

Procurement Factsheet

Tendering as a Consortium



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1. Introduction

Swansea Council welcomes bids from organisations who would like to work together in the form of a **consortium**. Consortia are groups of organisations who may come together for a specific project or purpose and may be either formal – for example, legal partnerships as defined in the [Partnerships Act 1890](#) - or informal or loose associations, for example, a number of organisations who work together supported by a memorandum of understanding.

2. Why set up a Consortium?

There are various legitimate reasons why organisations might decide to create a consortium in order to submit a joint bid for a Council contract. Sometimes the scope of a contract opportunity is such that, working in isolation, a single supplier would find it difficult to offer all of the services required. Other reasons why a consortium may be set up include:

- The organisations taken individually do not have the necessary scale to deliver the requirements of the contract.
- The organisations individually do not have the necessary previous experience or other technical capacity requirements to meet the minimum requirements set within the procurement documents.
- The organisations individually do not have all of the plant, equipment or other technical resources required to perform the contract.
- The organisations individually do not have all of the necessary skills or expertise to perform the contract.
- Alternatively, there may be another organisation with specific expertise in one area which would complement your own service offering.

3. What do we mean by consortium bidding?

The terms '*consortium bidding*' and '*joint bidding*' are used throughout this factsheet to refer to a situation where **two** or more parties choose to submit a joint bid in a procurement competition.

A consortium may comprise of two or more small and medium sized enterprises (SME), or it may, for example, consist of one large firm together with one or more SME. The composition of a consortium will always be dependent on the requirement and these are only examples provided.

4. Are there any rules surrounding consortium bidding?

The [Public Contract Regulations 2015](#) deals specifically with groups of economic operators (organisations) who are submitting bids. Regulation 19 specifically states "*Groups of economic operators, including temporary associations, may participate in public procurement procedures and shall not be required by contracting authorities to have a specific legal form in order to submit a tender or a request to participate*".

However, the Council may require a consortium to assume a specific legal form once they have been awarded the contract, to the extent that this is necessary for the satisfactory performance of the contract.

How your organisation decides to structure a consortium will depend on a number of factors, including how formal or informal you wish the arrangements to be.

You should take your own legal advice on what is best for your particular circumstances. Examples of formal ways of establishing a consortium include:

- i. The creation of **legal partnerships**. These are set up to comply with the requirements of the Partnerships Act 1890 and may take the form of an 'Ordinary Partnership', 'Limited Partnership' or a 'Limited Liability Partnership' – LLP.
- ii. The **creation of a company** in which the consortium members have an interest. Establishing a formal legal partnership or a company is a complex matter and you should seek legal advice if you intend going into an arrangement of this sort.

Less formal arrangements may also be established for example, for a specific purpose i.e. to bid for a contract or for a longer term relationship where the members of the consortium remain free to trade independently of the consortium. In either case it is sensible for the individual members of the consortium to have a simple agreement or memorandum of understanding which explains how the relationship will work, including payments and liabilities and what the individual benefits and responsibilities are for each member and whether they intend their arrangements to be legally binding.

5. Is there a difference between Consortia and sub-contracting?

A consortium is a group of organisations who choose to work together for a common specific purpose.

In a sub-contract relationship, an organisation who is awarded a contract may agree with another organisation for them to undertake part of the work. In this kind of relationship, the sub-contractor will be 'appointed' and paid for their work by the main contractor. Depending on how you set up your consortium, some members may act as subcontractors when contracting with the Council.

6. Contracting with Swansea, what are the rules?

The Council can only contract with a legal entity. This could be a sole trader, a legal partnership, a limited company etc.

If you wish to submit a bid as a consortium, and your consortium members have not set up together as a partnership or company so that you can use this as the legal entity which enters into contracts, we will expect to see one member of the consortium acting as the **consortium lead** in submitting the tender. As part of the procurement process the Council would need to understand who the members of the proposed consortium are and the part of the service that each member will provide. Responses must enable the Council to assess the overall consortium proposal.

If your bid is successful, we will enter into a contract with the consortium lead to deliver the service. We will also pay the consortium lead for the provision of the service which is why it is essential for the members of the consortium to agree how each member will be reimbursed for the work they have done.

7. Consortium bidding and the Selection Questionnaire

As part of the procurement process all bidders will be required to complete a Selection Questionnaire (SQ). Bidders will be required to answer all questions set out in the SQ and are only required to submit the information requested within the SQ. The SQ requires organisations to self-declare their status against the exclusion grounds and selection questions. The SQ is split into three separate parts:

- Part 1: Potential Supplier Information
- Part 2: Exclusion Grounds
- Part 3: Selection Questions

As part of the procurement process each organisation who is relied on as part of a bid must complete Parts 1 and 2 of the Selection Questionnaire to prove they do not fall into either the mandatory or discretionary grounds for exclusion from the procurement process. If an organisation does come within either of these categories the Council may ask that a substitute organisation is appointed as part of the consortium.

All questions within Part 3 of the SQ should be completed by the consortium lead on behalf of the consortium members as one single composite response. All relevant information should be provided in respect of all consortium members, sub-contractors or third party providers who will play a **significant role** in the delivery of the Contract. The Council defines a significant role as the reliance or reference to the economic and financial standing and/or the technical or professional ability of a consortium member, sub-contractor or third party within the tender response. The Council will need to analyse information that allows assessment of the overall financial stability of the consortium. Aggregating data on financial performance is most appropriate when members of a consortium are working together to increase collective capacity. Where, instead, a consortium exists to fulfil different elements of a contract and some of these are more critical to overall delivery than others, a separate analysis of financial stability will be required.

8. Additional Information

Assistance and further support is available for setting up a consortium to bid for a public contract is available from:

- **The Wales Cooperative Centre**
wales.coop/get-our-help/
0300 111 5050
- **Business Wales**
<https://businesswales.gov.wales/>
03000 603 000
- A joint bidding guide has been developed by the Welsh Government to assist suppliers and is available from the following link:
<https://gweddill.gov.wales/topics/improvingservices/bettervfm/publications/jointbidding/?lang=en>.