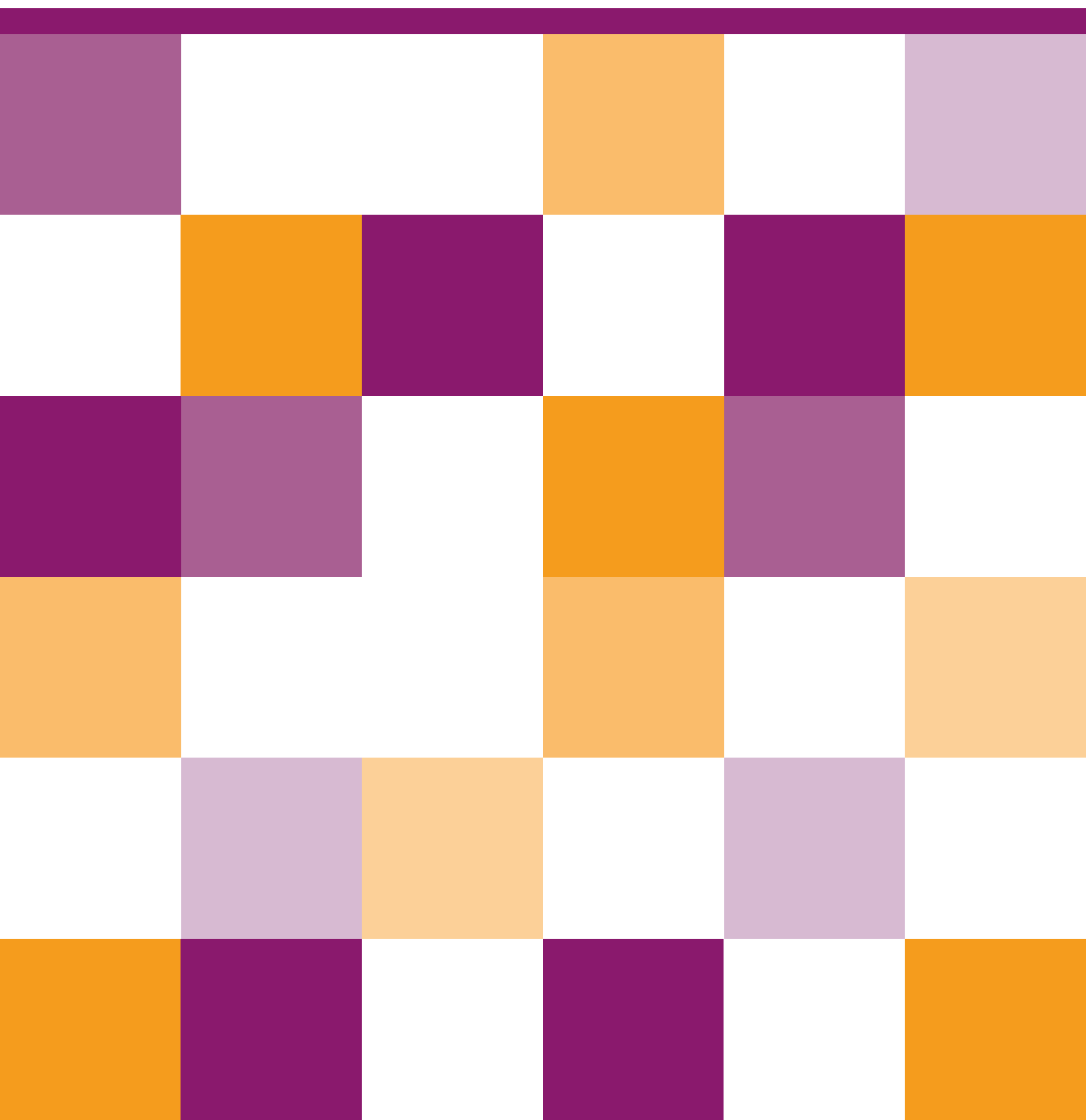




Working in a consortium – Summary guide

A guide for third sector organisations involved in public service delivery



Forming a consortium

In *Partnership in Public Services: an action plan for third sector involvement* the government acknowledged that, at their best, third sector organisations – especially those rooted in local communities – have an expert perspective on the needs of local people and how best to provide services that meet those needs.

This is why the action plan made a number of commitments to reduce the barriers that third sector organisations face in tendering for and delivering public services. Indeed it recognised that, as well as sub-contracting, forming a consortium was another way in which smaller third sector organisations could get involved in the delivery of public sector contracts.

Before taking any steps in the development of a consortium to tender for a public service contract, or extending your operations to working closely with others, there are some key questions for you, and others you may be considering working with, about which you should be clear:

- **Who you are** – what is your vision and what are your values?
- **What is your aim** – what drives you or motivates you?
- **Why you want to extend your operations** – including what do you wish to achieve?
- **How will you measure your success** – what key performance indicators have you set for the expansion activity?

Some reasons for forming a consortium for public sector tendering might be to:

- extend your current activities to include new ones for different client groups
- deliver your services in another geographical area
- tender for a contract where the specification includes areas of activity you are unable to deliver
- respond to other organisations which have approached you with a view to joining a consortium; or
- to ensure your organisation continues to provide services to your particular beneficiaries.

Tendering for public sector contracts is highly regulated

The rules which guide most public sector procurements are the Public Contract Regulations 2006, known as the PCRs. For services which include aspects of health, education and social care it may be that only some of the Regulations apply (known as 'Part B' services). It is important therefore, if you are delivering services, to identify under which heading they come.

The key Regulation regarding tendering as a consortium is **Regulation 28**. The Regulation defines a consortium as being two or more “economic operators” – that is to say contractors, suppliers or service providers. The PCRs also make clear that all economic operators must be treated equally in a non-discriminatory way. The purchaser must also act in a transparent way.

Regulation 28 tells the purchaser that they must not treat a tender submitted by a consortium as ineligible; neither must they exclude the tender for this reason. However, the purchaser may require the consortium to form a legal entity (such as a company or a co-operative) if this is justified for the effective delivery of the contract.

The rules which apply to, and the standards required of, any single organisation tendering for a contract also apply to EVERY member of a consortium.

Competition Law

In forming a consortium organisations also need to consider the requirements of competition law.

For the UK, the Competition Act 1998 sets out precisely what public authorities may not do. They can be summarised as meaning that nothing may be done which in any way prevents, inhibits or distorts competition. Contravention of this legislation could have serious implications for organisations

generally and in particular for members of their governing bodies such as trustees.

It is important, therefore, that specialist legal advice be taken from the earliest stages in the development of a consortium, not just in relation to the detailed drafting of the legal documentation but also in ensuring the formation of the consortium and the way in which the contract is to be delivered does not breach competition law.

Some strategies for working together

Scaling up – Pursuing a growth strategy to become a large scale regional or national organisation that can compete at scale with the current large scale operators.

Sheltering – A third sector organisation could shelter under a larger ‘umbrella’ organisation as a subsidiary.

Merging – Similar to ‘sheltering’, third sector organisations could pursue a strategy of merging with related organisations to achieve sufficient scale to compete in the market.

Sub-contracting – Third sector organisations could sub-contract their services to other organisations who submit the tender.

Consortium – Third sector organisations could agree to work together and form a consortium to tender for contracts to deliver public services.

Before starting

It is essential that the organisation leading the development obtains legally binding agreements for **Sharing of Information** and a **Confidentiality Agreement**. All potential consortium members should be invited to sign up to these agreements before there is any serious discussion regarding the formation of the consortium.

Some consortium models

- **Steering Group** – a contractual framework consisting of an agreement among the members of the consortium to work together and setting out their legal rights and obligations but without any additional legal entity being formed.
- **Lead Contractor** – a contractual framework where a lead contractor is identified as being willing and able to undertake this role. The lead contractor accepts full responsibility and liability for the delivery of the contract as specified.
- **Prime Contractor** – organisations tender to be the prime contractor and undertake the management of a contract or range of services on behalf of a

Government Department, Primary Care Trust (PCT), or Local Authority (LA). The role of the prime contractor is to then manage the supply chain of several layers of sub-contracting.

Sources of further information and advice

The full text for the **Working in a Consortium** guide is available on the Office of the Third Sector's website:
http://www.cabinetoffice.gov.uk/third_sector/public_services/public_service_delivery.aspx

If you are looking for help on working in a consortium there are a number of third sector organisations that may offer support and advice, including;

ACEVO – Helps develop the skills third sector leaders need for successful partnership working, bringing third sector and private sector leaders together to discuss and evolve partnerships, and representing to Government the interests of those third sector leaders who want to work in partnership.

Tel. 0845 345 8481

Email: Ralph.michell@acevo.org.uk

www.acevo.org.uk

Futurebuilders England – The Consortia Fund offers a combination of loan finance and professional support specifically for consortia groups aiming to work together to win public service contracts.

Tel: 0191 261 520

Email: info@futurebuilders-england.org.uk
www.futurebuilders.org.uk

NAVCA – The Local Commissioning and Procurement Unit (LCPU) provides support on matters relating to third sector commissioning and procurement, including consortia models of providing public services.

Tel. 0114 289 3982

Email: pauline.kimantas@navca.org.uk
www.navca.org.uk

NCVO – The Collaborative Working Team offers good practice information and advice to help voluntary and community organisations make informed decisions about whether and how to work collaboratively.

Tel. 020 7520 2440

Email: collaborate@ncvo-vol.org.uk
www.ncvo-vol.org.uk/collaborate

National Children's Bureau – Partnership programmes and collaborative working are at the heart of the NCB approach and a key driver in how it operates. Through both the VCS Engage and Children's Centre Project, NCB has developed several publications on collaborative working.

Tel: 020 7843 6000

Email: websupport@ncb.org.uk
<http://www.ncb.org.uk>

Social Enterprise Coalition – A key part of the Coalition's work is to enable social enterprises to share know how, network and do business. It publishes a range of case studies, 'how to' guides and training materials.

Tel: 020 7793 2323

Email: info@socialenterprise.org.uk
www.socialenterprise.org.uk

Office of the Third Sector
2nd Floor
Admiralty Arch, South Side
The Mall
London
SW1A 2WH

T: 020 7276 6400
E: OTS.info@cabinet-office.x.gsi.gov.uk
W: www.cabinetoffice.gov.uk/thirdsector

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