




JOBS AUSTRALIA
NATIONAL CONFERENCE

27-28 MELBOURNE
AUGUST 2014

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**MAKING A COMMITMENT:
TO PARTNER OR NOT TO
PARTNER?**

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- What is a Group Tender Bid?
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- What you have to put in your Tender – the EASY PART... or is it?
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- See **“STOP THE PRESS”** for important information received subsequent to the conference.


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Group Tendering

- the need for speed
- trials and tribulations
- documenting Group Tendering arrangements
- relative benefits of Consortium, Joint Venture, Partnership, Alliance and Subcontracting Arrangements





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Tendering Group Bids – what are they?

Where more than one legal entity is a signatory to the Deed: 6.4.3 (pages 81-82) of Exposure Draft


Consortium	Joint Venture	Partnership	Other alliances	Incorporated Joint Venture
<ul style="list-style-type: none"> • A group of individual legal entities that lodge a tender collectively 	<ul style="list-style-type: none"> • A business enterprise in which 2 or more legal entities enter into a temporary partnership through the use of a joint venture agreement 	<ul style="list-style-type: none"> • An agreement entered into by 2 or more legal entities in which each agrees to provide a part of the capital and/or labour for a business enterprise, and by which each shares a defined proportion of profits and losses 	<ul style="list-style-type: none"> • (Other) arrangements between corporate entities or individuals that have not been contemplated by the Department that meet the group tendering requirements 	<ul style="list-style-type: none"> • This is <u>not</u> a Group Tender, but if the incorporated entity is new then the tender will have to be completed in many respects (but not all) as if it is a Group Tender


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Consortium

A group of two or more legal entities, however constituted, other than a partnership, which have entered into an arrangement for the purposes of jointly delivering Employment Services, and which may have appointed a lead member of the group with authority to act on behalf of all members of the group


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What you have to put in your tender: the EASY PART... or is it?

- Tender writing
- Requirements for a Group Tender Bid
- Financial viability check
- Credentials check
- Capacity to deliver
- The big question – must you lodge with your tender the agreement that sets out the details of your business model, and if so, must it be signed or unsigned?



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The requirements for a Group Tender Bid

1. Must specify the business model (ie. consortium, joint venture, partnership, other alliances)
2. All members of the Tender Group are jointly & severally liable
3. No alteration to group membership without the approval of the Department, which cannot always be assumed
4. If a Tender Group membership change is approved by the Department then the Department may impose any conditions at its absolute discretion including that there be an authorised representative
5. Consortia and other alliances must nominate a lead member in the tender.
6. All Tender Group members must complete the Financial & Credentials Information Form
7. A Group Tender member cannot lodge a competing bid against itself within a particular Employment Region. Therefore no other bid can be lodged in that ER except perhaps as a subcontractor. Nor can a controlled entity of a Group member lodge a competing bid in the same ER



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Financial viability requirements

- The onus of proof is on the Tenderer.
- To enable the Department to assess a Tenderer's financial viability, each Tenderer, including each member of a Tendering Group, should supply the information requested in the Request for Tender. Each Tenderer must submit a completed *Financial and Credentials Information Form* and provide the most relevant information to prove its financial viability
- Objective:
 - to assess whether the Tenderer may be considered financially viable to meet the Service requirements of the Request for Tender (the financials check)
 - Whether there are any circumstances that may adversely affect the Tenderer's ability (and its Subcontractor's ability where it has Subcontracting arrangements) to meet its contractual obligations to supply services for at least the Deed period (the credentials check)
 - Any risk exposure for the Commonwealth
 - The Department may take these matters into account as part of the business allocation process (see Section 7.12.4)

See 6.8.1 (pages 97-98 of Exposure Draft)



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Financial viability requirements (cont'd)

Performance Guarantee & Deed of Financial Undertaking may be required

- Financial statements, including (if appropriate) audit report and management letters
- Recent mergers
- Assets used but not owned
- Additional funds




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Credentials check requirements

Each Tender Group member must provide:

- Credentials Check
 - Recent changes of substance in the Tenderer's financial position that are not reflected in the most recent financial statements
 - Significant events, matters or circumstances that have arisen since the end of the last Financial Year that may significantly affect the Tenderer's ability to perform the services
 - Court actions, charges, liens or encumbrances affecting any assets of the Tenderer
 - The Tenderer's ultimate holding entity, if any, their respective related Corporations and their respective Directors, and any shares in the Tenderer, its ultimate holding entity and their respective related Corporations
 - Any other factors the Tenderer wishes to describe to support its demonstration of financial capacity



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Credentials check requirements (cont'd)

Each Tender Group member must provide:

- Group Tendering
 - If tendering as a Tendering Group, each member of the Tendering Group, including the lead member if applicable, must complete a separate *Financial and Credentials Information Form* and should provide supporting documentation relevant to their individual organisations
 - Copies of relevant deeds or deeds regulating the Tendering Group, including deeds of cross-guarantee, deeds of partnership, Constitutions, shareholders' agreements and the like, should also be provided
- New organisations
 - If a number of organisations group together to form a new entity, the newly incorporated entity will need to provide evidence from its constituent members of their commitment to its continuing financial viability. This may take the form of articles of association, Constitutions or guarantees. If the guarantor(s) is other than a bank or lending institution, the guarantor(s) should provide evidence of capacity to honour the guarantee. This may take the form of financial statements

See 6.8.1 (pages 100-101 of Exposure Draft)



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Assessing Capacity to Deliver

- The Department will review the preliminary allocations of business taking into account the capacity of each Tenderer to which business has been allocated to deliver all of that business in all of the relevant Employment Regions or Harvest Areas
- This review will involve consideration of each Tenderer's financial and organisational capacity to deliver the relevant Services at the allocated level, and maintain the required quality of service delivery and any risk exposure for the Government. The review will look at each Tenderer's whole business including any business allocated to the Tenderer under business reallocation processes


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What you don't have to put in your tender: the DIFFICULT PART






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Step 1: Self-examination

Be realistic – evaluate your own organisation carefully and methodically

- Your strengths – where do you add value
 - Who can you bring to the table
 - What can you bring to the table
 - Who will manage the process
- Your weaknesses – where do you need value
 - Who are you missing
 - What are you missing
- Are you better off in a subcontracting arrangement?





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Step 2: External examination

Finding the partner – speed dating


The Department Timetable		
Today	28 Aug 2014	1 month after release of the Exposure Draft 23-28 days after Exposure Draft session 16 days after the release of the Draft Deed 3 days after closure of comments (extended by 1 week)
Release of Tender Application	28 Sep 2014 (approx.)	1 month after today
Tender Close	Oct /Nov 2014	4-6 weeks from release of tender
Tender Evaluation	Dec 2014	Maybe
Contract offers	Mar/Apr 2015	Maybe
Deeds issued	Apr 2015	Maybe
Start Date	1 Jul 2015	Yes


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Step 2: External examination (cont'd)

WHAT IS YOUR TIMETABLE?

- How many working days are available?
- What do you need to achieve?
- What resources are at your disposal? – be realistic




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Step 3: Identify potential “partners”
 Identify in order of importance to you:

Similar/ sharing of culture(s)	Similar/sharing of mission(s)	Governance structures of each organisation	Personalities and egos of the movers and shakers	Collaborating or competing with each other	Independence of each organisation to be maintained	Trust between the organisations
Potential efficiencies / savings	Sharing of resources	Personnel – quality, numbers, spread, areas	Profit motives of members	Branding of the Group Organisation	IT compatibility	Joint and several liability to the Department
How to deal with default under the Employment Services Deed	How to deal with under-performing members	Exit strategy	Short / medium / long term goals	Who is the lead member	Unequal bargaining power between members	Decision making processes – e.g. voting rights of each organisation
Financial data	Service delivery models	Should I be a subcontractor	Do we need to engage a subcontractors	Tax concessions availability (FBT, GST liability)	Other	

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Step 4: Tender writing

- Schedule meetings to discuss and finalise the document
- Arrangements in documentary form
- Check diary 

YOUR DIARY FOR THE NEXT 6-8 WEEKS

Continue tender writing

Continue meetings

Continue tender writing

Continue meetings

See the family

Check the wedding date

Check who’s on holidays

Continue tender writing

Continue meetings

...



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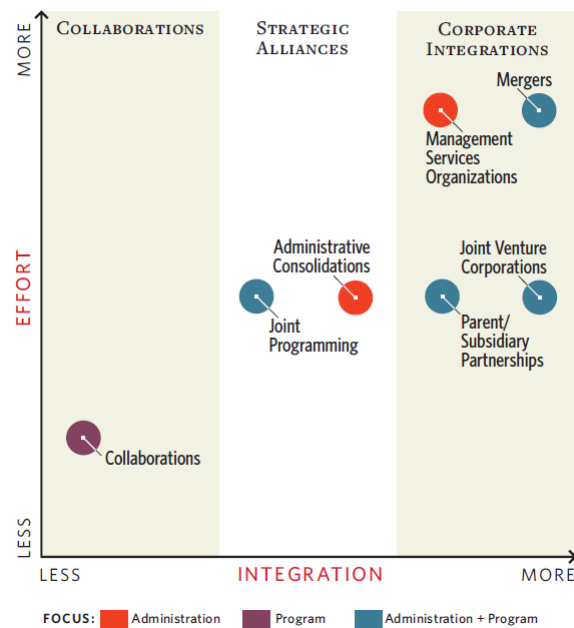
STOP THE PRESS

The Department has been asked to clarify 2 items in the RFT:

1. Provide examples of what does and does not constitute a competing tender (the definition of what constitutes a competing tender may be broader than in the Exposure Draft).
2. Whether a Group Tender bid must include the agreement (e.g. a Consortium Agreement) between group members.

NOTE: Members are urged to take extreme care to clarify whether they can lodge another bid without it being a competing bid (which would invalidate both tender bids). Members should also obtain appropriate assurances from other group members if those other group members intend to lodge a tender separate from the Group Tender to ensure it will not invalidate the Group Tender.

The Partnership Matrix



Source: La Piana, D. (Spring 2010) Merging Wisely, *Stanford Social Innovation Review*



Dr Banks prescribes an apple a day to keep the Department at bay.

