



A Quick Guide to Collaborative Tendering

This guide is intended to assist community service organisations by providing some background information on collaborative tendering and service delivery arrangements, often referred to as consortium arrangements.

A **consortium** or collaborative arrangement is a group of like-minded organisations that have come together with a common interest in delivering community services. It is a structured form of partnership with defined governance arrangements.

This guide outlines the two most commonly used arrangements to enable collaboration between service providers, **subcontracting** and the use of **Memoranda of Understanding**. It provides an overview of the advantages and disadvantages of collaborative arrangements. Any organisation considering entering into a collaborative arrangement for the delivery of community services should obtain independent expert advice.

Subcontracting occurs when a service provider contracted to deliver a service engages another organisation or person to deliver specific elements of the service on its behalf. A service provider may choose to subcontract when it does not have sufficient capacity to deliver all of the service; it may not be able to deliver the service in all of the specified locations; it may not possess the complete range of expertise or skills required; or there may be a gap in the services the contracted organisation can deliver. For the subcontractor, this arrangement may offer the opportunity to work with a particular community or client base that the organisation may not otherwise access.

Service providers engaging a subcontractor need to ensure they are fully aware of the terms and conditions of the service agreement, have planned the proposed subcontracting arrangement in detail, and have conducted due diligence on the organisation they intend to subcontract. While a service provider may subcontract specific elements of a service to a subcontractor, the service provider contracted to the government agency remains responsible for the delivery of the entire service.

Both the contracting and subcontracting service providers should obtain expert advice to ensure the subcontracting agreement covers each party's rights and obligations.

Useful links when considering subcontracting:

<https://www.business.qld.gov.au/business/running/winning-new-business/developing-competitive-bid/collaborative-bidding/working-subcontractor>

A **Memorandum of Understanding (MOU)** is an agreement between two or more parties that unlike a contract, is not legally binding. They are less formal, less complex, and much less detailed than contracts, and provide guidelines and a framework for each party to work within to achieve their shared goals.

MOUs require all parties to come to a mutual agreement on their requirements, what they have to offer, and the common objectives and timeframe of the MOU. While an MOU is not legally binding, certain provisions may be held binding by a court.

An MOU usually includes details such as the aim and scope of the MOU; roles and responsibilities of both organisations; governance structure and reporting; financial obligations; and agreed timeframes and milestones.

Useful links when considering an MOU:

<http://www.nfplaw.org.au/MOU>

http://www.nfplaw.org.au/sites/default/files/media/Memordanda_of_understanding_0_0.pdf

http://www.changelabsolutions.org/sites/default/files/MOU-vs-Contracts_FINAL_20120117.pdf

Considerations for Consortium or Collaborative Arrangements

When considering developing or joining a consortium:

- What is the purpose of the consortium and what are its goals?
- Do you understand the risks and challenges involved in establishing a consortium?
- Who will be the lead organisation and what responsibilities will they hold?
- What are the roles and responsibilities of the consortium partners?
- What type of formal agreement will be used?
- How will the finances be managed?
- Have you developed clear consortium guidelines in partnership?
- Do you understand the organisational risk involved in joining or leading a consortium?

Advantages of being part of a consortium include:

- shared knowledge and skills, and opportunities for capacity building;
- the ability for service providers to expand and grow their service delivery; and
- risk and liability for service delivery is shared across partners.

Potential disadvantages of being part of a consortium include:

- the time and effort required for the success of the consortium;
- developing relationships and managing the expectations of each partner organisation; and
- additional risk involved in entering into contractual arrangements with other organisations and the impacts should a partner organisation fail.

Organisations considering entering into a consortium arrangement should obtain legal advice to ensure the arrangement and the agreement is suitable for the organisation.

Useful links when considering consortium arrangements:

<http://www.linkwest.asn.au/about-us/facs-capacity-building-project/facs---capacity-building-project>

<https://www.business.qld.gov.au/business/running/winning-new-business/developing-competitive-bid/collaborative-bidding/working-in-consortium>

<http://www.nfplaw.org.au/workingwithothers>

Tendering Advice

Organisations engaged in collaborative arrangements are encouraged to include all relevant information when preparing an Offer in response to a Request. This information will assist the evaluation panel in understanding how the relationship between the organisations involved in the collaborative arrangement will be managed, and how the collaborating organisations will engage with the government agency contract manager. This may include:

- Roles and responsibilities;
- Governance arrangements; and
- Financial agreements.

Any organisation considering entering into a collaborative arrangement for the delivery of community services should obtain independent expert advice.