



Anti Competition and Consortia Working

From the outset of any type of collaborative working your primary reason for coming together should be about giving organisations an advantage in the market place. Consortia must not be seen as a way of eliminating or ruling out competition but increasing a competitive advantage. Procurement or grant making are in essence competitive processes and are often designed that way to ensure there is a healthy market offer stimulated by competition.

It is common for the board and/or staff of your consortia to have presence on other consortia boards and hold other collaborative working arrangements or contracts external to your project. There are sensible ways to manage the risk this poses to competition law and ensuring your collaborative project does not breach competition law.

The Competition Act 1998

The Competition Act 1998 states that organisations must not make arrangements between themselves in order to avoid competing for publicly funded contracts. This might be described as starting up a “cartel” which is explicitly prohibited. A cartel exists where organisations make an agreement not to compete with each other, particularly you must not:

- Fix prices or terms of trade, for example agreeing price rises with your competitors
- Agree to limit your production to reduce competition
- Carve up markets or customers, for example agreeing with a competitor that you will bid for one contract and they will take another
- Discriminate between customers, for example charging different prices or imposing different terms where there is no difference in the circumstances of supply¹

How to avoid anti-competitive working arrangements

- Invest time in reading Guidance from the Office of Fair Trading (OFT) on the Competition Act 1998.
- Make sure all board members spend time mitigating risks that arise from competition law including briefing any staff on what to say to competitors.
- Develop an information sharing protocol to avoid any misunderstandings surrounding confidentiality of information.
- Do not bid for any contracts until you have an information sharing protocol in place.
- Require interests to be declared and ask people to remove themselves from discussions.
- Have sensible discussions but do not agree not to compete with each other.

¹ Source: Office of Fair Trading, [A quick guide to competition and consumer protection laws that affect your business](#)

- Ensure the economic operators forming the consortium complement each others offer rather than replicating them.
- On all contracts make sure each type of activity is priced both separately and independently and not simply a copy of other consortium members pricing.
- Minute all decisions made and keep a record of who was present.
- Anti-competition behaviour amongst your consortium membership is illegal.
- Consider offering a seat on your board to an “honest broker” whose purpose is not to deliver contracts but to help mitigate risks.

Get Legal Advice

SCVO do not currently offer legal advice as part of their support package for collaborative working, but strongly urge organisations to seek appropriate legal advice from a specialist solicitor to ensure the proposed consortium is fully compliant with the Competition Act.

Further support and information

Office of Fair Trading

Telephone: 08457 224499

Email: enquiries@oft.gsi.gov.uk

Web: <http://www.oft.gov.uk/OFTwork/publications/publication-categories/guidance/competition-act/>

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