

Tendering and joint ventures

Submit a tender with other business

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| Acronyms | Full form |
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| NT | Northern Territory |
| Joint venture | Incorporated or unincorporated joint ventures |
| CAL | Contractor Accreditation Limited accreditation |

Contents

| | |
|---|----------|
| 1.1. Introduction..... | 4 |
| 1.1.1. What is a joint venture | 4 |
| 1.1.2. Why tender as a joint venture | 4 |
| 1.1.3. What to consider for unincorporated joint ventures | 4 |
| 1.2. Documenting a joint venture agreement | 6 |
| 1.3. Specific requirements for unincorporated joint ventures..... | 6 |
| 1.4. Infrastructure, civil, or trades specific requirements | 7 |
| 2. Submitting your Tender Response | 8 |

1.1. Introduction

The Northern Territory (NT) Government has produced this guide to provide businesses with things to consider when thinking of working with another business to tender for NT Government. If this is your first tender for NT Government you will also find the [Tendering guide¹](#) helpful.

This guide contains information specific to forming and tendering for NT Government contracts as an unincorporated joint venture (UJV).

1.1.1. What is a joint venture

When two or more businesses or individuals agree to work together on a project, they are known as a joint venture.

Joint venture arrangements are usually in place for a single project and once the project is complete.

There are two options when respondents to a tender want to act collaboratively as a joint venture.

| Type | Definition |
|------------------------------------|---|
| Unincorporated joint venture (UJV) | You and the other businesses tender as jointly (and all are named as respondents/contractors), but remain individual entities with their own business identifiers (i.e. multiple ABN/ACN/etc). This means the NT Government will be contracting with more than one legal entity. |
| Incorporated joint venture | You and the other businesses form a company under the <i>Corporations Act 2001</i> (Cth) or incorporate an association under the <i>Associations Act 2003</i> (NT). The company or association will have its own individual legal identity (i.e. one ABN/ACN/etc). This means the NT Government will be contracting with only one legal entity. |

Both incorporated and unincorporated joint ventures may tender for NT Government work.

1.1.2. Why tender as a joint venture

Joint ventures are an innovative way for businesses to combine their resources, knowledge and skills to make their tender efficient and attractive to Government. Benefits of working in a joint venture structure may include:

- winning work that you might not be able to get on your own
- sharing knowledge and skills that can be transferred to future projects
- sharing the risk of the project with the other businesses

If you are considering forming a UJV, there are a number of factors you will need to consider.

1.1.3. What to consider for unincorporated joint ventures

Make sure you have read and are able to meet the requirements of the [Northern Territory Procurement Code²](#).

¹ https://nt.gov.au/__data/assets/pdf_file/0018/910053/tendering-guide.pdf

² https://nt.gov.au/__data/assets/pdf_file/0003/954606/nt-procurement-code.pdf

What is your business relationship with the other businesses

- how well you know them and their business?
- are you are confident that you can work effectively together on the project?
- do they have previous joint venture experience? if so, ask them to describe the projects, outcomes etc.
- will the UJV members be permitted to also tender in their own name?
- would a subcontracting arrangement be more suitable?

How will you communicate with the other businesses throughout the project/contract

- can there be open and honest communication?
- can you all commit to completing the project to a high standard?
- will you be able to address possible disputes and conflicts of interest and how will they be identified?

Does everyone understand and agree on the project goals and objectives

- can everyone clearly understand the objective and goals of the arrangement?
- can you allocate the roles, responsibilities and obligations under the contract appropriately?
- does everyone understand the conditions of their participation?

How will you and the other businesses deliver and share throughout the project

- do you and the other businesses have the right skills and resources?
- do you and the other businesses have the right accreditation, certification and insurance requirements?
- can you and the other businesses all be named in the insurance policies?
- how will you and the other businesses invoice and receive payment?
- how will you and the other businesses share costs and split profits?
- will you need to consider the ownership and use of existing and new intellectual property between you?

How will this arrangement affect your legal, finance and taxation needs

- will there be tax implications for your business?
- how will GST be dealt with?
- could your UJV be considered a 'partnership' at law and what are the implications?

Each business entity should get their own independent advice to ensure the arrangement is right for their organisation. We suggest you get professional financial, taxation and legal advice before proceeding with a UJV, and put a joint venture agreement in place.

1.2. Documenting a joint venture agreement

When you are comfortable that you understand the working relationship, responsibilities, sharing of profit, and liability, you and the other businesses forming the UJV should document the terms of the arrangement in a legal agreement. It is recommended you get legal advice before entering an agreement.

It is suggested that the agreement contains the following details at a minimum:

- identify the UJV parties correctly with reference to business identifiers;
- the nature of the joint venture and a description of the objectives
- how the parties will interact operationally and how the project will be managed, including identifying a lead UJV member for the project
- how the parties will contribute to the costs and expenses of the project and divide the proceeds
- how UJV members will finance the project (if it requires finance outside the resources of the participants)
- any non-financial contributions of each UJV member – for example staff including roles and responsibilities, intellectual property, equipment and knowledge
- accounting and auditing processes including invoicing and receipt of payment information
- project specific and general business insurances
- intellectual property contributed by the UJV members and how intellectual property created during the course of the UJV will be dealt with
- confidentiality requirements and addressing publicity issues
- processes for resolving internal disputes and strategies for dealing with individual contract breaches, insolvencies and terminations
- rights, duties and obligations of the businesses
- risk allocation.

Depending on the complexities of the proposed UJV and the nature of the project, the preparation of a joint venture agreement could take a number of weeks to several months.

1.3. Specific requirements for unincorporated joint ventures

You should consider:

- Are you willing to be responsible for the liabilities and debts of the other UJV members?
- Do the parties looking to form the UJV operate in an ethically, sustainable and socially responsible manner as per the [Northern Territory Procurement Code](#)³?
- Will the UJV hold a single insurance policy (with all parties of the UJV noted on the policy) or individual insurances, and will that meet the contract requirements?

³ https://nt.gov.au/__data/assets/pdf_file/0003/954606/nt-procurement-code.pdf

- Will the financial security requirements (if any) be met by lodging bank guarantees or surety bonds? Individual entities in the IJV may lodge bank guarantees and a surety bond can be used to note all parties. As a UJV you can lodge multiple types of securities to cover the requirements.

1.4. Infrastructure, civil, or trades specific requirements

If you are working in the infrastructure, civil, or trades and related services space, the UJV parties may need to hold Contractor Accreditation Limited (CAL) accreditation. If the tender requires CAL accreditation there are some differences for UJV which are:

- only one party is required to hold accreditation in the category and group, provided that accreditation meets the tender requirements

For example, you might consider putting an offer in for a tender that:

- requires accreditation in the Building category, Residential Urban group and
- your tender response is to the value of \$4 million.

Party one is accredited in this category and group to \$6 million. Party two is not accredited. Therefore, no further accreditation is required and the UJV can submit its offer.

- parties can combine their accreditation to meet the tender requirements provided they both hold accreditation in the required category and group. This combined value of the parties' accreditation must be equal to or exceed the total value of the offer.

For example, you might consider putting an offer in for a tender that:

- requires accreditation in the Building category, Residential Urban group and
- your tender response is to the value of \$11 million.

Party one is accredited in this category and group to \$7 million. Party two is accredited in this category and group to \$5 million. Therefore, no further accreditation is required and the UJV can submit its offer.

- one or more parties can seek an upgrade to their accreditation value in the category and group for which they have existing accreditation.

For example, you might consider putting an offer in for a tender that:

- requires accreditation in the Building category, Residential Urban group and
- your tender response is to the value of \$10 million.

Party one is accredited in this category and group to \$4 million. Party two is accredited in this category and group to \$4 million. The parties must decide which one, or if both of the parties will upgrade the value of their existing accreditation to meet the requirements. The timeframe to upgrade the accreditation value for Tier 3 is seven (7) calendar days from the stated time and date for closing of the Request for Quotation. For Tiers 4-5 the timeframes to upgrade the accreditation value is (14) fourteen calendar days from the stated time and date for closing in the Request for Tender.

During the assessment of your offer you may be requested to provide additional information to NT Government on the technical, managerial or financial capability of your UJV members.

Contact the enquiries officer listed in your tender documents if you are unsure about what level of accreditation you require.

2. Submitting your Tender Response

As a UJV, you only need to submit a single Tender Response. However, each UJV party to the contract must be listed as a respondent as the NT Government will only award the contract to the respondent/s named in the Tender Response.

This means the business details of all parties, including legal names, ABN/ACN, CAL accreditation, and respondent's declarations must be provided as part of the response.

You do not need to provide a copy of your joint venture agreement but to enable the assessment of your bid, you must provide enough information in your Tender Response how the UJV will operate to enable the panel to assess the UJV against the evaluation criteria as a whole (and any potential additional risk to NT Government arising out of a UJV).

You should provide as much detail as possible in your Tender Response including:

- the skills, capacity and capability of each UJV party and which UJV party will be undertaking a particular section of work –
- relevant past experience of each UJV party
- resource allocation and management of the project between the UJV parties
- how insurance requirements will be met
- how CAL accreditation (if relevant) will be met
- nominate one contact point for project delivery and payment and the receiving of formal notices under the contract
- nominate authorised contact persons with respect to the day to day management of the various aspects of the project.

If you have previously worked with one or more of the businesses, you should provide information to show your ability to work together.

For more information, please contact Procurement Policy on procurement.NT@nt.gov.au.