



# **‘Collaborating to Compete’**

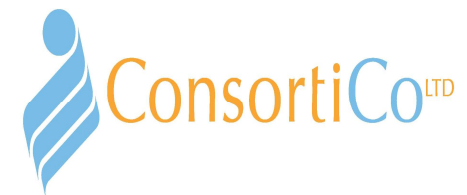
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## Session Aims:-

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- Key Drivers behind collaboration
- Some legal implications for consortia working.
- Consortia models: how they work and advantages and disadvantages.
- Building a successful consortia: How to get started....with reference to how we built and operate ConsortiCo Limited
- Sources of help





# Definitions

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## **A consortium is:**

“an association of several business organisations who are legally bound together to work towards a commonly held objective”

“two or more economic operators” (Public Contract Regulations)

i.e. not a network, loose affiliation or ‘partnership’



## Working in a Consortium (COTS DEC 2008)

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“A key reason to form a consortium may be that it provides your organisation with new opportunities to secure contracts which would not otherwise be available to you”

(page 4)



## Real help for Communities: HM Govt Feb 2009

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This set out how the government would act to help the 'Third Sector' survive the recession and included a £16.5M 'modernisation fund' targeted at helping frontline TSOs to merge and or collaborate (Modernisation Fund)



# Current Policy Direction: 'Supporting a Stronger Civil Society'

(Oct 2010 Office of Civil Society)

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- "Opening up public sector contracts: We are committed to ensuring charities, social enterprises and co-operatives will have a much greater role in the running of public services."
- "...right to bid for public contracts and take over the use of community assets"
- "Civil society organisations will need to embrace new skills, partnerships and organisational models if they are to seize the opportunities that lie ahead."



# So why do we need to consort?

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- Shift from grants to contracts (between 2000/01 and 2007/8 contract income rose by £4B to £9.1B up by 128% and grants fell by £400M to £4.2B NCVO 2010 Almanac)
- Collaborative purchasing leads to consortia supply (the Aggregation Agenda)
- Externalisation Agenda; Risk is being transferred out of the public sector and there are advantages in sharing it!
- 25% Tender Appraisal Criteria
- “tender for a contract where the specification includes areas of activity you are unable to deliver”



# Legal Implications

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- Charity Trustee Responsibility
- Incorporation
- Powers needed for consortia working
- Confidentiality Agreement
- Public Contract Regulations
- Binding consortia members together to deliver a Public Service Contract.

(I am not a lawyer so I cannot be relied upon to give legal advice/opinion)



# Charity Trustees responsibilities

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## **Charity Commission Guidance...Hallmarks of an Effective Charity (publication CC10) states:**

'The Trustees' duty is to "consider whether collaborations and partnerships (including the possibility of a merger) with other organisations, could improve efficiency, the better use of funds and the better delivery of benefits and services to beneficiaries"



# Does your organisation need to be incorporated to operate in a consortium?

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No.....

but your organisation is better off because of 'risk' and 'contractibility'



## Powers needed to operate in a consortia

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Check that your Memorandum and Articles of Association have the following powers:

- To work in partnership
- To trade within your charity's objects (enter into public service contracts)
- Geographical powers
- CC36 'Changing your Charity's Governing Document'



## Public Contract Regulation 28 (2006)

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Commissioners must not treat a tender submitted by a consortium as ineligible/exclude it

However, commissioners may require the consortium to form a legal entity if this is justified for effective delivery



## Equal treatment and consortia working

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- Equal treatment means that tender appraisal will consider the same factors as they relate to every tender.
- Purchasers must also act transparently




# Public Contract Regulation 45

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Allows the purchaser to ask the economic operator to indicate within the tender;

a) any part of the contract that is intended to be sub-contracted

b) the identity of any person to whom the economic operator proposes to sub-contract any part of the contract



# Confidentiality or Non Disclosure Agreements

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- Business sensitive information such as trade secrets, financial/costing information etc deserves to be protected
- Supports openness and trust from the outset
- Equally binding on parties concerned
- Take legal advice



## **Binding organisations together in consortia: legal agreements**

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- Provide back up to the trust that already exists
- Establish definable boundaries and expectations
- Act as a practicable point of reference
- Make clear the roles of each organisation within the consortia
- Serve as a common tool of mediation



## Binding organisations together in consortia

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- Partnership Agreements
- Memorandum of Understanding
- Heads of Agreement
- Contracts and Sub Contracts
  
- Legal Advice is Essential!!!!



# Charity Commission Guidance

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- CC34 Collaborative Working and Mergers
- CC37 Charities and Public Service Delivery
- Choosing to Collaborate: Helping you succeed
- Making Mergers Work: Helping you succeed



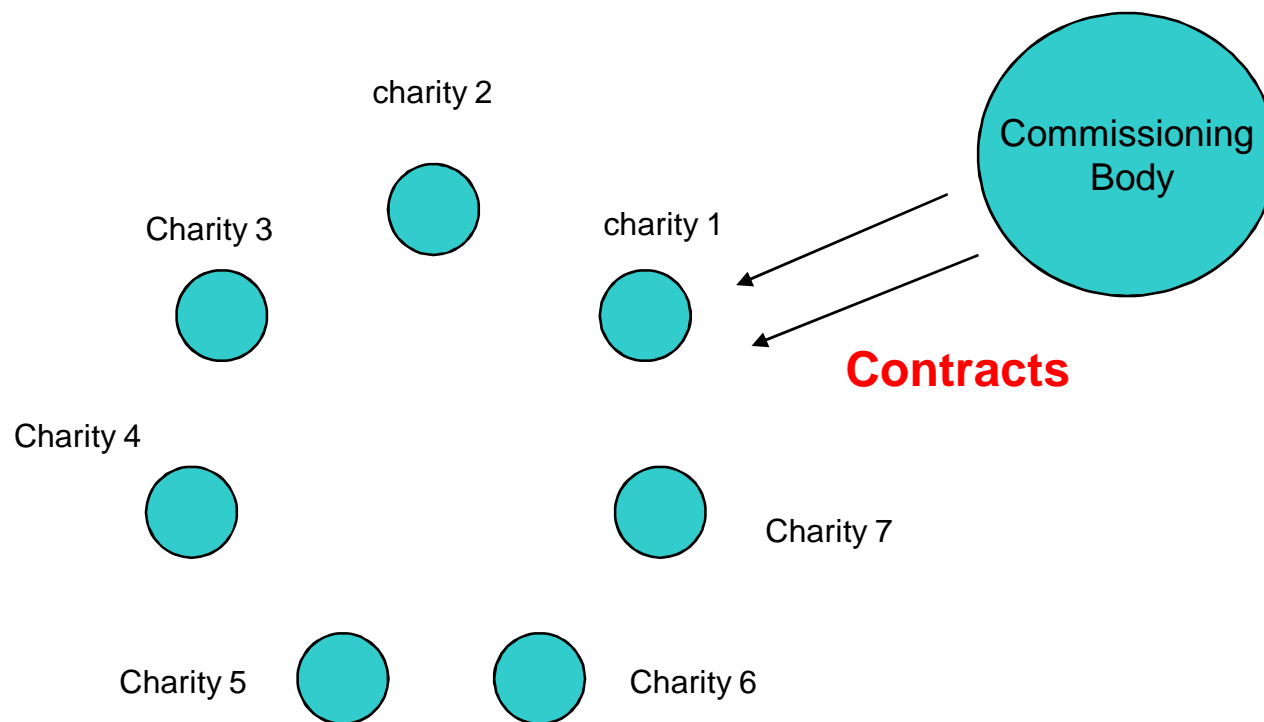
## Can't we wait for a tender?

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The time between open and close of tender is minimum of four weeks.....

# Models of merger and consortia working: Informal Network

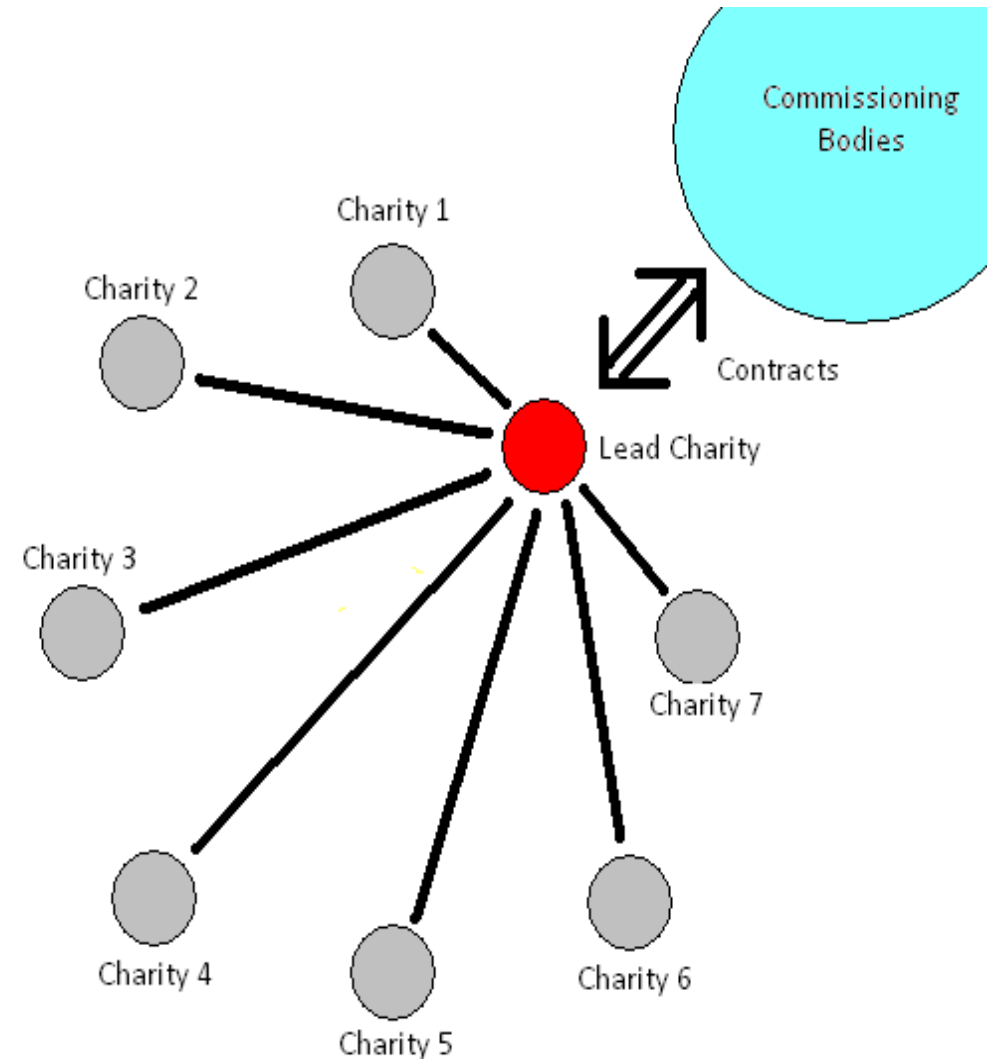
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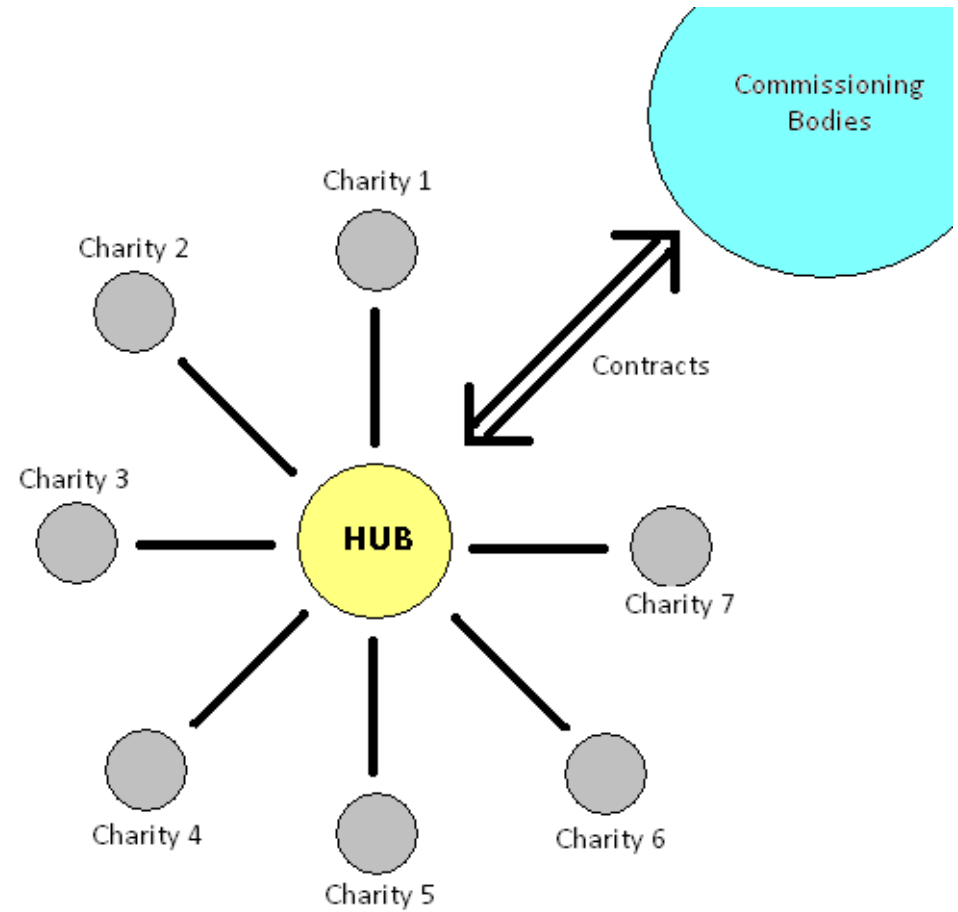
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## Lead contractor model



# Hub and Spoke

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## Getting started with a consortium

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Your organisation:

- Is your board/managers aware of the move from grants to contracts?
- Are they aware of the 'Aggregation' agenda and the need for consortia?
- Have they considered a board paper about this and resolved to explore consortia/merger options?



# Getting started with a consortium

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Your organisation should review its capacity to deliver contracts...and in consortia.

Capacity building:

- Pre Qualification Questionnaire
- Contracts: Performance Management Systems
- Quality Mark
- Financial Systems Costs and Standing
- IT systems
- Risk/contingency plans including anti fraud measures.
- Powers
- Marketing



## Getting started with a consortium

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- Identify your partners
- Hold an exploratory meeting
- Board report in common
- Hold a brokered meeting
- Form a task and finish working group



## Getting started with a consortium

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- Terms of reference
- Chair and Secretary
- Agenda and minutes
- Confidentiality Agreement



## Getting started with a consortium

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- Develop a Business Plan/strategy for the consortium
- Legal Form and Registration
- Membership criteria (Capacity building to achieve PQQ standards)
- Membership Prospectus and Application Procedure
- Website and Marketing materials
- Launch



# The initial work of the Consortium Board

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- Application for inward investment
- Banking arrangements and financial systems
- Appoint Staff
- Establish Office Base and systems
- QM/PQQ
- Market to Commissioners
- Grow Membership
- Negotiate Contracts/Tenders
- Deliver them successfully!!!!!!
- Contract monitoring and performance systems
- Sprinkle more fairy dust!!!!!!



## Sources of Support

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bassac (or ACRE in rural areas)

- Collaboration Benefits web resource (guidance, templates, case studies)
- Publications/signposting/phone or e-advice
- Facilitation support for complex collaborations

Local infrastructure agency; e.g. CVS, RCC

National agencies like NCVO (usually charge)

[www.bassac.org.uk/collaborationbenefits](http://www.bassac.org.uk/collaborationbenefits)

**Collaboration**  
**Benefits**  
Resources | Skills | Action

