

# Make Equality Count



## Foreword by Angela Eagle, Exchequer Secretary to the Treasury

We are privileged to have a richly diverse population, providing us in these difficult times with a pool of talent to serve our businesses and public services. Our businesses and public services in turn cater for the varying needs of our people. This Government has demonstrated through our actions that we are committed to fair and equal treatment for all our citizens regardless of gender, race, creed, disability or any other characteristic. We have done a lot but there is a lot more to do. The Equality Bill will be an important development on the journey.



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About a third of public expenditure goes on the things the Government buys to run the country and provide public services. Public sector organisations need to consider equality in the conduct of their procurement and have an opportunity to make a difference to our national performance on equality by addressing equality professionally in the procurement process. This useful guide shows public procurers, with examples, how to do it.

A handwritten signature in black ink that reads "Angela Eagle." The signature is written in a cursive, flowing style.

**Angela Eagle**  
Exchequer Secretary to the Treasury

## Introduction



Government is committed to promoting a fair and equal society, where everyone has the chance to flourish, achieve their full potential and contribute to its success. A fair and equal society, which makes best use of its talents, will help the economy perform to its productive potential, even in difficult economic times.

**With an annual expenditure of around £175 billion on goods and services, the public sector has an important opportunity to use its purchasing power to promote equality where possible, and it has legal obligations to consider the need to do so in respect of race, disability and gender equality under the public sector equality duties discussed later.**

When deciding to spend taxpayers' money buying goods and services, the public sector has a responsibility to consider benefits to wider society, to obtain value-for-money and to comply with the legal framework governing public procurement.<sup>1</sup>

Equality is an important social policy objective for the Government. Achieving value-for-money and delivering wider benefits such as equality objectives often go hand in hand. Procuring goods and services that work well by taking account of, and catering for, users' and communities' diverse needs, at good value-for-money, is what good procurement is all about. Ensuring public contracting opportunities are accessible to all types of businesses, for example, those owned by people from ethnic minority communities, women and disabled people, means that every supplier who can offer real benefits and value-for-money has a chance to compete according to their merits.

Encouraging suppliers to promote equality and diversity in their own workforces helps to ensure that contractors and the public sector benefit from diverse skills and talents, and that society benefits from reductions in pay gaps and improved employment rates among currently under-represented groups.

This practical guide is aimed at public authorities, and builds on existing guidance on how to address social issues through procurement. It demonstrates, with examples, what the current public sector equality duties mean in the context of public procurement, and how equality issues can be addressed at the different stages of the procurement process within the legal and policy framework governing public procurement.

As and when there are changes, this guide will be updated as appropriate. The Government made a manifesto commitment to introduce an Equality Act in this Parliament to modernise and simplify equality legislation. This will place a new Equality Duty on public bodies, which will bring together the existing race, disability and gender equality duties and extend to gender reassignment, age, sexual orientation and religion or belief. Once the Equality Bill is passed into law, this guide will be updated to reflect the position with regard to public procurement.

<sup>1</sup> [http://www.ogc.gov.uk/key\\_cross-cutting\\_government\\_policies\\_the\\_policy\\_and\\_legal\\_framework.asp](http://www.ogc.gov.uk/key_cross-cutting_government_policies_the_policy_and_legal_framework.asp)

## Why consider equality in procurement?

Achieving procurement objectives and equality objectives go hand in hand

Addressing equality issues in procurement, following the guidance in this pamphlet, will help authorities provide public services that are tailored to the needs of diverse users and communities. Public services that are tailored to individual needs equate to better quality public services and often better value-for-money. Equality issues will often be of direct relevance to what is being bought, perhaps as an integral part of a service that is being delivered to citizens.

Reaching out to the widest possible range of contractors – including for example, those owned by people from ethnic minority communities, women and disabled people – ensures access to suppliers who can offer real benefits and help deliver these personalised goods and services.

There is also an opportunity to work with suppliers to influence their equality practices and achieve greater transparency about these practices. Encouraging the creation of workplaces with open and effective equality practices helps contractors drive up productivity, through attracting recruits from the widest pool, better staff retention, and improved morale and performance. Suppliers can consequently ensure the best pool of people are delivering the services procured.

Considering equalities issues in procurement is therefore not only about satisfying legal obligations, which are set out on the next page. It can also help public procurers deliver higher quality services and achieve better value for money in procurement activities.



# Legal Obligations

## Procurement policy and legal framework

All public procurement is required to achieve value-for-money and is subject to the principles of the EC Treaty, which aim to ensure a level playing field for suppliers from the UK and other member states, and the UK regulations implementing the EC Public Procurement Directives.

For detailed guidance, see: [http://www.ogc.gov.uk/key\\_cross-cutting\\_government\\_policies\\_the\\_policy\\_and\\_legal\\_framework.asp](http://www.ogc.gov.uk/key_cross-cutting_government_policies_the_policy_and_legal_framework.asp)

### Legal obligations relating to equality

Public authorities must ensure that their procurement activities are operated in a way that meets their legal equality obligations.

There are specific legal obligations relating to equality with which all organisations, in both the public and private sectors, must comply. These obligations include the equality-related UK legislation listed at the back of this guide. Compliance with equality laws should be required as standard in UK public contracts; the OGC model terms and conditions include a model contract condition to deal with equality laws.

In addition, there are particular duties (the public sector equality duties) placed on public sector bodies to have due regard to the need to eliminate unlawful disability, gender and race discrimination and to promote equality of opportunity. These duties are known as:

- The Disability Equality Duty
- The Gender Equality Duty
- The Race Equality Duty

These duties mean that when public authorities develop their policies and carry out their functions (including procurement), they must have due regard to the need:

#### ■ Under the Disability Equality Duty to –

- promote equality of opportunity for disabled people
- eliminate unlawful discrimination
- eliminate disability-related harassment
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life

- take steps to meet disabled peoples needs, even if this requires more favourable treatment.

#### ■ Under the Gender Equality Duty to –

- eliminate unlawful discrimination (including under the Equal Pay Act) and harassment; and
- promote equality of opportunity between men and women.

#### ■ Under the Race Equality Duty to –

- eliminate unlawful racial discrimination; and
- promote equality of opportunity and good relations between persons of different racial groups.

Public authorities must consider how they can use their procurement functions to further equality objectives. So, for contracts where equality has been assessed as relevant, these equality considerations should be reflected in the procurement process in a way that is consistent with the EU procurement rules. There is guidance on how to do this later in this guide.

‘Due regard’, in the context of public procurement, means that the weight given to these equality issues should be proportionate to the relevance of the equality issue to the individual procurement in question.

Equality issues can be relevant to supply and works contracts as this guide illustrates, and are almost always likely to be relevant to contracts for services. Both the workforce delivering services and the communities and the wider public at which they are aimed, will have needs relating to equality.

The Disability Equality Duty refers to ‘more favourable treatment’, which acts as a reminder that it is not unlawful to treat a disabled person more favourably than a non-disabled person and that achieving equality for disabled people will at times require making adjustments to remove barriers. There is scope within public procurement for positive action. Indeed, the procurement rules require public authorities, wherever possible, to take into account accessibility for disabled people and suitability of design for all users. ‘More favourable treatment’ may be required in order to promote genuine equality of opportunity and should be considered at the planning stage, as illustrated in the next example. As outlined later in this guide, authorities can also reserve contracting opportunities for sheltered workshops.

## Legal Obligations

In addition, in relation to the other equality strands, positive action can be taken in procurement to prevent or compensate for particular users' disadvantage or to meet their special needs. This can be done for example by procuring services tailored for customers with particular language needs due to their ethnicity, or particular dietary needs due to their religion.



### **'More favourable treatment' under the Disability Equality Duty**

A local authority is contracting out its sports and leisure services. The authority recognises that all services must be fully accessible for disabled people. Through consulting with disabled people in the planning stage, the authority recognises that some specific services solely for disabled people will also be required, to allow them to participate fully in the services being offered.

So, within the procurement process the authority builds in certain requirements including full accessibility of services, specific sessions in both the swimming pools and gyms for disabled people and positive mechanisms such as working with representative groups to recruit disabled people to the user groups for individual sports facilities.

### **Do the public sector equality duties apply to public sector services delivered by the private sector?**

Equality legislation which prohibits discrimination applies to both the public and private sectors, whereas the public sector equality duties do not apply directly to the private sector. However, where a public service is contracted out and a public sector equality duty is relevant to that service, the public authority must consider whether the relevant obligations should be passed onto the contractor. Where a public authority assesses that these obligations should be passed on to

the contractor, this should be included in the contract conditions which relate to the performance of the contract. Public authorities should monitor the performance of the contract to ensure that the obligations are being met. The public body would remain liable for any non-compliance.

### **Contracting out and the equality duties**

In meeting its obligations to promote race equality and good race relations, a public authority running care services for over 65s monitors the ethnicity of its clients as part of the information it needs to help ensure fair treatment for people from ethnic minorities. The public authority contracts out the running of some services in specific localities. As a result of this contracting out, the public authority will need to pass on to the contractor the obligation to gather the information needed, including client ethnicity, to enable action to be taken to ensure fair treatment.

Additionally, if public authorities decide to contract out their procurement function, the public sector equality duties will still apply and these obligations, where relevant to procurement, must be passed to the contractor.

Where contractors' staff are working on public authorities' premises with their employees, for example cleaning or receptionist staff at Government offices, hospitals or schools, as a way of meeting their equality duties, the public authorities would expect the staff to adhere to the equality policies and codes of practices of their own staff on the same premises.

### **Working on Government/public premises**

In a hospital contract for building and equipment maintenance services and repair works where the contractor's staff will be working on the hospital premises and have contact with other hospital staff and patients, the public authority decided that the contractor's staff must abide by the hospital's equality code of practice which included attending their equality and diversity training session. This was therefore included and carried out as a contract condition.

In buying goods for staff's or clients' use, public authorities should take account of the needs of people covered by the equality duties.

It is the public authority's responsibility to ensure that they meet their legal obligations relating to equality. Although there are other equality issues, age, religion or belief, sexual orientation and, in part, gender reassignment, that are not currently covered by the public sector duties, a similar approach should be taken in those cases.





## Addressing equality in the procurement process

Embedding equality into your procurement strategy

The first step to addressing equality issues in public procurement is for public authorities to incorporate equality issues into their overarching commercial strategies and procurement policies, and to articulate how they will use procurement to achieve their equality objectives. Equality impact assessments are one way of ensuring that commercial strategies and related policies incorporate equality considerations. It is always best to involve the organisation's equality and diversity officer in the development stage, and they will be able to advise on how to carry out equality impact

assessments. This involvement should help to ensure that the organisation's commercial strategy and related policies do not discriminate against a particular group(s) and that the organisation's procurement activities promote equality in accordance with the public sector equality duties.



Equality impact assessments can also be useful in identifying certain groups of people, known as ‘target groups’, who may face particular barriers when it comes to equality of opportunity. Where it is consistent with the EU procurement rules, it is sometimes possible to address these barriers in procurement activities. This is illustrated further on in this guide.

The rest of the pamphlet provides guidance on how to address equality issues at each stage in the procurement process, in a way that is consistent with the EU rules. Addressing equality issues at the different stages should be covered by the organisation’s procurement policies.

In addition to the legal requirements under equality legislation and obligations under the public sector equality duties, public authorities should consider what they can proactively do to promote equality on specific contracts.

The extent to which equality issues can be incorporated varies depending on the stage of the procurement process.

Equality issues can be addressed:

- Pre-procurement – when identifying the need and considering the market;
- Specification stage – when deciding the requirement;

- Selection stage – when selecting suppliers to invite to tender;
- Award stage – when awarding the contract;
- Contract conditions – in the performance of a contract;
- Relationship management – on an informal basis, outside procurement and contract management.

There is most scope to consider equality issues at the beginning of the procurement process, when setting the business case, identifying the need and defining the specification. That is not to say that action should stop there.

It is often helpful, when considering how to promote equality issues in procurement, to contact organisations such as the Equality and Human Rights Commission (EHRC), Trade Unions and industry representatives. These organisations support Government and the private sector in promoting equality of opportunity. Additionally, they have researched case studies and other useful material, which they are generally happy to share.

## Identifying the need

This is the stage at which there is the most scope to address equality issues in procurement

### Setting the business case

When setting the business case, public authorities have a duty to test for need, value-for-money and affordability. At this stage, in assessing value-for-money, they should not just consider benefits from the perspective of the authority itself but also wider benefits to society. They must also ensure that they consider and meet their legal obligations relating to equality. This means they must consider the relevance of equality issues (such as disability, gender and race) to the individual procurement. Indeed, the procurement rules require public authorities, wherever possible, to take into account accessibility for disabled persons and suitability of design for all users. They should also consider how they could promote other relevant equality issues that are not covered by the equality duties.

### Consulting with stakeholders

Public authorities should consider consulting with stakeholders, such as potential customers and interest groups, to help get a better understanding of what is required and whether there are any particular equality issues relevant to the procurement that they will need to address. This consultation will help to ensure that particular groups are not discriminated against and that the diverse needs of customers are addressed more effectively.



### Consulting with potential users of a service

A local authority is procuring a service for social care and support to elderly residents of the borough. To establish exactly what the service will need to offer and how it should be delivered, the authority contacts its local elderly residents to find out what kind of support they need. The authority also consults with age related organisations. It establishes that needs range from assistance in the home with household tasks, to a general point of contact i.e. a 'one-stop shop' for information or queries on services from which elderly residents might benefit. It also establishes that the best way to deliver the 'one-stop shop' aspect of the service is through a telephone helpline as many of its elderly residents do not have Internet access in their homes and some have mobility restrictions. The authority then ensures that these needs are reflected when drawing up its requirements, which form the basis of its procurement. As a result the elderly residents receive the support they said they needed, in the way they said they needed it.

Public authorities should also engage with suppliers to understand what the market can provide and how the needs of the procurement can best be met. Early engagement with the market can help public authorities in their understanding of what is achievable on equality issues.

### Consulting with a range of stakeholders

A further education institution is planning a contract for an outreach course offering basic IT skills training for people who have been out of work for 6 months or more. One of its target groups for this training is women or men wanting to return to work after a period of full-time or part-time childcare. The institution has identified different stakeholders with whom it will consult in planning the procurement, including women's, men's and parents' organisations, other further education institutions, its employees, external training providers, nursery service providers, health professionals and local employment services. Through this consultation, the public authority establishes that remote access learning can be provided and is welcomed by the target group. This is reflected in the authority's procurement, resulting in the further education institution offering remote access learning. This allows more men and women wishing to return to work after a period of childcare to take the IT course and get the necessary skills.

### Accessibility of contracts to different groups of suppliers

Equality issues can be considered indirectly when identifying the need. For example, by ensuring that contract opportunities are easily accessible to small and medium sized enterprises (SMEs), including those owned by women or ethnic minority groups, as well as supported factories and businesses for people with disabilities. This ease of access can help to improve supplier diversity, which can contribute to better quality public goods and services and better value-for-money. Accessibility to these groups of suppliers can be improved by engaging with them to find out what they can provide, and also ensuring advertisements for contracting opportunities reach them.

#### Encouraging supplier diversity

A public authority wanted to ensure that it was attracting a diverse supply base in order to help achieve best value-for-money in its procurement and to deliver better public services. Once it advertised its contract in the Official Journal of the European Union (OJEU), it also placed an identical advertisement on Supply2.gov.uk, a UK Government portal aimed at opening up the public procurement market to all types of businesses, particularly SMEs, and in a range of newspapers and journals aimed at businesses and organisations led by different groups, such as women, ethnic minorities, disabled people and third sector organisations.

To increase accessibility to public contracting opportunities, it is possible to divide contracts or frameworks into 'lots' or 'categories', where doing so can help achieve value-for-money. There are other benefits too from doing this, such as reduced procurement and contract management cost and shorter supply chains which often means a closer working relationship with suppliers.



#### Splitting a contract for a meals service

A health authority provides meals to a range of patients in all the hospitals within its Trust. The health authority knows that its patients have different dietary requirements according to their health and religious or cultural background. It decides to split the contract according to different categories based on these needs, for example diabetic meals, low salt meals, vegetarian meals, Hindu meals, Jewish meals, allowing those suppliers who specialise in these particular types of meals to bid for the contracts. The result is meals tailored to patients' needs, rather than based solely on what one supplier is able to offer.

When considering accessibility, public procurers must also bear in mind the effects that aggregated requirements can have on reducing SMEs' ability to compete for public contracts. This will have a knock-on effect on supplier diversity.

For further guidance on reducing the barriers faced by SMEs see [http://www.ogc.gov.uk/documents/CP0083\\_Small\\_supplier\\_better\\_value.pdf](http://www.ogc.gov.uk/documents/CP0083_Small_supplier_better_value.pdf).

## Specification

The specification stage is another key point at which to consider and address equality issues. This is the stage where buyers define their requirements with a formal written description of the service, works or goods that the public authority is looking to purchase. Core requirements are essential parts of a contract that are set out in both the specification and the conditions of the contract.

Equality issues can be a core requirement included within a specification where they are relevant to the subject of the procurement. Public authorities will need to assess on a case-by-case basis which requirements are core requirements.

Care must be taken when drawing up the specification to ensure that it does not result in the unequal treatment of suppliers generally or exclude or disadvantage prospective contractors from outside the UK, for example by specifying a particular equality standard for relevant contracts that does not allow for equivalents from outside the UK.

### Defining characteristics

Where equality considerations define the required characteristics of the service, works, or goods being procured, they should be incorporated into the specification.

#### Protective clothing for women

In a contract for the supply of protective clothing and helmets for staff working on construction sites, a public authority included a requirement for the contractor to supply protective clothing that meets the needs of women. As a result the contractor provided a range of clothing specifically designed to fit the size and shape of women, enabling the female staff to work safely and comfortably on the construction site.

### Design Accessibility

Under the procurement rules public authorities must, wherever possible, take account of accessibility criteria for people with disabilities and public authorities should also consider the suitability of design for all users, such as women, men and elderly people.

#### Design accessibility

1. The design and construction of public buildings (e.g. libraries, youth and community centres), pavements, parks, bus shelters should be such that they are accessible to people with disabilities or pushchairs. For building construction works it may be appropriate to specify a particular standard, such as BSI 8300, although public authorities should use an EU standard instead where one exists and should always allow for equivalent standards.
2. Ensuring relevant facilities for users, for example toilet facilities that are accessible to disabled people such as those in wheelchairs and changing facilities for men and women with babies or small children.

### Performance based specifications

Specifications can describe relevant equality-related performance requirements or functional requirements.

#### Specifying requirements to cater for disabled service users

A local authority is procuring domestic recycling services with the aim of increasing the percentage of domestic waste that is recycled. The authority is aware of the need to improve the service for disabled and elderly people to enable take-up. In its requirements, the authority therefore states that the service must include doorstep rather than kerbside collections for disabled and elderly people.

Public authorities can also consider setting outcome- or output-based specifications relating to equality where this is considered relevant to the subject matter of the contract.

**Specifying outcomes for targeted recruitment**

In a contract for recruitment, a fire and emergency service has specified the outcome that it wants - a 10 percent increase in the proportion of applications from women and people from ethnic minorities. Tenderers are expected, in their tender submissions, to outline the steps they would take to achieve this outcome. For example, encouraging applications from women and people from ethnic minorities by targeting advertising in certain areas, in job fairs aimed at ethnic minority groups and in community centres with a high attendance by women. The use of outcome or output-based specifications allows suppliers to be more innovative in how they deliver the contract.

**Reserving Contracts – supported employment**

It is at this stage that public authorities should consider whether it will be appropriate on the basis of their user requirement and specification, to reserve a contract for supported factories and businesses providing supported employment opportunities to

disabled people, as permitted under Article 19 of the EC Public Procurement Directive and Article 28 of the Utility Directive.

**Reserving contracts**

A public authority is procuring a product or service and having defined its requirements, the public authority establishes, through market research, that its procurement need could be met by supported factories and businesses in a way that would be consistent with value-for-money. The public authority decides to reserve the contract so that only supported factories and businesses can compete for it. It still awards the contract on the basis of value-for-money.

For guidance on reserving contracts, consistently with the EU Rules, see: [http://www.ogc.gov.uk/documents/supported\\_factories\\_and\\_businesses.pdf](http://www.ogc.gov.uk/documents/supported_factories_and_businesses.pdf).



## Selection

This is the stage at which public authorities assess and select potential suppliers to bid for a particular contract. Under the public procurement rules, public authorities can only take into account information relating to the potential suppliers' technical/professional ability to perform the contract, or financial/economic standing, or the grounds for rejection set out in the rules and outlined below.

### Technical ability

The procurement rules contain an exhaustive list of evidence that potential suppliers can be required to provide in order to demonstrate their technical ability. Equality issues can be considered when looking at a potential supplier's technical ability to perform a contract where they are relevant to that particular contract. For example, a contract may require specific know-how or skills relating to equality issues, such as language skills or cultural awareness for services that are to be delivered to diverse communities, in which case public authorities can ask for evidence of the skills or know-how.

#### Evidence of technical ability for local authority helpdesk

A local authority in an ethnically diverse area wanted to ensure that information about its services was accessible to the whole community. It decided to outsource a helpdesk to provide assistance to and answer questions from those with little or no proficiency in English. The public authority stated in its specification, that staff working on the helpdesk must have fluency in languages other than English, as this would help ensure that the service met the needs of its users. Being able to meet this requirement reflects a potential supplier's technical ability to deliver the contract. At the selection stage, the public authority therefore requested evidence from tenderers of their ability to meet the requirement.

### Requesting evidence

Where it is relevant to the delivery of the contract, public authorities can also ask potential suppliers for evidence of relevant aspects of equality policies or training.

#### Evidence of previous diversity experiences for community centre

A local authority is setting up a community centre to encourage greater social inclusion amongst its diverse community. At the selection stage, the public authority asks potential suppliers for evidence of equality and diversity policies to ensure that they are aware and able to handle and respect the cultural differences and needs of the community, for example the traditions and religious beliefs of different groups.

Public authorities can also consider a potential supplier's track record for delivering on previous similar contracts.

### Excluding bidders

At this stage, public authorities can exclude potential suppliers from the procurement process if they have been found guilty of grave professional misconduct. This misconduct could include a breach of equality legislation, which applies to the private sector as well as the public.

Public authorities will need to assess the seriousness of any such offences and before making a decision whether or not to exclude a potential supplier; the supplier must be given the opportunity to demonstrate any action that it has since taken to rectify any breaches or to address such issues.

Public authorities must be able to demonstrate that any decision to exclude is proportionate to the seriousness of the offence; if in doubt, legal advice should be obtained.



**Excluding bidders for breaching equality legislation**

For a contract for recruitment services aimed at helping to get parents of young children back into work, in asking for details on convictions in the past 5 years, a public authority might discover that a candidate had been found guilty of breaching the Sex Discrimination Act 1975. While this would provide reason for exclusion at the selection stage, the public authority allowed the organisation to demonstrate the actions it had since taken to rectify the breach. The organisation was able to show that following the breach it had completed a full review of its equality and diversity policies and procedures, and had consequently established a formal complaints procedure and equality training for its staff. In this instance, the public authority decided not to exclude the organisation from the tendering process because to do so would be considered disproportionate.

If, however, the organisation was not able to provide any evidence of steps it had taken to rectify the breach, then exclusion could be considered proportionate.

**Pre-qualification questionnaires**

Equality should be used in pre-qualification where it is relevant to what is being bought. Pre-qualification questionnaires (PQQs) can be used to help assess the suitability of potential suppliers to invite to tender for contracts. OGC’s model PQQ is specifically intended for contracts below EU threshold and contains an equality module. This provides a useful guide as to the kind of things that can be asked in PQQs, and it can be tailored to suit specific procurements.

OGC’s model PQQ can be found at: [http://www.ogc.gov.uk/tools\\_\\_\\_services\\_pqq\\_4728.asp](http://www.ogc.gov.uk/tools___services_pqq_4728.asp).

## Award

This is the stage at which public authorities assess the bids submitted by the potential suppliers that they have invited to tender following the selection stage. Bidders themselves cannot be assessed on their abilities at this stage or excluded, for example, based on criminal convictions or gross misconduct, as these assessments and exclusions would have already been done at selection stage. Rather, the actual bids themselves are assessed in accordance with the award criteria.

### Award criteria

Bids must be evaluated on the basis of pre-published award criteria linked to the subject matter of the contract. A contract should be awarded to the tenderer offering the best value-for-money. Value-for-money is the optimum combination of whole-life costs and quality to meet the user's requirements. Value-for-money in this context usually equates to the 'most economically advantageous tender' (MEAT)<sup>2</sup> for the public authority, as set out in the EU Directives.

At award stage, value-for-money must be assessed from the perspective of the public authority; this is in contrast to the stage when need is identified, where wider benefits to society can be considered.

The public procurement rules list a number of criteria, by way of example, that public authorities can use to identify which tender would be the most economically advantageous. These award criteria include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance and delivery period or period of completion. Although equality is not explicitly stated, in some cases equality can be relevant; for example equality issues can affect the 'quality' of a service being delivered.

<sup>2</sup> Article 53 of the EU Directive allows for bids to be evaluated on the basis of either the most economically advantageous tender (MEAT) or the lowest price. The UK's policy is to use MEAT.

### Providing additional quality

A public authority is procuring services intended to help unemployed people find jobs. In addition to offering a competitive bid, the winning tenderer might also provide additional quality by offering as part of the service, tailored programmes specifically aimed at helping those groups of people who are particularly disadvantaged in the labour market, such as disabled people, women (including women returning to work after a period of time out of the labour market owing to caring responsibilities) and ethnic minorities, rather than a standard service for everyone.

Criteria involving equality issues may be used to determine the most economically advantageous tender where they reflect an equality-related part of the specification.

### Evaluating on equality specifications for library services

For library services, a public authority has stated in its specifications that material/products (books etc) must be accessible to people who are blind or have hearing difficulties. When evaluating bids, the public authority can assess what provisions the tenderer has made to fulfil this requirement – e.g. audio material, visual material with sign language, or the use of Braille, as these aspects would affect the functionality and quality of the service provided.

All award criteria must be stated upfront, in the contract notice or contract documents, so that potential suppliers know the criteria against which their bids will be assessed.

### Equal bids

Where two or more bids are equal on value-for-money grounds, it is possible to use additional award criteria relating to equality issues to determine between the bids. Legal advice should be sought first, as it is very rare for bids to be equal in this way.

## Contract Conditions

Contract conditions relate to the performance of the contract and are included within the contract. Public authorities can include contract conditions relating to equality issues provided these relate to the performance of the contract and are compatible with European Community law. They must be indicated in the contract notice and contract documents and must be able to be met by whoever wins the tender from the time at which the contract starts but not necessarily before.

### Targeted recruitment for support services to victims of domestic violence

For a contract to provide support services (such as sheltered accommodation or a helpline) to victims of domestic violence, a public authority included as a condition of the contract that, of the staff performing the contract, those who have direct contact with the customers, for example those working on site at the sheltered accommodation or as an adviser on the helpline, must be female, as most victims of domestic violence and thus most users of the service would be women. This condition is considered acceptable as it relates to the performance of the contract and as it is an occupational requirement it is permitted under the Sex Discrimination Act.

It would not, however, be acceptable to require all staff working on the contract to be female because roles such as administration and finance do not involve direct contact with the customers.

Contract conditions must not be disguised technical specifications or selection or award criteria. For example, if particular language skills/qualification are required for a contract, then these are core requirements and should be included in the specification.

### Target recruitment for under-representation in the construction industry

As part of a major social and physical renewal scheme a local authority has awarded a contract for the rehabilitation of a large housing block. The works involve plumbing, carpentry, brick-laying, plastering and decorating. The authority is aware that in all these trades, women are under-represented both nationally and locally but does not have comparable knowledge for other EU member states.

The authority includes a condition with the contract that "10% of the person-weeks required to complete all the works are to be delivered by women who have either an apprenticeship, trainee or employment contract with the contractor or sub-contractor and are engaged in a training programme that is accepted by the employer." This condition was included upfront in the contract notice. In this example, 10% is acceptably proportionate, whereas 50% would not be. Costs and benefits need to be weighed up case by case.

### Recruitment services

In a contract to manage its recruitment function, a department wants to ensure that its recruitment service is open to all groups of people, particularly women. It therefore includes within the contract, a condition that all jobs must be advertised on either a part-time basis and/or with flexible working provisions unless there is a justified business case why a particular job cannot be offered with these terms.

Complying with equality laws should be mentioned as standard in UK public contracts. The OGC's model terms and conditions show how to do this, and can be found at: [http://www.ogc.gov.uk/Model\\_terms\\_and\\_conditions\\_for\\_goods\\_and\\_services.asp](http://www.ogc.gov.uk/Model_terms_and_conditions_for_goods_and_services.asp)

### Complying with public procurement rules and European Community Law

It is for the public authority to decide whether to use contract conditions and these decisions should be made case-by-case rather than using a 'blanket' approach as some conditions will be relevant to certain contracts, but not necessarily to all.

## Contract Conditions

Public authorities need to make sure that contract conditions are non-discriminatory, do not disadvantage suppliers outside the UK and that value-for-money is maintained – contract conditions should be supported by the benefits they accrue set against the cost of achieving them. When setting contract conditions, public authorities should bear in mind that conditions that require changes to the organisation, structure or policy of suppliers established in other Member States might be considered discriminatory or a barrier to the freedom to provide services under European Community Law.

### **Complying with public authority's equality and diversity policy**

In a procurement for catering services in a central Government office where the staff performing the contract will be on Government premises and have contact with the department's staff in the building, the procuring department included as a contract condition, that the supplier's staff delivering the contract must do so in line with the department's equality and diversity policy.



## Relationship Management with Suppliers

There are often good opportunities outside the formal procurement process, post-award, for public authorities to work with their suppliers on a voluntary basis to promote the importance of equality issues to their suppliers and supply chain.

Public authorities can highlight the importance of the equality agenda and outline the benefits to suppliers of taking account of equality issues, including the benefits to the business of having a more diverse workforce, such as a wider pool of employee skills and improvements in recruitment and retention. When a supplier is keen to work with public authorities, there is often more opportunity to embed good equality processes and the spread of best practice through the supply chain.

There are many different ways that a public authority can choose to work with suppliers.

Below are just some examples of what can be done.

### Provision of in-house training

In highlighting the importance of equality to Government, public authorities can work with suppliers to give staff working on public contracts access to in-house equality and diversity training.

### Raising awareness of equality issues

Women are one of the groups of people that face particular barriers in the labour market, for example in accessing jobs and career progression, perhaps owing to caring responsibilities. A public authority can work with its supplier to help them to take action to address this issue by encouraging suppliers to operate a flexible approach to working hours so that women can balance child and other caring responsibilities with work. This can be done through awareness-raising events or as part of other events for suppliers held by the public authority. At these events, not only can the public authority share its own experiences, and highlight the benefits that the public authority has seen as a result of implementing such approaches (e.g. improvements in recruitment and retention and a wider range of skills and experiences to draw on), but it can also invite suppliers who have implemented initiatives to share their experiences.

### Encouraging supplier diversity

A local authority provides a range of services to its diverse community. The authority wanted to ensure that it was attracting a diverse supply base to help meet the needs of its community, to deliver better public services, and to help achieve the best value-for-money in its procurement. The public authority held a 'Meet the Buyer' event where it invited a range of businesses – SMEs, those owned by women, ethnic minorities and disabled people, supported factories and businesses providing employment opportunities for people with disabilities, as well as existing suppliers. The aim of the event was to highlight the authority's commitment to encourage a diverse supplier base throughout the supply chain and the benefits that this can bring, as well as to provide an overview of how the public procurement process works. Over 600 potential suppliers attended, with around 22% of them from ethnic minorities and around 16% majority-owned by women.

### Equality and diversity workshops for suppliers

In line with OGC's model terms and conditions, a public authority includes as a contract condition that its contractors must comply with all existing equality legislation. To help its suppliers comply with this condition, the authority organises an equality and diversity workshop for all of its suppliers. The aim of the workshop is to provide its suppliers with an overview of the equality legislation and to ensure that they understand their legal responsibilities with respect to their contracts, including where any obligations under the public sector equality duties are passed to contractors.



## Further Reading

For guidance on related matters, such as social issues, see the Office of Government Commerce's publication, 'Buy and make a difference':

[http://www.ogc.gov.uk/documents/Social\\_Issues\\_in\\_Public\\_Procurement.pdf](http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf),

and for a more detailed guide, see 'Social issues in purchasing':

[http://www.ogc.gov.uk/documents/Social\\_Issues\\_in\\_Purchasing.pdf](http://www.ogc.gov.uk/documents/Social_Issues_in_Purchasing.pdf)

For an overview of public procurement, see 'Introduction to Public Procurement':

[http://www.ogc.gov.uk/documents/Introduction\\_to\\_Public\\_Procurement.pdf](http://www.ogc.gov.uk/documents/Introduction_to_Public_Procurement.pdf).



# Public Procurement Checklist

All public procurement is required to achieve value-for-money and is subject to the principles of the EU Treaty and the UK regulations implementing EU Procurement Directives.



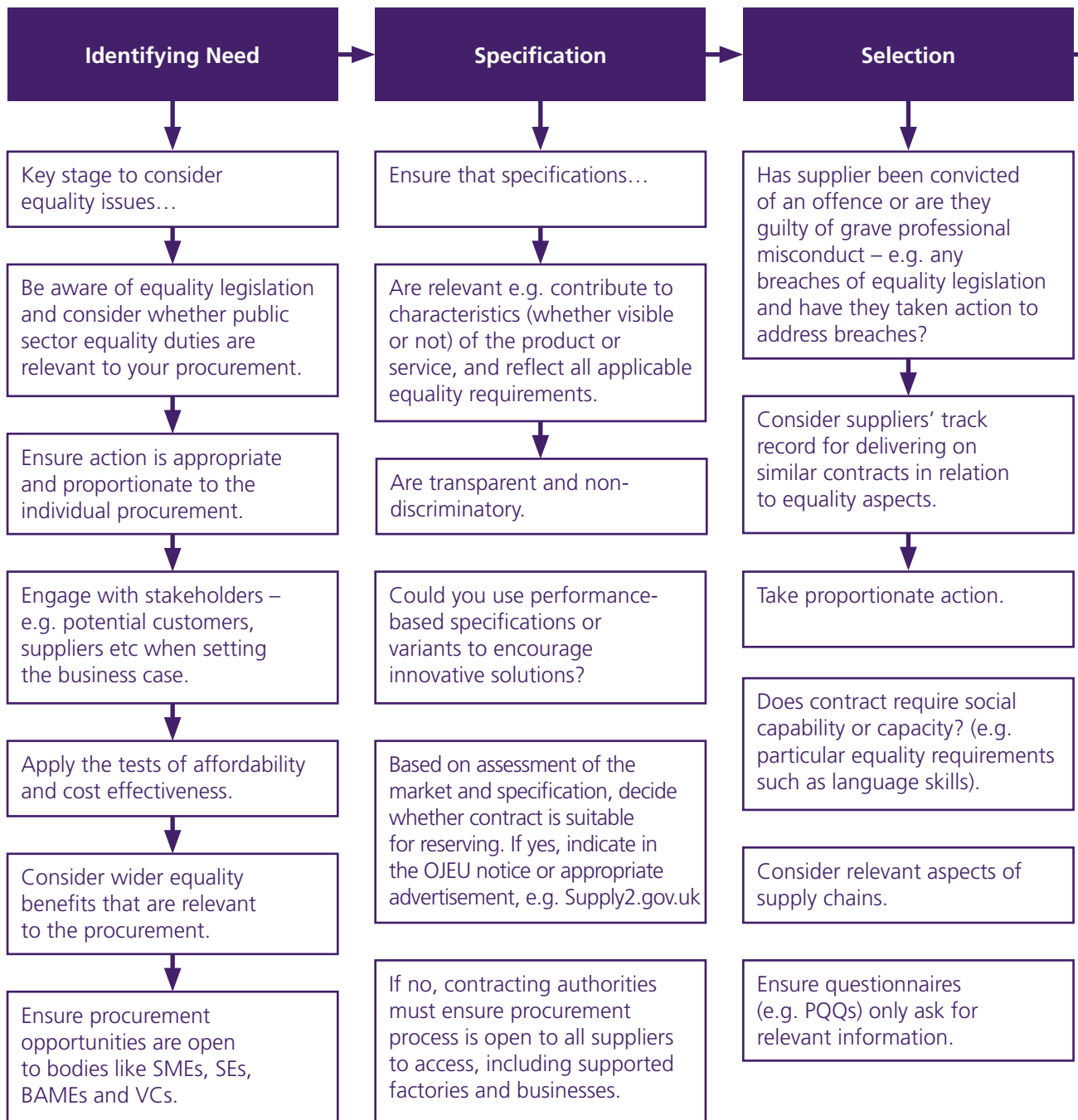
## Do make sure:

- That all legal obligations, including the public sector equality duties are met.
- Equality issues that are addressed in procurement are relevant to the subject or performance of the contract.
- Equality issues are considered early on in the procurement.
- Actions to take account of equality issues are proportionate and consistent with the Government's value-for-money policy, taking account of whole-life costs. Value-for-money means securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
- Benefits sought are assessed against any additional costs and potential burdens on suppliers.

## Do not:

- Act in such a way as to distort competition or discriminate against candidate suppliers from other Member States.
- Leave consideration of equality issues until too late in the process.
- Confuse obtaining value-for-money, which is required, with awarding contracts on the basis of lowest initial price, which is bad practice.
- Impose contract conditions that are not relevant to the performance of the individual contract.
- As part of the procurement process, ask suppliers about their policies generally on equality issues that are not related to the specific contract.
- Impose any unnecessary burdens that would seriously deter suppliers, especially SMEs, from competing for public contracts, which in turn could reduce the choice available and could impact on costs and service standards. The suppliers that are deterred could be the very ones whose participation would help to further the Government's equality agenda, for example, those businesses owned by women, black and ethnic minorities and disabled people.

This table illustrates how equality issues can be considered and incorporated at the different stages of the procurement process. It should be used in conjunction with the rest of this guide, which provides more detailed advice.

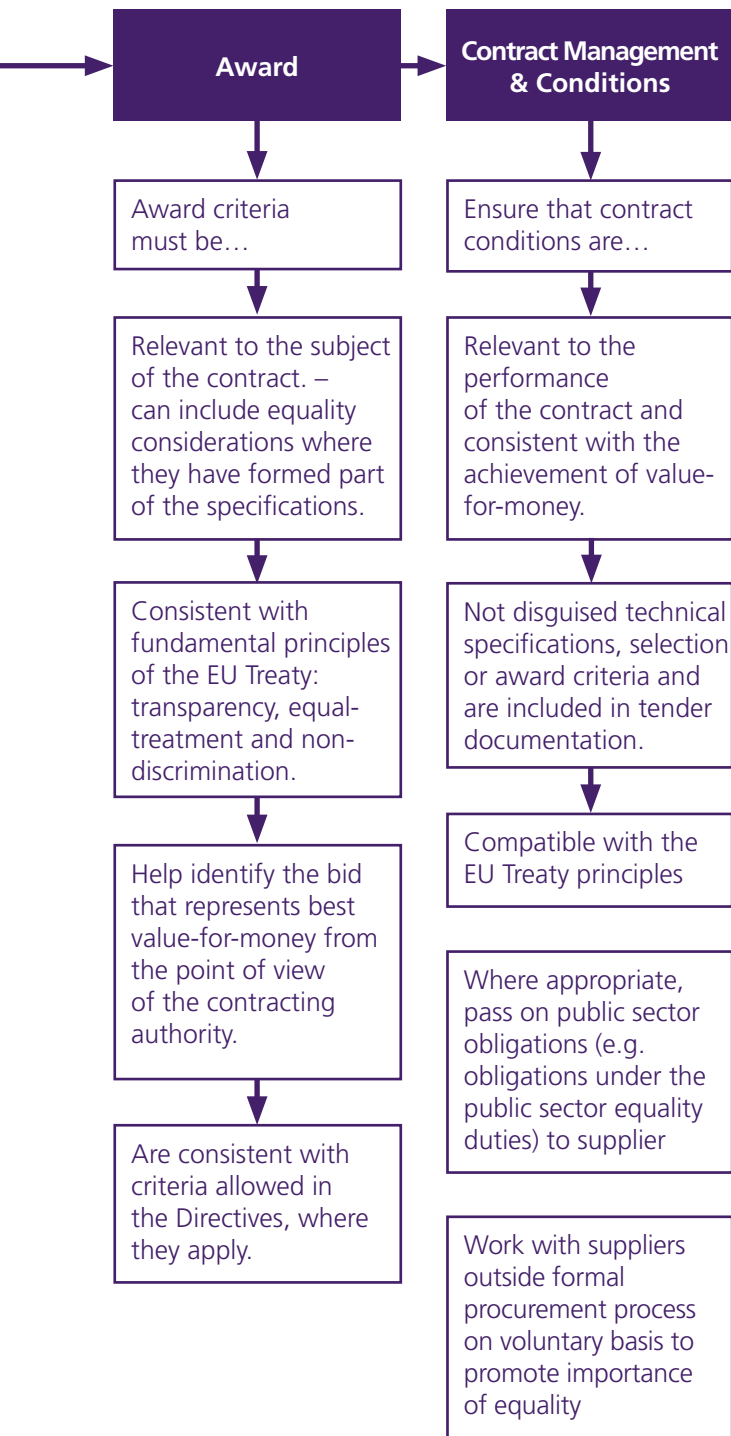


# Equality Legislation

There are several pieces of legislation that combat discrimination and promote equal opportunities and diversity. These include:

- Equal Pay Act 1970
- Sex Discrimination Act 1975 (as amended)
- Race Relations Act 1976 (as amended)
- Disability Discrimination Act 1995 (as amended)
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Age) Regulations 2006
- The Equality Act 2006
- The Equality Act (Sexual Orientation) Regulations 2007

The Equality and Human Rights Commission provides information, advice and assistance on equality and diversity legislation. It also issues good practice to employers and service providers in partnership with ACAS.



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