



# T LEVELS – CONSORTIA BIDDING – SOME KEY CONSIDERATIONS AND POTENTIAL CHANGES FOR WAVE 4

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Note: The information on these slides is provided by the Institute for Apprenticeships and Technical Education for general awareness purposes. As such, this information is not a substitute for the specific professional advice and guidance that should always be sought by suppliers if they are considering entering into specific consortia arrangements in order to bid for a particular contract.

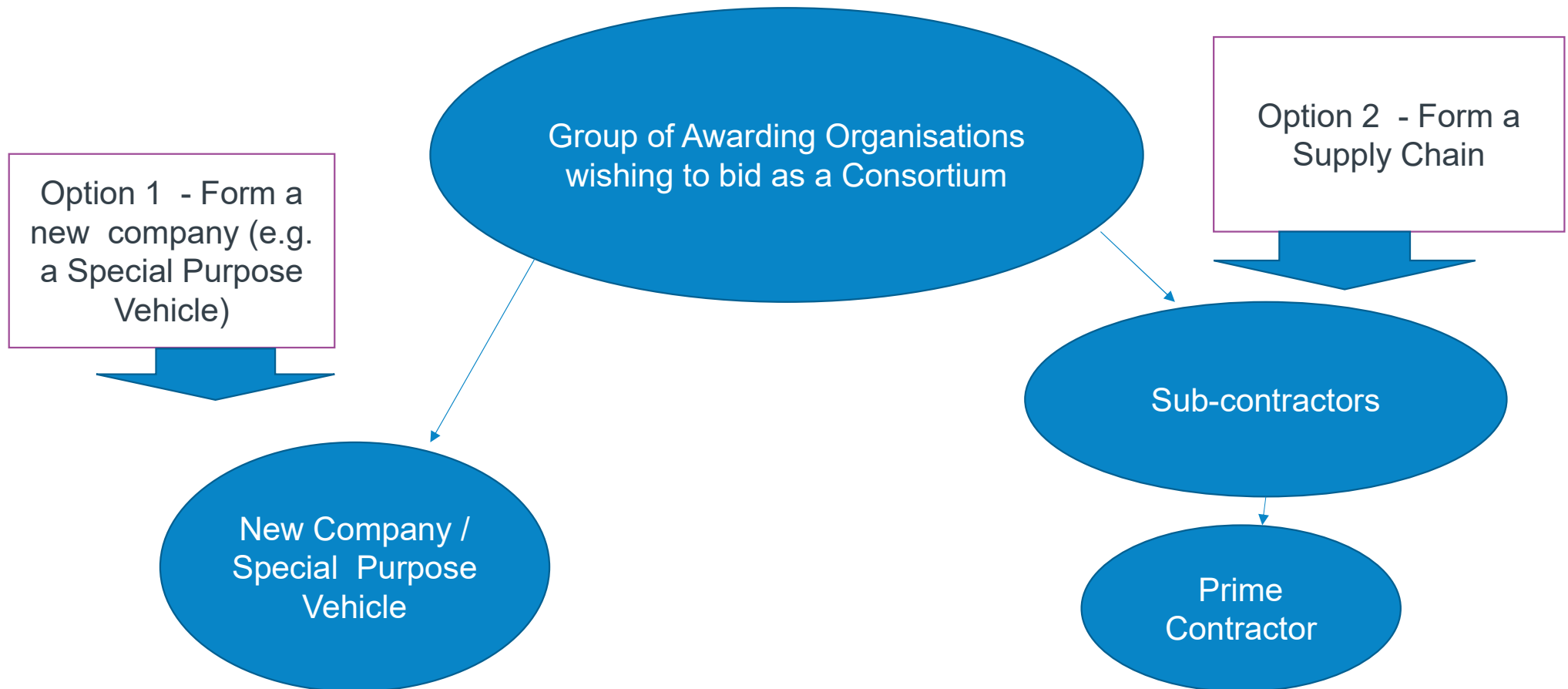
# CONSORTIA BIDDING – INTRODUCTION TO THIS PRESENTATION

- The aim is to cover some of the key considerations for those Awarding Organisations considering bidding as a consortium, taking into account the relevant requirements set out in the ITT
- Some key points to set the context are also included
- Key information is structured as series of questions so as to form a helpful note / set of FAQs to take away for future reference

## CONSORTIA BIDDING AND T LEVELS - SOME KEY POINTS TO SET THE CONTEXT

- A “consortium” in this context is simply two or more suppliers coming together to bid for a particular T Level contract
- There is no limit to the number of members that may be in a consortium
- Bids from consortia are welcome. The T Levels ITT documentation reflects this
- There is no requirement to bid as a consortium. Bids from individual Awarding Organisations are equally welcome

# CONSORTIA BIDDING AND T LEVELS – OPTIONS FOR BIDDING AS A CONSORTIUM



## WHY BID AS A CONSORTIUM?

- Where two or more Awarding Organisations take the view that they could collectively put in a better bid they may decide to bid as a consortium
- Where individually two or more Awarding Organisations are not able to meet all of the relevant requirements of the ITT (e.g. the relevant expertise, capability, capacity or geographic coverage required to provide the services), but take the view that collectively they can, they may decide to bid as a consortium

## HOW ARE CONSORTIA REFERRED TO IN THE T LEVELS ITT?

- Consortia are referred to as a “Group of Economic Operators”
- They need to appoint a “Lead Supplier” as a lead contact for the purposes of completing the bid on behalf of all of the consortium members

## WHAT AUTHORISATION DOES THE LEAD SUPPLIER REQUIRE FROM OTHER CONSORTIUM MEMBERS?

- The Lead Supplier must be authorised in writing by each of the other members of the consortium to provide the responses to the ITT and to submit the T Levels bid on behalf of the consortium
- Consortium members will often enter into a bidding agreement with each other for these purposes (see next slide)

## IS A FORM OF BIDDING AGREEMENT MANDATED BY THE INSTITUTE?

- The detailed scope and format for any bidding agreements between members of a consortium is a matter for the members and is not mandated by the Institute
- Members will need to take their own professional advice on what should be covered in their bidding agreement taking into account the specific roles, responsibilities, risk, resource allocation, cost allocation and overall bidding approach agreed
- By way of example, such bidding agreements will typically also address common issues like confidentiality, sharing of information and withdrawing from the consortium etc.



## DOES THE ITT REQUIRE CONSORTIA TO HAVE A PARTICULAR LEGAL FORM FOR THE PURPOSES OF BIDDING?

- Consortia are not required to have a particular legal form to submit a T Level bid
- The Institute may require consortia to assume a specific legal form if they are awarded the contract (see next slide for further detail)
- The Institute does however require that a single entity must enter into the contract

## WHAT LEGAL FORMS MAY BE APPROPRIATE FOR THE PURPOSES OF ENTERING INTO THE CONTRACT WITH THE INSTITUTE?

- A joint venture company or special purpose vehicle (a company set up by the members of a consortium for the purposes of delivering one or more specific contracts) that will then enter into the contract with the Institute is one option
- Another option is a prime / lead contractor and sub-contractor arrangement with one member of the consortium taking the role of prime / lead contractor and entering into the contract with the Institute

## **WILL ANY GUARANTEES BE REQUIRED FOR A JOINT VENTURE COMPANY / SPV?**

- A guarantor (or guarantors) to guarantee the performance of the contract may be required by the Institute
- As part of the ITT, the Institute has a right to request and assess information on the economic and financial standing of any proposed guarantor(s)
- The Institute also has the right to disqualify any consortium that does not nominate a guarantor(s) that resolves any concerns in relation to the economic and financial standing or technical and professional ability of the joint venture company / SPV

## ARE ANY GUARANTEES REQUIRED IN THE CASE OF A PRIME / LEAD CONTRACTOR ARRANGEMENT?

- The financial standing of the prime / lead contractor (including any proposed guarantee arrangements such as from a relevant group company) will be assessed by the Institute as part of the procurement process based on the criteria set out in the ITT (to include in relation to financial standing requirements)
- Consortia using this model will wish to offer a proposed bidding structure and, as relevant, appropriate guarantee arrangements, that meet the criteria set out in the ITT



## **WHEN COMPLETING THE SELECTION QUESTIONNAIRE AS PART OF YOUR BID, DO YOU NEED TO GIVE DETAILS OF THE ROLES OF EACH CONSORTIUM MEMBER?**

- Details of the consortium members and the percentage of contractual obligations assigned to each member must be completed in the Selection Questionnaire
- Where a consortium is relying on the capability and/or experience of one or more of its members to demonstrate its technical and professional ability to provide the services, this must be made clear as part of the relevant responses (including an explanation of that consortium member's role, capability and experience as the context of the question requires)

## DO ALL OF THE MEMBERS NEED TO COMPLETE A SELECTION QUESTIONNAIRE AS PART OF THE BID?

- An additional copy of the Selection Questionnaire is generally only required to be completed and submitted in respect of any member of the consortium that is expected to be assigned 25% or more of the contractual obligations under the contract (by value of the relevant services) OR where the relevant consortium member is being relied on to meet the relevant selection criteria
- However, the Institute has the right to require other consortium members to complete a copy of the Selection Questionnaire if it considers this further information is required for any reason

## **CAN CHANGES BE MADE TO THE CONSORTIUM AFTER THE TENDER SUBMISSION DEADLINE?**

- The Institute recognises that arrangements in relation to consortia may be subject to future change
- Any changes must be promptly notified to the Institute who will assess any new information provided
- The Institute also has the right to require additional reassurances / information in these circumstances

## **CAN MAKING CHANGES AFTER THE TENDER SUBMISSION DEADLINE LEAD TO THE EXCLUSION OF THE CONSORTIUM?**

- The Institute has the right to exclude a consortium at any time during the procurement depending on the nature of the proposed changes. For example, if a member withdraws from the consortium with the result that the consortium no longer meets certain ITT requirements
- A failure by a consortium to promptly notify the Institute of any changes may also lead to a consortium being disqualified from the procurement



## CAN CONSORTIUM MEMBERS BE PART OF MULTIPLE BIDS?

- A consortium member may be involved with the submission of multiple T Level bids provided that:
  - it only submits one bid for a particular T Level pathway / lot in its own right and name (to include where it is a Lead Supplier)
  - such involvement does not result in any potential or actual conflicts of interest, supplier capacity problems, restrictions or distortions in competition, or collusion

## OFQUAL RECOGNITION

- If you are setting up a new entity, you will be treated as a new market entrant by Ofqual and you will need to go through the full Ofqual recognition process
- We recommend all new entrants start the Ofqual recognition process early, in advance of bidding. More information can be found here:  
<https://www.gov.uk/guidance/apply-to-have-your-qualifications-regulated>
- All entities have to be recognised by Ofqual at the point of signing the contract

## POTENTIAL CHANGES UNDER CONSIDERATION FOR WAVE 4

- In accordance with relevant best practice guidance, contracting authorities can promote competition and make a positive contribution towards market health where they:
  - design procurements that keep entry barriers low and maintain a level playing field between suppliers
  - design contracts that do not create an unassailable advantage for incumbents in future contracting rounds
  - plan for medium and long-term market health
- In this context, the Institute is considering the following 2 Options:
  - (1) Incentivising supply chain opportunities for SME's
  - (2) Allowing smaller Awarding Organisations working together to combine their resources for the purposes of passing the ITT selection criteria

## OPTION (1) – INCENTIVISING SUPPLY CHAIN OPPORTUNITIES FOR SMALL AND MEDIUM SIZE ENTERPRISES

- This option would involve the Institute promoting sub-contracting opportunities for SMEs by scoring the level of proposed sub-contracting to SMEs by prime suppliers even if that prime supplier is itself an SME. For these purposes, an SME will be a business (excluding affiliates) with a staff headcount of  $< 250$ , a turnover of  $\leq \text{€ } 50\text{m}$  (c.  $\text{£ } 45.2\text{m}$ ) and/or a balance sheet total of  $\leq \text{€ } 43\text{m}$  (c.  $\text{£ } 39\text{m}$ )
- By promoting greater SME participation in this way, the Institute aims to encourage innovation by developing a broader supplier base and to enable such SMEs to develop the experience to become prime suppliers in the future thereby helping to ensure a continuation of healthy and dynamic competition for future T Levels

## OPTION (1) CONTINUED – INCENTIVISING SUPPLY CHAIN OPPORTUNITIES FOR SMALL AND MEDIUM SIZE ENTERPRISES



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- In terms of scoring the level of proposed sub-contracting to SMEs by prime suppliers, current thinking is that this would be done by:
  - Awarding a fixed mark of 5 where a tender proposal is based on sub-contracting 25% (by value) or more of the requirement to SMEs
  - Where a tender proposal is based on sub-contracting less than 25% (by value) to SMEs the mark would reduce on a pro-rata basis
  - The mark for this requirement would contribute a maximum weighted score of 5 to the overall of score of each potential supplier in each lot (see worked example on next slide)

## OPTION (1) CONTINUED – INCENTIVISING SUPPLY CHAIN OPPORTUNITIES FOR SMALL AND MEDIUM SIZE ENTERPRISES

- Worked example:
  - Potential Supplier A proposes sub-contracting 35% (by value) of the requirement to one or more SMEs. This is over the 25% threshold so Potential Supplier A receives the full 5 marks
  - Potential Supplier B proposes sub-contracting 18% (by value) of the requirement to one or more SMEs. This represents 72% of the 25% threshold so Potential Supplier B receives a pro-rata mark of 3.6
  - Potential Supplier C does not propose to sub-contract any of the requirements and so receives a mark of zero
  - Potential Supplier D proposes to sub-contract 50% of the requirement (by value) to a sub-contractor that is not an SME (i.e. does not meet the criteria referred to on the earlier slide). Potential Supplier D does not propose to sub-contract any of the requirement to SMEs and so receives a mark of zero

## OPTION (1) CONTINUED – INCENTIVISING SUPPLY CHAIN OPPORTUNITIES FOR SMALL AND MEDIUM SIZE ENTERPRISES

- Related points to note:
  - The maximum weighted score for certain questions will be changed or the maximum weighted overall score will be increased to accommodate this new response requirement
  - Potential SME sub-contractors would still need to meet the relevant requirements of the ITT. In particular, an additional copy of the Selection Questionnaire will be required to be completed and submitted in respect of any sub-contractor that is expected to be assigned 25% or more of the contractual obligations under the contract (by value of the relevant services) or where the relevant sub-contractor is being relied on to meet the relevant selection criteria

## OPTION (1) CONTINUED – INCENTIVISING SUPPLY CHAIN OPPORTUNITIES FOR SMALL AND MEDIUM SIZE ENTERPRISES

- Further related points to note:
  - Additional supporting information will need to be provided, where requested, to confirm that sub-contractors meet the SME criteria where the prime supplier has categorised that sub-contractor as an SME
  - A specific value (based on the best available information at the time of bidding) will need to be given as to the % of the requirements being sub-contracted to SMEs
  - Additional supporting information will need to be provided, where requested, to support any such calculation of the specific % value of the requirements being sub-contracted to SMEs



## OPTION (2) – ALLOW AWARDING ORGANISATIONS TO COMBINE RESOURCES TO MEET THE ITT SELECTION CRITERIA

- This option would effectively allow Awarding Organisations a new additional option under the ITT to combine their resources for the purposes of passing the selection criteria without the need to form an SPV
- Although they would still need to appoint a lead supplier (i.e. prime-contractor) and the other members of the consortium would still be treated as sub-contractors, this new option would make it possible for smaller organisations to come together to meet the relevant selection criteria in ways that were not possible under previous T Levels waves and so would reduce entry barriers. See worked example on next slide

## OPTION (2) CONTINUED – ALLOW AWARDING ORGANISATIONS TO COMBINE RESOURCES TO MEET THE ITT SELECTION CRITERIA



- Worked example:
  - If the Turnover Threshold for the relevant T Level Lot is £1.8m, under the Wave 3 ITT the lead supplier would generally have had to have met this requirement in its own right (unless a guarantor was provided that met this requirement in its own right)
  - Whereas under this proposed new additional option for Wave 4, a prime supplier with a turnover of £1m with two sub-contractor partners each with a turnover of 450k could meet this requirement with their combined turnover of £1.9m

## OPTION (2) CONTINUED – ALLOW AWARDING ORGANISATIONS TO COMBINE RESOURCES TO MEET THE ITT SELECTION CRITERIA



- As a condition of bidding on the basis of this new option, each sub-contractor partner would be required to complete a Selection Questionnaire (i.e. regardless of whether or not they are expected to be assigned 25% or more of the contractual obligations under the contract by value of the relevant services)
- If the consortium was successful in winning the contract relying on this option, as a condition of being awarded the contract, each sub-contractor would also be required to enter into a legal agreement with the Institute confirming that:
  - (1) It will comply with its obligations under its sub-contract; and
  - (2) If, for whatever reason, the Institute's main contract with prime contractor is terminated (e.g. if the prime contractor was to become insolvent), upon request from Institute, that sub-contractor would:
    - (a) accept the transfer to it of the prime contract (provided that it had the necessary resources to deliver the prime contract); or
    - (b) accept the transfer of its sub-contract to the Institute or a third party taking over responsibility for the delivery of prime contract

**ANY FINAL QUESTIONS?**