It is not unusual for construction firms and other companies to form a consortium bid (or joint bid) for a building or infrastructure project. Whilst competition law clearly prohibits collusion involving price fixing, market sharing or bid rigging (which attract high fines), what is the position in relation to joint bidding?

Where two or more independent companies come together to submit a joint bid, this will not breach competition law if they are not actual or potential competitors. Where they are (or may be) competitors, competition issues are unlikely to arise if the individual companies can show that they would not have been able to bid for the project alone, or with a smaller number of companies.

In all other cases, joint bidding will be permissible only if the parties can demonstrate that the arrangements produce benefits for consumers which outweigh any anti-competitive effects. In practice, it may be difficult to satisfy this test.

For any consortium bid, it is sensible to ensure that the following safeguards are put in place:

**Do:**

- disclose commercially sensitive information only on a "need to know" basis;
- share the minimum amount of information necessary between the consortium members;
- agree the scope of co-operation before discussions start – the scope should be limited to what is required to submit the bid; and
- in all areas outside the bid, continue to compete as normal.

**Don't:**

- agree future pricing strategies or output, or share or allocate customers;
- disclose sensitive information unrelated to the bid, including general commercial strategy, prices offered to other customers or detailed information on your cost base;
- hide your participation in competing consortia from either the tendering body or the other consortia members; instead, put appropriate measures in place for the exchange of information; or
- take risks if you are in any doubt about whether the joint bid/information exchange infringes the competition rules – seek legal advice.

**Why does this matter?**
If the authorities found that the parties have infringed competition law, the penalties could be severe: the parties could each be fined up to 10% of worldwide group turnover; the agreement (or the relevant parts of it) would be unenforceable; and third parties who have suffered harm as a result of the infringement could bring a claim for damages.

In addition, in the UK, there are sanctions for individuals for breach of competition law: company directors could be disqualified for up to 15 years; and individuals found guilty of the "cartel offence", which includes bid-rigging, can be imprisoned for five years and/or made to pay an unlimited fine.

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