

EQUALITY & DIVERSITY WITHIN PROCUREMENT

Introduction

Promoting equality and diversity through public sector procurement is important. Everyone in our communities has a right to expect that public money is spent on goods and services which suit their needs and that it is spent in a way which promotes equality of opportunity and delivers high quality goods and services.

The Authority has a statutory duty to ensure that public money is spent in a way that ensures value for money and doesn't lead to unfair discrimination.

Legal Context

Public Sector Procurement is governed by the following:

- Authority Financial Regulations and Contract Standing Orders
- EU Directives (European law)
- UK Law

Authority Financial Regulations & Contract Standing Orders

The Authority's internal processes and procedures are in place to ensure that that procurement is undertaken in a fair, transparent and open manner. A copy of these documents are available on the Authority's website.

EU Directives

If a Procurement process is above the financial thresholds set by the European Union, the Authority has a statutory requirement to operate within the European Procurement Directives. These are specifically in place to ensure that there is no discrimination, equal treatment of all potential bidders/suppliers, fair competition and all processes are open, transparent and auditable.

UK Law

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Equal Pay Act 1970 and the Disability Discrimination Act 2005 contain various prohibitions on discrimination on the grounds of race, sex and disability in the provision of goods, facilities and services. The Authority expects suppliers and contractors to comply with all relevant legislation, and incorporate this as a requirement into all its contracts.

Race Relations Act 1976

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 imposes a statutory duty on local authorities, in carrying out their various functions, to have due regard with regards to the need to:

- Eliminate unlawful racial discrimination
- Promote equality of opportunity
- Promote good relations between people from different racial groups

All procurement activity must take cognisance of these requirements.

The Sex Discrimination Act 1975 & the Equal Pay Act 1970

This legislation outlaws discrimination on the grounds of gender. The Gender Equality Public sector Duty came into effect in April 2007, as part of the Equality Act 2006. Part 3 of the Act creates a duty on the Authority to promote equality of opportunity between men and women, and to prohibit sex discrimination in the exercise of public functions.

The Disability Discrimination Act 2005

This law outlaws less favourable treatment for a reason related to a person's disability that cannot be justified. This is defined as:

- By refusing to provide, or deliberately failing to provide any service which it provides or is prepared to provide to the public
- In the terms of service or manner in which it provides the service
- The terms of which it provides the service

From 1st Oct 1999, the Authority has had a statutory duty to make reasonable adjustments to enable disabled people to access goods and services.

The Disability Discrimination Act 2005 has also significant added power when combined with the 'social considerations' provisions of the new Public Sector Procurement Directive. The Act introduced a new, positive duty on the public sector to eliminate discrimination against, and harassment of disabled people and to promote equality of opportunity for disabled people.

Equality Act 2006.

The Equality Act 2006 outlaws discrimination in the provision of goods, facilities and services on the grounds of religion or belief or sexual orientation.

Equality Bill

In 2010, the Equality Bill is expected to receive Royal Assent. This Bill will strengthen equality law and will create a new single public sector Equality Duty which will continue to cover race, gender and disability but will be extended to cover age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment. In anticipation of this the Authority considers these additional equality strands within its Equality Scheme.

Equality & Diversity in Procurement **Guidance for Staff**

Planning the Project

Before commencing a new project, it is essential that you evaluate the current or past provision generally, and specifically for its impact on equality. You need to identify where current or past provision has been effective in promoting equality and where changes are required. An Equality Impact Assessment is a key way to undertake this.

Appropriate consultation with key stakeholders is also a valuable way to identify any equality issues. There is no restriction regarding this consultation process, provided that discussions do not create any advantage for a potential tenderer.

Drafting the specification

The contract specification is a formal, detailed description of the goods or services you seek to procure. If you have determined that equality is part of the subject matter of the contract, this must be made clear in the specification.

Our equality duties apply to all of our functions as an Authority. The Authority will remain responsible for meeting these duties whether or not we arrange for all or part of certain functions to be carried out by an external contractor/supplier. Liability also remains with the Authority and you must ensure that the external contractor/supplier adequately discharges the public duties on behalf of the Authority through good contract management and monitoring the performance of the contract.

The EU Directive Article 23 (1) and UK Regulation 9 (3) state that, wherever possible, technical specifications should take into account:

- Accessibility requirements for people with disabilities
- Design for all users

Drafting contract conditions

Contract conditions set out how a contract is to be carried out. Contract conditions can include as appropriate:

- Non discrimination and equality requirements for the recruitment, selection and terms and conditions for the workforce employed to perform the contract
- Requirement to comply with equalities legislation and codes of practice
- Can include requirements for equality monitoring of the contractors performance of the contract
- Can require contractors/suppliers to address equality issues with their sub-contractors

Advertising the contract

For some procurement projects there is a requirement to advertise the opportunity to do business with the Authority. Advertising tender opportunities can have the following benefits:

- Potential contractors/suppliers can be made aware of the Authority's equality requirements and expectations at an early stage in the process
- It offers the opportunity to improve the diversity of contractors with whom the Authority does business

Pre Qualification Questionnaire

Depending upon the procurement route taken, it may be appropriate to issue a Pre Qualification Questionnaire (PQQ). This is a set of questions which will assist the Authority to assess the suitability of prospective tenderers. The Authority's PQQ asks potential contractors/suppliers regarding their equality and diversity policy to ensure that it is in line with our expectations.

Invitation to Tender

At this stage in the procurement process, it is important that there is full compliance with the basic EU principles of equal treatment, transparency and non discrimination as well as identifying the award criteria which will be used. The Authority has a requirement to ensure that:

- The same information is given to all bidders
- No actions is taken which could give one bidder an advantage over another bidder
- All bidders are aware of the award criteria which will be used to award the contract

The Invitation to Tender (ITT) documents should assist bidders to understand what our compliance expectations and requirements are for our contractors/suppliers. It might be appropriate to provide copies of the following documentation in the ITT pack:

- The Authority equality scheme
- The Authority's equal opportunities policy

Evaluating bids and awarding the contract

Prior to awarding a contract, there must be a careful auditable evaluation of all of the tenders submitted. The evaluation criteria used must be the same as the criteria stated in the ITT.

The evaluation must be based on bidders proposals as set out in their tender documents. These should include full details of how each bidder proposes to carry out the contract, in accordance with the specification. If the specification has included equality outcomes or outputs, the ITT response should describe how the bidders propose to achieve these.

As a matter of good practice, all unsuccessful bidders must be notified. This is an opportunity to emphasis the Authority's commitment to equality and to encourage better practice in the wider economy. Appropriate feedback can assist bidders when they next tender for work in the public sector.

Monitoring & managing the contract

Effective contract management is essential to ensure that the contractor/supplier is meeting all of the requirements laid out in the contract, including any equality objectives which have been set.

It is important to put in place monitoring arrangements which are proportionate and realistic for both parties.

If you become aware that the contractor/supplier is not meeting its obligations under the contract, it is appropriate to set up a meeting with the other party to identify the reasons for this and to seek how to remedy the issue. If no resolution can be agreed, the issue will need to be referred to the Director of Procurement / Head of Procurement for advice.