likely to procure public services through open and competitive tenders [rather than grants or service level agreements] and what the procurement procedures and contracts will demand of you and your organisation. Senior staff will also need an understanding of how their local government organisations intend to procure public services (their procurement procedures and buying intentions) as well as an awareness of the Public Contract Regulations which became operational on 31<sup>st</sup> January 2006 as these form much of the basis for open and competitive tendering.

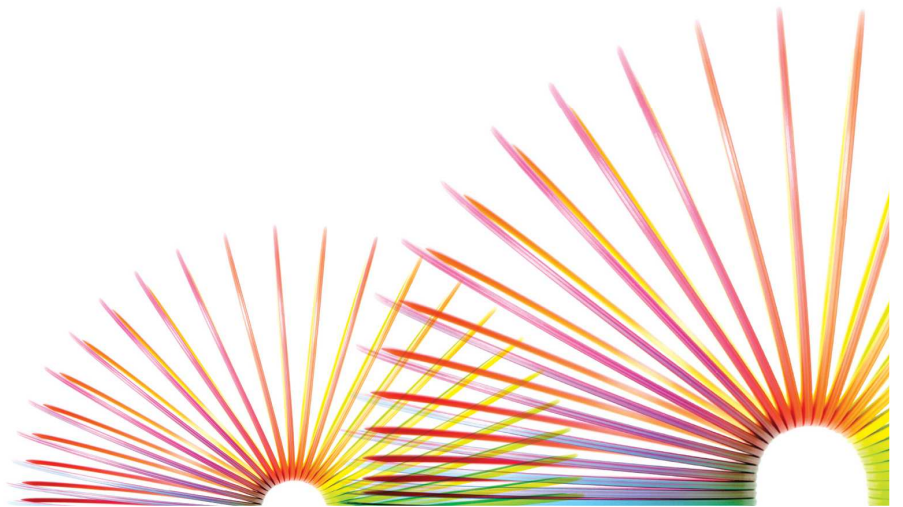
Organisations also need to develop business plans and as part of this planning process consider strategically how they propose to work towards the 'sustainable funding' of their current and future services. Additionally they should also consider all aspects of the marketing of their services to both the public and commissioners.

An underlying activity is to stay very close to public service commissioners and to take part in any relevant discussions about the design of public services or how they intend to commission them. Organisations should also engage with policy consultations and make sure they are aware of shifts in both local and national policy as government policy is usually backed by investment!

**The second step** concerns the development of your organisation's ability to become part of a consortium to access public service contracts.

The responsibility for entering into a consortium [and merger] working with other organisations rests with trustees so they must be kept up-to-date about any potential consortium working developments and it is they who must decide whether or not to enter into these arrangements. (See Charity Commission Guidance CC10 'Hallmarks of an Effective Charity which states: The Trustees' duty is to "consider whether collaborations and partnerships, including the possibility of a merger, with other organisations could improve efficiency, the better use of funds and the better delivery of benefits and services to beneficiaries".)

The organisation's governing documents should also be examined. Firstly does the contract on offer fall within your organisation's objects? If it doesn't then your organisation should either decide not to enter into the contract or amend its objects (in consultation with the Charity Commission). Secondly the charity's powers need to be examined. Does the contract fall within the organisation's geographical (area of operation)





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powers? If the contract is to be delivered outside of the organisation's geographical area of operation, then your charity may need to widen its geographical area of operation. Does the charity have the power to work in co-operation with other organisations? If not, then it will need to adopt this power to enter into a consortium or other collaborative working arrangements. Please refer to Charity Commission guidance CC36 'Changing your Charity's Governing Document'.

Any organisation that wants to work in consortium will need to identify potential partner organisations. Some will select those they already have a track record of working with, whilst others will adopt a strategic approach and select partners who are already 'fit for purpose' and want to form a consortium to respond to a future tender opportunity. It is recommended that, however you select your potential consortium partner organisations, you ask relevant questions about each other's financial, legal and reputational positions etc. In a merger this process is known as 'due diligence' but in a potential consortium the same list of questions can be used to select from, to check each other out. Essentially all consortium members need to be fit for contracting and have the capacity to deliver public service contracts. A failure to carry out due diligence work at the outset of forming a consortium will increase business RISK and reduce the chances of being awarded a contract. Where a formal or super contractor consortium (model two) has been created, membership application is usually rigorous and based on a comprehensive range of PQQ and due diligence questions requiring hard evidence.

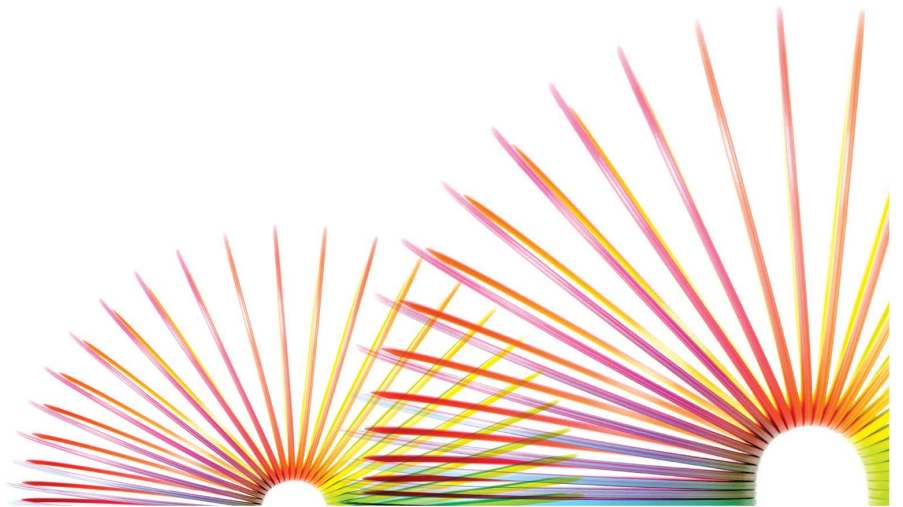
### Can I wait until a tender is open before I join a consortium?

The time between open and close of tender can be short. Some recent tenders have only been open for twenty working days. They can be longer if the contract value is in excess of the EU Procurement Threshold of £156,442 when longer minimum time limits apply. Even if they are longer the work that needs to be done in developing a larger and more complex tender is usually considerable and this work is increased if a tender is to be co-developed in consortium. It is therefore suggested that the best way forward is to develop a consortium in advance of tenders being advertised and to take all steps necessary to minimise business risk and prepare to successfully deliver services to your beneficiaries.

### What are the steps we need to take to develop a consortium?

The following is a list of steps taken to form a recently-built formal consortium.

- Identify potential partner organisations

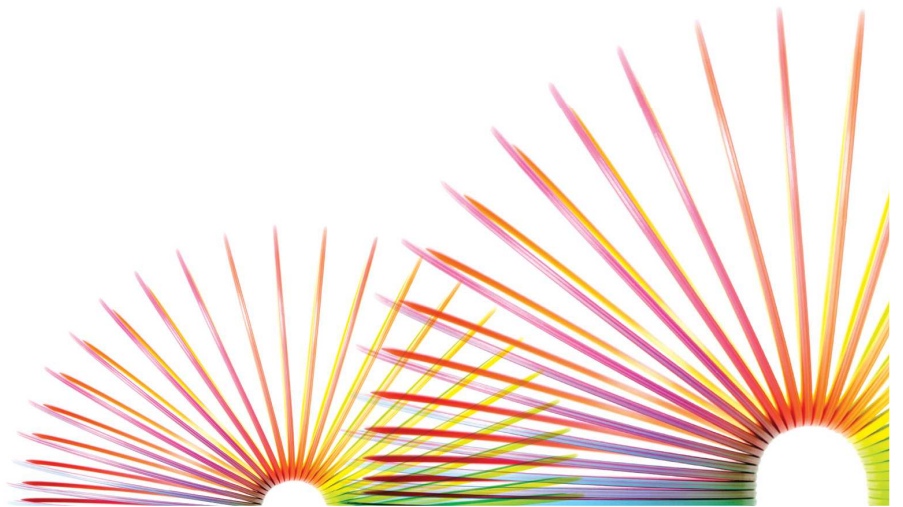


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- Hold a 'scoping meeting' between Chief Officers to explore the need for consortium working and way forward
- Hold a development event for trustees and senior staff to explore the need to work in consortium and to gain their general commitment to build a consortium
- Each board of trustees concerned to consider a report about consortium working to gain their commitment to build a consortium, agree who will represent them on a 'task and finish' consortium development working group
- Hold a two-day intensive meeting of the consortium development working group to consider (the models above can be used as a base for these discussions examining the advantages and disadvantages of each) and adopt the consortium model which is considered most advantageous and start to develop the consortium business plan
- Apply for grant funding to support the work of the consortium development working group
- Hold several meetings of the working group to finalise the business plan, agree the legal form for the consortium hub, agree the company name and register it, develop the marketing materials, membership application criteria, application process and forms, consortium membership prospectus, launch event and publicity
- Build the capacity of all the consortium members to ensure they are in a position to compete for contracts
- Develop a website
- Apply for hub start-up funding
- Appoint staff
- Establish an office base
- Establish contact alert and consortium tendering procedures
- Establish policies and procedures so the hub is as PQQ-ready as possible
- Increase consortium membership
- Meetings with commissioners and procurement officers
- Develop tenders and win some
- Establish service reporting procedures
- Establish contract compliance with member organisations
- Continue to support the board of directors and hold membership meetings

### Where can you go for help?

Although BASSAC has recently merged with the DTA to become Locality, and their Collaborative Benefits Unit has come to an end, at the time of writing, one of the best resources is their Collaborative Benefits website.



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This can be found at: [www.bassac.org.uk/collaborationbenefits](http://www.bassac.org.uk/collaborationbenefits) Click on the Collaborate for Commissioning button on the left of the home page [although the whole site is full of useful resources].

The Charity Commission has published the following guidance: CC34 Collaborative Working and Merger, CC37 'Charities and Public Service Delivery', 'Choosing to Collaborate: Helping you Succeed' and 'Making Mergers Work: Helping you Succeed' [The last two publications are tool kits!]

The government in December 2008 [Cabinet Office of the Third Sector] published 'Working in a consortium' as a result of their commitment to support third sector organisations through their 2007 'Action Plan for Third Sector Involvement'. This is a very useful start point and answers many of the questions about why you need to consort, how to, and the legal implications.

Perhaps the best tool kit to date is 'Consortium Toolkit' published by Voluntary Action Sheffield (£25); this comes with a disk of very helpful templates for the various documents you will need to develop your consortium. Contact VAS on Tel: 0114 253 6600 to order your copy.

### About the author

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