

Joint Tendering and Collective Bidding

Small Business Guide Part 1

Structure, Process, Opportunities, Challenges
and Barriers when forming Consortiums





Purpose of this Guide

This series of three handbooks are designed as a quick guide for sole traders and micro businesses working in the built environment sector who wish to work together in order to joint tender for public or private contracts or work collaboratively on shared bids.

There could be benefits for small traders from collective bidding, such as:

- the opportunity to get involved in larger contracts
- the opportunity to widen the pool of resources and skills available
- sharing of costs, burden, hassle
- being able to look and act bigger
- ability to focus on your core strengths
- more eyes to spot opportunities
- future proofing - gain awareness, skills, experience, qualifications
- networking opportunities
- lessen the necessity of employing its own staff, particularly if there is a local shortage of expertise

The guide will walk small businesses through the steps they need to take in order to prepare themselves to enter a bidding process as a consortium. The full guide is available online (see back page for links).

What You'll Find in this Guide

- ◊ Net zero opportunities and collaboration
- ◊ Structure options for public and private tendering and the types of legal vehicles for collaborative working
- ◊ Considerations and processes - a three phase approach to forming a collective and taking it to a bidding stage
- ◊ Threats, challenges and barriers when forming a consortium

Net Zero - The Bigger Picture

It is foreseen that the drive to net zero will create substantial economic opportunities in retrofitting alongside a wide range of new building projects. Every region will be in the same position so it will become harder to draw suppliers in from surrounding areas.

Predominantly rural areas face particular challenges to factors including the dispersed housing and infrastructure, lack of large locally-based construction sector organisations and the distance from major centres of population.

It is therefore important to find ways of encouraging and assisting built environment sector SMEs to bid for energy efficiency supply chain (EESC) related work in their own regions.

Why Collaborate?

There are many benefits from encouraging a collective approach to promote the involvement of small, local businesses in public and private sector contracts whether bidding directly as lead or joining the supply chain of main contractors.

Capacity and resilience in the local supply chain is enhanced, and benefits accrue to local job markets, community wealth building and circular economies.

Small businesses are provided with an opportunity to work on larger contracts, share costs, widen the pool of skills available and appear 'bigger'.

For the local economy there is the potential to provide scale, stronger competition, improved local services and the creation of new jobs.



Structure Options for Tendering

If SMEs desire to collaborate to tender for contracts, a key early consideration is whether they want to form a new legal entity* in which they are bound together prior to a specific tendering opportunity being identified, or depend on a relatively informal and contractual relationship to begin with.

The public procurement regulations make no restrictions on the forms of consortia that are eligible to bid for public contracts. In principle, public sector contracts are open to any form of “economic operator” – legal person, sole trader, private limited company, partnership, plc, charity – provided it/they pass the Selection Criteria set by the Buyer at the time of tendering.

The rules in this area are contained in the Public Contracts (Scotland) Regulations 2015 <https://www.legislation.gov.uk/ssi/2015/446/contents>

*prior creation (in advance of suitable tenders being available) is advised as this stage could be time consuming depending on number of businesses involved and type of structure being created.



Types of Legal Vehicles for Collaboration

The main forms of formal collaboration in the context of tendering for business are the following:

- Company Limited by shares - the SMEs would all be shareholders, whether they are sole traders or themselves limited companies. Limited flexibility in terms of departing or new members.
- JVC (Joint Venture Company) – as above but a limited company incorporated to bid for and run a particular large project. Will have shareholders, directors, annual returns, statutory accounts, be subject to public scrutiny. Limited flexibility in terms of changes to the shareholders.
- Partnership – traditional partnership – but the partners would have joint & several liability, also lacks flexibility.
- Limited liability partnership (LLP) - a separate legal entity from its members (partners), who are only liable for the amount of money they invest, plus any personal guarantees. The partnership is incorporated at Companies House, and can only be used by profit-making businesses. Partners are required to provide a registered address for the business, and maintain a register of members. There's no restriction on the maximum number of partners allowed but there must be at least two members on incorporation, either individuals or limited companies. Members can be companies as well as individuals. LLPs are flexible in terms of management and how profits are shared. Accounts require to be filed at Companies House and are therefore available for public view. There will be administrative costs due to accounting and filing requirements comparable to an incorporated company.
- Company Limited by Guarantee - a legal entity similar to the company limited by shares but limited by guarantee. A new company is created with the members being the SME companies, sole traders or partnerships who wish to collaborate. The members are subject to a Members Agreement, which sets out the rules of membership, including the process for incoming or departing members (so more flexible than a company limited by shares).

Considerations and Process

Phase 1 -Forming

- Research & document target markets
- Identify possible partners and any skills shortfall
- Define tender opportunity search criteria
- Prepare policies, experience, references etc
- Confidentiality Agreement/Non Disclosure Agreement (NDA)
- Letter of Intent/heads of terms

Phase 2 - Preparing

- Identify tender opportunity
- Match tender opportunity to target markets
- Establish Interest / invite participation
- Identify appropriate team leader
- Execute collaboration agreement

Phase 3 - Implementing

- Manage tender process:
 - 1.Prequalification stage/Single Procurement Document (SPD)
 - 2.Tender
- Contract & subcontract negotiation
- Contract/subcontract award



Threats and Challenges

Having put together an effective team to bid for a tender, discussed all the issues and all signed up to a comprehensive Collaboration Agreement, the SME contractors must be aware of the following threat scenarios which could derail the relationship. It can be argued however that it would be better to experience and deal with these challenges at the informal stage, prior to creating a formal legal relationship.

Threats

- A team member starts promoting their own company instead of the group
- Imbalance of effort: some members not pulling their weight; one party doing all the running
- One or more members have over-estimated their capacity and can't perform/deliver
- There is a lack of openness & trust
- A clash of cultures – eg. between high-quality culture and one focussing on cheap prices
- Instructions from other organisations/individuals
- Scepticism
- Personality conflict
- Inexperience of project/contract management, particularly by leader
- Egos – resistance to taking instructions from other organisations/individuals
- Resource shortages
- Leadership deficit
- Team ethos not established (group not working as a team)
- Poor planning
- Poor communications within the team

Challenges

- The team leader and/or other team members may consider a team member's prices to be too high and either put pressure on to reduce them, or want to bring in a replacement
- Concessions may be sought by the team leader in other aspects to limit their exposure to the customer
- Unacceptable terms may be imposed which are designed to cause particular team members to exit in order that the work may be done by others.

In a collaborative and essentially voluntary relationship, it is impossible to wholly prevent such problems arising, or in a worst-case scenario, one of more of the team members exiting the group. Upon contract award therefore, it will be important to put in place legally binding subcontracts between the consortium itself and its individual members participating in the project.

Barriers to Collaboration

There are many challenges to successful collaborative tendering by SMEs (see below). Some of these are more significant than others and so constitute 'barriers', and are repeatedly identified as such by SME consortia members and by specialist collaboration advisors.

- Difficulty in identifying and approaching potential consortium partners
- Anxiety about giving away information to competitors
- High level of commitment - time, resources
- Reluctance to take on the overheads and risks of being lead partner in a consortium, even at bidding stage
- Unfamiliarity with joint systems for project & quality management, administration and communications
- Difficulty in negotiating with potential partners
- Possibility of disputes
- Management of communications with the customer and the group
- Unfamiliarity/concern over the customer's financial and other assessment criteria as applied to a consortium bid
- Buyer attitude/receptiveness
- Ensuring quality assurance, consistency
- Unfamiliarity with structures, documentation, tools for collaborative working



In Part 2 of our handbook series we outline the considerations small businesses need to address to gain customer confidence and ensure legal and financial protection for new consortiums.



This handbook series is a quick guide version of the report:

TRADES CONSORTIUM AND COLLECTIVE BIDDING
A report for Scottish Borders Construction Forum
by Gavin Tosh, Clerwood Business Support Ltd
and Gill Joy, Mackerris Consulting
2024

Read full document here:

<https://sup.org.uk/wp-content/uploads/SBCF-SUP-Report-Trades-Consortium-and-Collective-Bidding-July-2024.pdf>

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Contact Information

Social Media <https://www.facebook.com/BordersConstructionForum>

Website <https://sup.org.uk/projects/scottish-borders-construction-forum/>

Email bordersconstructionforum@gmail.com
