

Consortia delivery of public services

Structures

Public bodies reducing the number of contracts they hold results in a transfer of responsibilities of contract management to delivering organisations.

This page explores different aspects of three models of consortia delivery of public services by voluntary and community organisations:

1. a **new legal body** is established to manage a contract
2. one organisation takes **lead responsibility**
3. an **external non-delivering organisation** takes the lead

1. New legal body

In favour of the new legal body model – established specifically for the delivery of a contract (sometimes referred to as "new single purpose vehicles") – there are the benefits of protecting the separate organisations if the contract falls apart, through ring-fencing the risk. This is regarded as legally neat, as, if there was a problem, the activities and assets of the partner organisations wouldn't be called into account. It also has the benefit of being a venture jointly owned by all partners.

But there are significant issues and potential drawbacks to consider.

Some drawbacks to setting up a new, joint company – when bidding for funding – are the issues of no track record of service delivery, no financial history, and no reserves. The newly established organisation, being a lead and accountable body, will be responsible for reporting on finances, project delivery, etc. Will this new legal body be a shell, or a real organisation with staff? If the latter, remember that TUPE will apply on the transfer of any staff from one of the partner organisations (see TUPE below).

Setting up a new legal body can be a complicated process, and it will take time and resources, for example, to agree a new governing document, etc.

Decisions will need to be made about the structure of the new legal entity (e.g. company? and charity?), and registering the new body (Companies House and Charity Commission): this can be a lengthy process. There will also be staffing and management issues to agree, and the new organisation will be subject to the ongoing legal and reporting requirements of the regulators (e.g. Annual Returns, SORP).

With regard to the **board composition** of a new organisation, there have been cases of equal representation from each partner organisation, with some independent board members for balance.

Of three examples of new legal entities established for a particular contract, two examples had an equal number of representatives from partner organisations on the new board, along with a significant number of independents, and the third example had a majority of independents. All these cases had an independent chair. This was to ensure impartiality and that all decisions taken would be in the best interests of this new organisation, and to avoid political manoeuvring.

2. Lead body

A lead body – one designated organisation from a consortium – would be solely accountable to the commissioner (e.g. council), having to report and account for both finances and project delivery, and have to 'manage' the partners.

With the lead body model, there may be a certain amount of complexity regarding subcontracting, e.g. the commissioner speaking to the lead body, and the lead speaking to subcontracting organisations, and so on.

There may be one organisation that would be the natural and appropriate choice for lead body, but there may be a perception of unfairness or a power imbalance if one organisation acts as lead and has the final say on decisions.

Additionally, does the lead body have the capacity and resources to manage the contract?

A **steering group**, comprising representatives from all partner organisations, could be established for the project, to promote transparency and ensure all partners needs and issues are addressed. Who to involve on a steering group would depend on the level of decision-making: trustees would be involved for governance issues; staff would be involved for operational, project delivery issues.

If it is decided that the model to be adopted is that of one organisation taking lead responsibility, then this structure and the involvement of other organisations could be specified in a contract with the commissioner. However, this might be

problematic if a named partner withdraws, resulting in a potential breach of contract.

The lead body should also have a clear joint working agreement with the others, which could include, for example, agreement to consult with all partners before any decisions are taken, or changes made to the project, if this is to be a partnership of equals. There would also need to be controls introduced to ensure that the lead body is able to take action against one of its sub-contractors in the event of a sub-contractor failing to provide the services required.

3. External body

A non-delivering, external partner could take lead responsibility for the management of the contract. This means that there would be no single ownership of the project from within the consortium of delivering organisations. This could also mean that partner organisations could concentrate on where their expertise lies, i.e. direct project delivery, not sub-contracting.

But which organisation should be chosen? (E.g. a local infrastructure organisation?) Are they informed enough and experienced enough? Do they have sufficient capacity and resources to host the project? Do they have a track record of contract management?

The non-delivering lead could also engage and negotiate with commissioners, e.g. influencing the process, and providing a voice or representing the organisations.

There could also be a capacity building aspect to this lead organisation's involvement, to facilitate the consortium's development, if this organisation is an infrastructure body. Supporting the organisations to develop could be built into the contract.

But there may be additional cost implications to a non-delivering organisation taking on the role of contract management, particularly if they are also delivering capacity building. Has this been budgeted for?

As with the model of one lead organisation from within the consortium (outlined above) the structure of a non-delivering lead could be specified in a contract with the commissioner, and the non-delivering lead should also have clear joint working agreements with the others.

Other factors to consider

The **size and duration of the contract** may be a deciding factor on the model to adopt: whether it is worth establishing a new organisation or deciding on one organisation to take lead responsibility.

There are obviously variations on all these models, e.g. involving different levels of subcontracting, and the model chosen should be appropriate to the circumstances of the project.

If organisations are embarking on public service delivery for the first time, they should consider if this is a new way of delivering their primary purpose work, or would they be risking mission drift?

The **commissioner may have a preference** for one particular delivery model, so if there is a way of finding out what their preference would be, then this will be well worth exploring. Also, can the *pre*-commissioning process be influenced? Can you engage in a dialogue with the commissioning officer, or present an argument for your choice of delivery? Can you sell a package of services with your preferred structure to the commissioner?

Importantly, has the commissioner considered the financial implications of transfer of responsibilities of contract management? Has this been budgeted for?

VAT

VAT issues might arise, but VAT is a complicated subject, and specialist financial advice will need to be sought. For example, there may be VAT implications to a grant with a service level agreement.

TUPE

If the award of a contract means transferral of staff from another organisation, then **TUPE** regulations will apply, and there may be complicated **pensions** implications. For information on the Transfer of Undertakings (Protection of Employees) Regulations 2006, see the TUPE Factsheet on the UK Workforce Hub website (www.ukworkforcehub.org.uk).

Joint working agreements

It is good practice to have a **joint working agreement**. Guidance for organisations developing their own written agreements is available at www.ncvo-vol.org.uk/jointworkingagreements.

It is best to have a clear, written business case for a final decision, and, as always, it is advisable to seek legal and financial advice.

Governance

The final decision on any major change rests with an organisation's **trustees** and they have ultimate responsibility for collaborative working arrangements. It is

their role to see that the decision-making process covers all angles to make the most effective use of funds. Trustees must ensure their organisation acts legally and that professional advice is taken where relevant.

Acknowledgement

We would like to acknowledge the support of Stephen Ravenscroft of Stone King Solicitors (www.stoneking.co.uk), in developing this guidance.

Further information

- See the Collaborative Working Unit's model *Joint working for public service delivery* (www.ncvo-vol.org.uk/cwupublications)
- For information about other aspects of delivering public services under contract, see NCVO's Sustainable Funding Project (www.ncvo-vol.org.uk/sfp)
- See Section 3: 'Working with others' in *Before signing on the dotted line*, information about procuring public sector contracts (www.ncvo-vol.org.uk/publications)
- For information about legal structures see the Governance Hub's *Governance and Organisational Structures* (www.governancehub.org.uk)

NCVO's Collaborative Working Unit is supported by the Sylvia Adams Charitable Trust, the Tudor Trust, and the Vodafone UK Foundation.



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