

Equality of Opportunity and Sustainable Development in Public Sector Procurement

**EQUALITY COMMISSION FOR
NORTHERN IRELAND AND THE
CENTRAL PROCUREMENT
DIRECTORATE**



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FOREWORD

The over-arching aim of the Executive's Programme for Government 2008 – 2011 is to build a peaceful, fair and prosperous society in Northern Ireland, with respect for the rule of law where everyone can enjoy a better quality of life now and in years to come. Key to achieving this aim is the two cross-cutting key themes of fairness, inclusion and equality of opportunity, and ensuring that the principles of sustainability underpin our approach to all our activities.

The leverage of public procurement to contribute to delivering greater equality and social inclusion as well as sustainability goals, within the current legislative framework, should not be underestimated. Public procurement currently accounts for approximately £1.9 billion of supplies, services and construction works. Over the course of the next 10 years this will be significantly augmented by the additional investment of the order of £20 billion under the Investment Strategy for Northern Ireland.

From the development of a policy or strategy through to project or programme delivery, opportunities exist within the procurement process for policy makers and procurement professionals to work together with suppliers to promote equality of opportunity and sustainable development in the delivery of our public services. This guide provides a practical framework within which these key players can work together to deliver these outcomes.

Finally, can I commend the guidance to you and record my thanks to the Procurement Board for the production of the guidance which was co-written by the Central Procurement Directorate and the Equality Commission for Northern Ireland.



RT HON PETER D ROBINSON MP MLA

Minister for Finance and Personnel

Chairman of the Northern Ireland Procurement Board

May 2008

ENDORSEMENT

Investment and public procurement are important elements in economic development. Economic development and equality of opportunity go hand in hand. The one without the other cannot realise the potential of either; each is incomplete without the other. That is one of the reasons why this Guidance is so timely and so important. All of our decisions have consequences – whether we wish it so or not. So too, all of our economic and investment decisions have social consequences.

The coupling of these two issues in this guidance on procurement reveals a profound understanding of the inescapable linkage between sustainability and equality of opportunity in the development of a fair, prosperous, shared Northern Ireland. The fact that it was developed jointly by the Central Procurement Directorate and the Equality Commission is a further indicator of the significance of the issue. The labour of all who contributed to the Guidance is to be commended.

The Minister's foreword outlines the scale of the financial commitment that procurement will represent over the next decade. That fact alone underlines its importance for the future life of Northern Ireland. But it is the impact that this expenditure will have on society, on communities and on individuals that will be the real measure of its success; as is the extent which it will make Northern Ireland a more equal place.

The disciplines of Section 75 in respect of promoting equality of opportunity and good relations are not restrictive but facilitative. They assist in more effective policy-making. Procurement decisions and practices come clearly within its purview and this guidance is a powerful statement of that reality. I know that all public authorities will follow its good counsel in what is a vital aspect of their work.



BOB COLLINS

Chief Commissioner

Equality Commission for Northern Ireland

PREFACE

In October 2004 the Procurement Board agreed the establishment of a working group to formulate guidance on both equality and social considerations in public private partnerships (PPPs). The Working Group was led by the Office of the First Minister and Deputy First Minister (OFMDFM) and the agreed terms of reference were

“To develop guidance for presentation to the Procurement Board that would be used by departments and contracting bodies in the public sector on the inclusion of social policy considerations in PPP procurements, and on the equality considerations for PPP projects. Both sets of guidance will be subject to consultation before publication. The working group will give due consideration to all relevant drivers including EU directives, value for money, equality and social need considerations.”

The Working Group requested that the Equality Commission prepare guidance on equality considerations in PPPs. On receipt of the first draft the Working Group determined that the proposed output should change from being two sets of guidance aimed specifically at integrating equality considerations and, separately, social policy considerations in public private partnerships/private finance initiatives (PPP/PFI) to a single guide. Consequently the Equality Commission worked in partnership with the Central Procurement Directorate (CPD) to produce a much broader and much more useful end product covering equality and sustainable development in all public sector procurement including construction.

A draft approved by the Procurement Board in November 2006 was issued for public consultation. The consultation was led by the Equality Commission, supported by CPD. The Equality Commission completed the revision of the draft taking account of the comments made during the consultation period and CPD expanded the guidance on sustainable development following the introduction of the statutory duty on sustainable development. The final draft was submitted to the Working Group for agreement and then to the Procurement Board for approval.

The approved guidance contains a number of case studies and procurement process models which will be helpful to equality and procurement practitioners across the public sector to enable them to deliver equality of opportunity in sustainable procurement.

EXECUTIVE SUMMARY

The purpose of the guidance

- 1.1 This guide has been prepared by the Equality Commission and the Central Procurement Directorate (CPD) to support public authorities as they embed equality of opportunity, including good relations, and sustainable development in their procurement practice. It will assist policy and decision makers, and those who determine our public services as well as people who work directly in procurement, project management and equality of opportunity and sustainable development. This guidance sets out what is expected of all those involved in public sector procurements, whether large or small, and is supported by the law.
- 1.2 Society is continually being transformed and at the beginning of the twenty first century significant government investment has been allocated to speed that transformation. It is imperative that equality of opportunity and sustainable development considerations are at the heart of this change. The opportunity for public procurement practice to contribute to making public service provision fit for purpose, now and for decades to come, must be seized.
- 1.3 This will require political will and top level commitment as well as the expertise of people working in the public services. It will also need new and imaginative partnerships with people and organisations who espouse equality of opportunity and sustainable development, including the private sector where it is involved in delivery of public services.
- 1.4 In Northern Ireland, public procurement policy recognises that the primary objective should be the achievement of “best value for money” which is defined as *“the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer’s requirements”*. Achieving best value for money will depend on a number of overarching factors:
 - First, equality of opportunity and sustainable development must be considered at the outset of any procurement process and then throughout the life of a project, with particular attention being given at decision making moments. A holistic view of public service provision is essential. Equality of opportunity and

sustainable development considerations must be evident from the development of government strategy, through project development and in project management.

- Second, the approach to equality of opportunity and sustainable development should be active, with policy and decision makers and practitioners seeking out opportunities to promote equality of opportunity and sustainable development. In its equality scheme adopted as part of its duties under Section 75 of the Northern Ireland Act, 1998 (s 75) (see annex 1), a public authority will have committed to doing this with the involvement of people affected by inequalities. Given legislative protection and the benefit of the increased knowledge and understanding which comes from evidence based policy and decision making, it also allows for and celebrates innovation, new ways of doing things, informed risk taking and sound risk management.
- Third, it will be outcome based and have clear objectives at each stage which are understood by all. Visionary thinking followed by careful planning and project development and management combine for positive results in equality of opportunity and sustainable development.
- Fourth, it will take account of the life of the project and be sufficiently flexible to respond to change. This might be, for instance, changing need due to demographic factors or new opportunities through technological advance and consideration of equality of opportunity and sustainable development.

1.5 This guide describes how to consider who will be involved in embedding equality of opportunity and sustainable development and how to ensure that expertise is appropriately applied. Experience has shown that projects work best where outcomes and objectives are clear and expertise is appropriately harnessed. This includes involving people affected by the project through impact assessment, getting the best from project board models and developing the project management arrangements at an early stage.

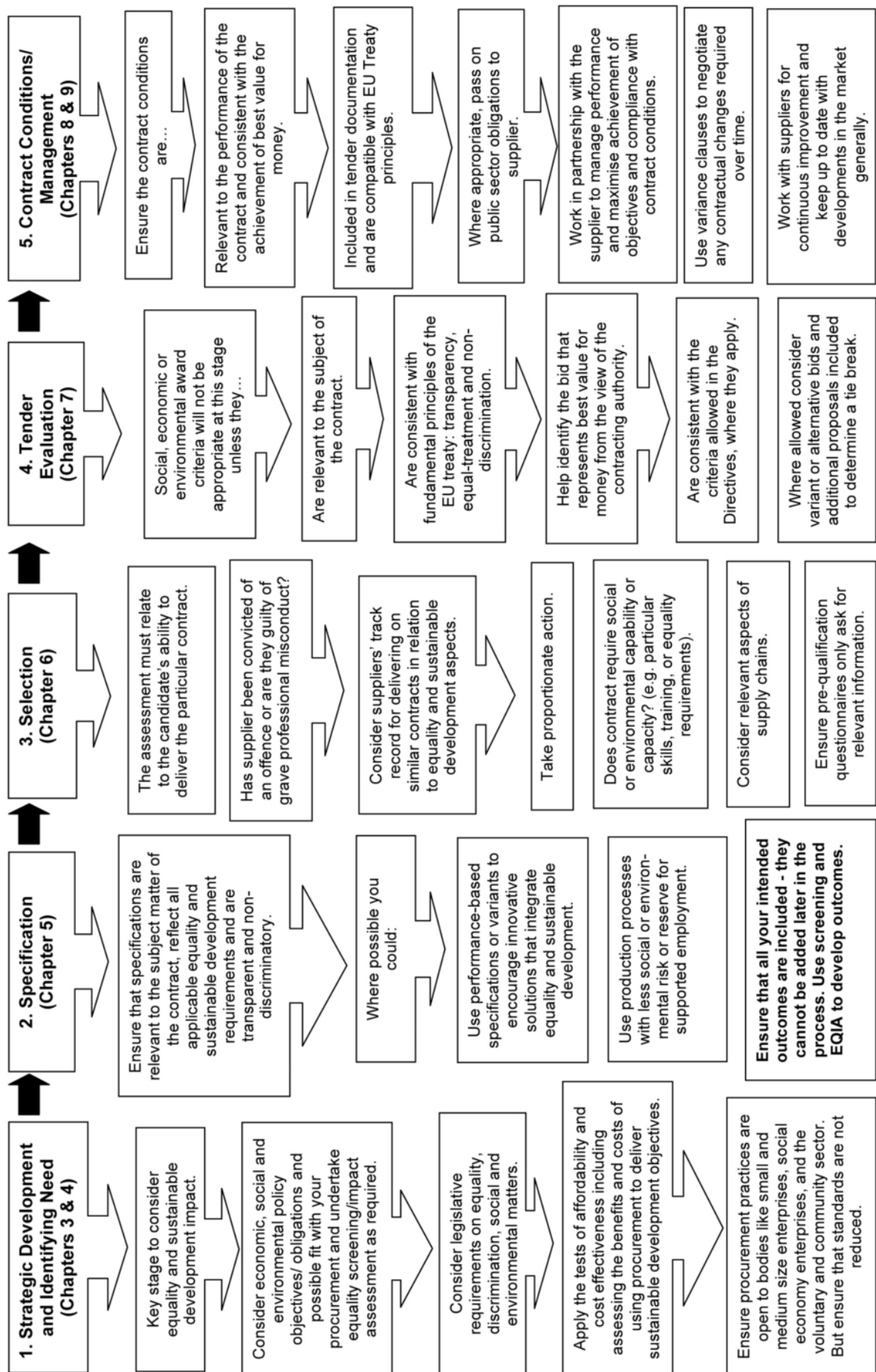
1.6 Equality of opportunity and sustainable development are integral to government policy as a whole and are cross cutting themes for all subsidiary policy and practice. This creates the imperative to embed equality of opportunity and sustainable development in the delivery of all public services.

- 1.7 The means of succeeding along this path are outlined in this guide. Public authorities have statutory duties for equality and good relations and Northern Ireland government departments and district councils have a statutory duty for sustainable development under Section 25 of the Northern Ireland (Miscellaneous Provisions) Act, 2006, (s 25). In this guide, the Equality Commission and CPD show how equality impact assessment (EQIA), the integrated impact assessment tool and adherence to the principles of public procurement can achieve best value for money through considering equality of opportunity and sustainable development in public procurement. The duties are explained in full in annex 1.

Using the guide

- 1.8 The importance of seeking out the opportunities for promotion of equality of opportunity and sustainable development is underlined by the extent of investment in public service and by the length of the contracts engaged. The guide acknowledges the particular opportunities for significant gains for equality of opportunity and sustainable development in large projects and those defined as complex but the principles apply generally and will assist public authorities in fulfilling their responsibilities under s 75 and s 25 (see annex 1) in their procurement practice. In respect of s 75 the guidance is based on the *Guide to the Statutory Duties* issued in 2005. That guide is subject to review and will be updated as necessary.
- 1.9 The scope for including equality of opportunity or sustainable development considerations is greatest and they will have most impact in the early stages of the project. Opportunities should be considered before a procurement begins and then in planning, scoping, deciding the strategic objectives, the specification, when writing the project documentation and during the performance of the contract.
- 1.10 Chapters 3 and 4 of the guide show how screening and equality impact assessment (EQIA) and the integrated impact assessment tool (IIA) can be used in policy development to identify the scope for equality of opportunity and sustainable development considerations. They show how equality of opportunity and sustainable development outcomes can be identified and planned for and then included in the subject matter of the contract.

This table is designed to illustrate how equality and sustainable development issues can be considered at each stage of the procurement process.
It should be used in conjunction with the relevant Chapters of this guide, which provide more detailed advice.



- 1.11 The guide describes how procurement practitioners and people working to promote equality, good relations and sustainability bring together their expertise in developing and managing a project which gives equality and sustainable development benefits.
- 1.12 Once a procurement project is determined the public authority will develop clear objectives to show the contractor what is required. The guide (chapter 5) shows how the specification sets outcomes, can be varied, allows value to be added by the contractor and relates to the subject matter of the contract while embracing aims, objectives and cross-cutting policies as well as legal obligations.
- 1.13 In chapter 6 the guide considers equality of opportunity and sustainable development in the selection process. It shows how information can be exchanged so the public authority knows about the company and the contractor learns about the project. It looks at the use of pre-qualification questionnaires and at the position of consortia and partnerships.
- 1.14 Chapters 6 and 7 describes how, particularly in complex contracts, procurement practitioners should consider equality of opportunity and sustainable development throughout negotiations with potential contractors, prior to signing the contract. Then, in the awarding of the contract, it describes how choices are made on the basis of most economically advantageous tender (MEAT).
- 1.15 The contract conditions will then reflect the desired equality of opportunity and sustainable development outcomes which have been specified at the outset or required as part of the delivery of the project and chapter 8 gives examples of how this should be considered.
- 1.16 Chapter 9 considers performance management with particular attention to how the Gateway and s 75 reporting mechanisms can be used to ensure that the project continues to deliver the equality of opportunity and sustainable development outcomes throughout its life.
- 1.17 The importance of working in partnership “shoulder to shoulder” with the contractor is emphasised as a positive way in which to deliver a successful contract and successful sustainable outcomes.

- 1.18 There is an overarching chapter 10 which advises on the importance of identifying the equality, as well as sustainability, issues relating to employment. This should happen at policy initiation, development, monitoring and evaluation stages. The chapter outlines the requirements to be met under the Transfer of Undertakings (TUPE) legislation in Northern Ireland. Where the project includes provision of services, equality of opportunity and sustainable development need to be addressed in the appraisal of any options being considered.
- 1.19 This guide uses the term public authority throughout, meaning a public authority designated under s 75 and/or subject to the s 25 duty, rather than contracting authority in procurement terms. It recognises too, that a responsible public authority may not always be the contracting authority, for example, in bundles of projects.
- 1.20 Text boxes throughout contain examples of good practice and positive outcomes in procurement exercises. They aim to bring the guidance to life, illustrating what can be achieved through application of equality and sustainable development principles. The guide is illustrated by examples and case studies showing the procurement process in operation. There is other useful material on the Equality Commission and CPD websites, www.equalityni.org and www.cpdni.gov.uk
- 1.21 The guidance is authoritative but not a definitive guide to procurement and employment law. The law constantly changes and legal advice should always be sought on these matters.

Overview and general notes for other users

- 1.22 While the guidance is written primarily for public authorities - specifically those designated under s 75 of the Northern Ireland Act 1998 - it will be of use to others with an interest in public sector procurement. Wider stakeholders in the procurement process include:
- those wishing to enter into contracts with public authorities, whether in the private or non-governmental sectors, or indeed other public authorities

- those in non-governmental organisations, trade unions, other social partners or individuals wishing to contribute to policy making and good service delivery.

1.23 General areas of interest to other stakeholders are listed below, as well as some matters of particular interest to those who wish to enter into contracts with public authorities.

Engaging with public procurement

1.24 Although this guidance is aimed at public authorities, others will also find it useful. It is important to understand the relationship between the public sector and their contractors. Responsibilities under s 75 remain with the public authority. Therefore, while any contractor with whom a public authority contracts will have equality conditions and sustainable development considerations built into the terms and conditions, it is the public authority that has to ensure compliance with s 75 and the statutory duty on sustainable development. Complex projects such as those involving PFI represent a large investment of public money over time in the private sector, and voluntary and community groups can help to ensure that this money is spent according to the needs of local communities.

Transparency and accountability

1.25 Public procurement is regulated at European and national level with financial thresholds set for the application of the different regulations. The processes to procure goods, facilities or services are based on various principles, particularly fairness, non-discrimination and transparency. S 75 provides a mechanism through which public authorities are accountable. Procurement projects, as well as the procurement function, should be covered in equality schemes.

Consultation

1.26 This guidance advises public authorities on the best approach in incorporating equality of opportunity and sustainable development considerations and s 75 obligations into their procurement process, including when and how to screen and, if necessary, conduct an equality impact assessment (EQIA) on their policies. It is essential

that public authorities consult effectively, including with relevant voluntary and community groups on their proposals and that there is meaningful engagement to ensure that the needs of people are reflected in the decision making process.

- 1.27 This guide applies equally to large and small procurement. However in the case of larger and complex developments it recommends that for these in particular consultation happens at different stages of decision making, as different levels of detail emerge. This should ensure a number of opportunities for groups and people affected by these complex procurements to engage with the process.

Changing conditions during the life of the contract

- 1.28 Some projects have a long life span, particularly PFIs, and it is possible that conditions will change in an area which will affect the contract, eg changing areas and communities may require that greater consideration be paid to the needs of older people where ten years previously younger people had been those most in need of the services of the contract. The public authority should build into its contract arrangements an obligation to consider these changes and use the mechanism to alter the contract accordingly. Those in the voluntary and community sector are ideally placed to keep abreast of these changes and to ensure that the needs of the community and their interest groups are being properly considered and fed back to the public authorities who operate in their area.

Monitoring

- 1.29 Public authorities will have contract arrangements in place to monitor the contractor's compliance with the contract terms, including equality of opportunity and sustainable development requirements. However, if it becomes apparent that a public authority is not acting in accordance with s 75 in the discharge of its functions because of the actions of a contractor, any complaint would be to the public authority in the first instance. If the voluntary and community sector is aware of the partnership responsibilities of the contractors and the public authorities, the sector could alert the public authority to any issues at an early stage for resolution.

Preparation for contracting with Government

- 1.30 While this guidance has been written primarily for public authorities, it will be useful for potential contractors who want to engage in procurement contracts from the public sector. Experience shows that taking equality of opportunity and sustainable development into consideration enhances business generally, but it is essential for a contractor who wishes to enter into a contract with a public authority. The guidance shows what the authority must consider and allows the potential contractor to prepare to provide that by developing an understanding of the equality of opportunity and sustainable development responsibilities. A contractor can then consider what they can offer and how they can work more effectively in partnership in complying with the contract's terms and conditions.

Statutory duties and contractors

- 1.31 Equality of opportunity and sustainable development should not be seen as an add-on to a contract. An organisation which hopes to be selected to tender, or to be awarded public authority contracts, will be expected to meet the equality of opportunity and sustainable development requirements for the particular contract.
- 1.32 The public authority has to comply with its equality scheme and with the sustainable development duty. If an organisation is delivering a public function or service on behalf of a public authority, that authority must ensure that it continues to meet the requirements of the duties.

How will equality of opportunity and sustainable development be included in public authority contracts?

- 1.33 The public authority will be considering these issues from the outset. The information gained by public authorities to complete screening and EQIAs will be available setting out any impacts identified on equality groups and their own strategies on equality of opportunity and sustainable development will be in the public domain.
- 1.34 The scoping of the project will determine the subject matter of the contract and the extent to which equality of opportunity and sustainable development are objectives. This will in turn determine what needs to be done in relation

to equality of opportunity and sustainable development at each stage of the procurement process.

Equality of opportunity and sustainable development in the selection of candidates

1.35 These should be part of selection, depending on the subject matter of the contract, including:

- technical ability in the assessment of candidates' own policies and practices and track record
- in the specification of the project and therefore at the dialogue and tender evaluation stages.

Incorporating equality of opportunity and sustainable development into a tender submission

1.36 As much information as possible should be sought about the background and context of the proposed contract as well as the public authority's equality of opportunity and sustainable development objectives. Any potential contractor should look for:

- the authority's equality scheme
- the Sustainable Development Strategy for Northern Ireland and the public authority's action plan
- facts about the population likely to be affected by the contract and any information about user need
- how the goods, works or service are currently provided and the results of any monitoring, consultation or other assessment, including EQIA, of the impact on equality of opportunity
- the terms and conditions of any staff who will transfer under TUPE, including protection against discrimination and rights to equality of opportunity and any policies and codes of practice with regard to protection of terms and conditions
- requirements in the contract specification to carry out certain measures in relation to equality of opportunity or sustainable development, eg monitoring a service for any negative impacts it may have on these issues or any training placements to be made available.

Will the contract conditions impose any equality or sustainability obligations?

1.37 They should do:

- generally, for requirements in relation to the project
- in specifications for the contract requirements
- in other economic, social or environmental considerations as set out in contract conditions (eg employment for the unemployed).

Where a contractor is successful, what do they need to do to meet the equality of opportunity and sustainability requirements of the contract?

1.38 The contractor will want to establish a positive working relationship with the appropriate representatives of the public authority. The following questions will help identify specific areas to discuss:

- Is the public authority able to offer any support such as advice on equality training?
- How will responsibilities for monitoring equality of opportunity and sustainable development performance be divided between the contractor and the authority? What is the authority planning to monitor?
- In what form, and how often, does the public authority expect the contractor to report monitoring responses?
- What are the respective roles in dealing with complaints of discrimination from employees, subcontractors, users of the goods, works or service in question, or others?
- How will conflict be resolved? For example, if there is disagreement about the implications of monitoring data or other measurements of the contractor's performance.
- Does it make business sense to introduce further arrangements to promote equality of opportunity or sustainability on a voluntary basis such as company voluntary agreements?

1.39 This will set the tone for the long term relationship and create the right environment to deliver the long-term outcomes of the procurement contract.

Complaints

- 1.40 CPD and the Centres of Procurement Expertise (CoPEs) have formal complaints procedures should an affected individual believe that the service provided by one of these organisations has been unsatisfactory. If a complainant remains dissatisfied, having heard from the organisations concerned, they may ask a Member of the Legislative Assembly (MLA) to refer their complaint to the Northern Ireland Ombudsman for investigation.
- 1.41 CPD's formal complaint procedure is incorporated into its Customer and Supplier Charter and can be viewed on the CPD website. Similarly complaint procedures for CoPEs can be viewed on their websites.
- 1.42 There is also a s 75 complaints process. Should an affected individual believe that a public authority has failed to comply with its equality scheme commitments, they should pursue a complaint regarding scheme implementation with the public authority or contact the Equality Commission for further advice. See the Equality Commission's ***Guide to the Statutory Duties***.

INTEGRATING EQUALITY OF OPPORTUNITY AND SUSTAINABLE DEVELOPMENT INTO PROCUREMENT

2

INTEGRATING EQUALITY OF OPPORTUNITY AND SUSTAINABLE DEVELOPMENT INTO PROCUREMENT

This chapter considers the reasons for the equality and sustainable development duties and, as public procurement provides a valuable and compelling opportunity for change, shows the measures which can be used to integrate equality of opportunity and sustainable development into the procurement of public services.

Equality

- 2.1 Inequalities exist in society for many reasons. As well as discriminatory practices there can be barriers to equality from attitudes, from lack of educational or training opportunities or attainments, from social deprivation or because of personal economic circumstances.
- 2.2 Some change has taken place but inequality still remains:
- effective access to the workforce for disabled people is still denied
 - women are still over represented in low paid and unskilled work but under represented on public bodies
 - most Traveller children leave school with no or few qualifications
 - Travellers and other ethnic minorities have grave difficulties in securing adequate health care
 - the number of reported homophobic, racist and sectarian attacks continues to increase
 - there are continuing differentials in employment and occupational profiles based on community background
 - inequalities have arisen in certain sectors of the workforce where labour and skills demand exceeds supply in a local area, with a need for comprehensive workforce planning to address appropriately current and future demands
 - women still experience unequal pay in many sectors and through working patterns
 - there are persistent practices which restrict equality of access to health and social care through the application of age based criteria.
- 2.3 It is imperative to work to remove inequalities, changing society so everyone enjoys justice and dignity and has equal opportunity to reach their full potential.

- 2.4 Some improvements have been made, but public authorities and others must continue to work to eliminate inequalities and make sure no more develop. In addition to compelling issues of social justice, approaching procurement with an equality perspective ensures good decisions and service delivery, involving people directly affected. It allows public authorities to meet the needs of diverse communities and, as necessary, make positive changes for society.

Sustainability

- 2.5 At the start of the 21st century countries across the world are facing up to the global threat of unsustainable development that risks causing damage to such an extent that the planet would no longer have the capacity for human life¹.
- 2.6 Unsustainable development across the world is overexploiting resources and creating pollution, changing habitats and driving species to extinction. It is creating social problems which are exacerbated by the inequalities in health, wealth, education and employment which accompany it.
- 2.7 The most widely known definition of sustainable development is *Development which meets the needs of the present without compromising the ability of future generations to meet their own needs*².
- 2.8 In Northern Ireland, as in the rest of the UK, the challenge of delivering sustainable development will be pursued in an integrated way through the creation of a sustainable, innovative and productive economy that delivers high levels of employment; and through the creation of a just society that promotes social inclusion, sustainable communities and personal wellbeing. This will be done in ways that protect and enhance the physical and natural environment and through using resources and energy as efficiently as possible. Procurement has a clear role to play within the process. The Sustainable Development Strategy for Northern Ireland, underpinned by the Sustainable Development Implementation Plan, sets out the first steps in tackling these challenges.

1 First Steps Towards Sustainability - A Sustainable Development Strategy for Northern Ireland 2006

2 Our Common Future (The Brundtland Report) Report of the 1987 World Commission on Environment and Development

Public authority statutory duties in relation to equality

- 2.9 Public authorities have statutory duties to promote equality of opportunity and good relations (s 75) (see annex 1) and, in addition to this, departments and district councils also have a statutory duty to deliver sustainable development (s 25) (see annex 1). The equality and good relations duties apply to all designated authorities and the duty of sustainable development applies to departments and to councils. The Equality Commission and CPD (see annex 2), as the bodies responsible for overseeing the principles and practice of s 75 and public procurement policy respectively, have prepared this guidance to assist all such public authorities, departments and district councils in meeting their responsibilities under these statutory duties in their procurement practice.
- 2.10 Public authorities in Northern Ireland which have been designated under Section 75 of the Northern Ireland Act 1998 (s 75) are required to make equality and good relations considerations central to their policy making and to prepare an equality scheme to show how they will promote equality of opportunity in carrying out all their functions, powers and duties relating to Northern Ireland.
- 2.11 The scheme will also describe the public authority's procedure for examining its policies to identify those which will be subject to full equality impact assessment (EQIA) and how they will be prioritised. This is known as screening. Its purpose is to identify those policies which are likely to have a significant impact on equality of opportunity. It requires a systematic review of policies.
- 2.12 The Equality Commission's existing guidance on s 75 clearly identifies procurement as a function of public authorities and sets out the expectation that this function is screened in and an EQIA is carried out³. Those functions and policies delivered through or as a result of procurement must also be screened and any EQIA carried out.
- 2.13 Purchasing policies are an integral aspect of the way in which an authority carries out its functions. It is important the public authorities take steps to ensure the promotion of equality of opportunity in relation to purchasing. Public

authorities should ensure that their current purchasing policies are consistently applied. If any purchasing practices come to light that fall outside the current policy, or if changes to the policy are proposed, these must be screened and subject to EQIA if necessary in line with the approved equality scheme.

Equality impact assessment

Equality impact assessment (EQIA) is a tool for systematic examination of policy to ensure that promotion of equality of opportunity is embraced throughout public policy making.

“The primary function of the EQIA is to determine the extent of differential impact of policy upon the groups and in turn whether that impact is adverse, that is, whether it has a negative impact on one or more of the nine equality categories. If it is decided that the policy has an adverse impact, the public authority must consider measures which might mitigate the adverse impact, and alternative policies which might better achieve the promotion of equality of opportunity.

The seven step process involved in conducting an EQIA is not an end in itself. The aim of the assessment is the better promotion of equality of opportunity. The outcomes from an enhanced policy are of primary concern.

In the Procedure of Conduct of Equality Impact Assessments, outlined in annex 1 of the Guide to the Statutory Duties, the seven separate elements of an EQIA are as follows:

1. Defining the aims of the policy.
2. Consideration of available data and research.
3. Assessment of impacts.
4. Consideration of:
 - measures which might mitigate any adverse impact; and
 - alternative policies which might better achieve the promotion of equality of opportunity.
5. Consultation.
6. Decision by public authority and publication of report on results of EQIA.
7. Monitoring for adverse impact in the future and publication of the results of such monitoring.”

Source: Guidance for Implementing Section 75 of the Northern Ireland Act 1998, ECNI, revised 2005

Statutory duty in relation to sustainable development

- 2.14 Section 25 of the NI (Miscellaneous Provisions) Act 2006 (s 25) introduces a statutory duty for sustainable development. In the first instance, the duty falls on Northern Ireland government departments and district councils. The duty is intended to ensure that the principles of sustainable development underpin all decisions and actions. The legislation also requires that local authorities have regard to guidance issued by Northern Ireland Departments. In due course, consideration will also be given to what other bodies should be designated.
- 2.15 An integrated impact assessment tool (IIAT), described below, which incorporates sustainability criteria to ensure that all new or revised policies take full account of sustainable development has been developed by the Office of the First Minister and Deputy First Minister (OFMDFM). This provides a more detailed assessment framework which will in turn complement any strategic assessment required under the Strategic Environmental Assessment Directive. It should be noted that the IIA supplements, and does not replace, the requirement to screen and carry out equality impact assessment as screening determines.

Integrated impact assessment

The integrated impact assessment (IIA) is a good practice tool designed to help assess the impact of a policy. Anyone in government embarking on a policy development exercise should find the IIA useful. It is intended to provide both a mechanism for screening and a format for presenting the results of more detailed impact assessment of a policy.

When to use it

The best time to start using the IIA is early on in the policy process. Appraisal of this kind is an essential component of good policy making. It is likely to be useful to use the IIA both at an early stage of the policy process and also from time to time later on, revising it as further information becomes available. The user can benefit from the IIA by using it as evidence of having gone through a robust process of policy development, taking the widest possible range of impacts into account. The summary table that results can provide a useful

digest of impacts to accompany (for example) a submission to ministers or a public consultation.

The IIA is primarily intended to assess the impact of policies. It can also be applied to individual projects where this is appropriate. The IIA also helps with developing the framework for later evaluation of policy and helps identify what data need to be collected in order to monitor a policy's actual impacts and effectiveness.

In undertaking an impact assessment, it is important to take account of the principle of proportionality. The detail and extent of the impact assessment to be carried out should reflect the significance of the policy and of the impact in question. In some cases, the screening mechanism within the IIA will help you to decide that no further investigation of a particular type of impact is necessary for your policy. In others, more detailed work will be required.

Source: OFMDFM

Northern Ireland Public Procurement Policy

2.16 In approving the Public Procurement Policy for Northern Ireland the Executive Committee recognised that the primary objective of the Policy should be the achievement of 'best value for money' which is defined as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements" and allow for the inclusion, as appropriate, of sustainable development goals within the procurement process. When a procurement process results in the 12 guiding principles, set out below, being satisfied that process can be said to have resulted in best value for money being achieved.

Twelve principles of public procurement

- *Accountability* - effective mechanisms must be in place in order to enable Departmental Accounting Officers and their equivalents in other public bodies to discharge their personal responsibility on issues of procurement risk and expenditure.
- *Competitive supply* - procurement should be carried out by competition unless there are convincing reasons to the contrary.

- *Consistency* - suppliers should, all things being equal, be able to expect the same general procurement policy across the public sector.
- *Effectiveness* - public bodies should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
- *Efficiency* - procurement processes should be carried out as cost effectively as possible.
- *Fair dealing* - suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
- *Integration* - in line with the Executive's policy on joined up government, procurement policy should pay due regard to the Executive's other policies, rather than cut across them.
- *Integrity* - there should be no corruption or collusion with suppliers or others.
- *Informed decision making* - public bodies need to base decisions on accurate information and to monitor requirements to ensure that they are being met.
- *Legality* - public bodies must conform to European Union and other legal requirements.
- *Responsiveness* - public bodies should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
- *Transparency* - public bodies should ensure that there is openness and clarity on procurement policy and its delivery.

Source: Public Procurement Policy, Department of Finance and Personnel, May 2002

2.17 In addition, in procurement through public private partnerships (PPP), especially those using private finance initiatives (PFI), the length of the contract, range of relationships in consortia and the number of changing stakeholders make for special challenges. As part of the work of the review of public procurement, the Department of Finance and Personnel (DFP) set up a working group on PPP and undertook screening and EQIA of the PPP policy which is the standard policy applied in Northern Ireland.

Special Contracts Arrangement Scheme

The revised Northern Ireland procurement policy included a focus on the Special Contracts Arrangement Scheme, designed to help workshops for disabled people to compete for public contracts. It applies only to contracts below the threshold level for EU rules and is open to workshops throughout the EU.

The Public Contracts Regulations 2006, however, widen the scope on supported employment by enabling public authorities to reserve specific contracts (including those above the EU thresholds) to contractors that operate supported factories, businesses or employment programmes.

The provision of the Special Contracts Arrangement Scheme and the provisions on supported employment which permit affirmative policies to solve particular employment difficulties can be designed and implemented within EU rules.

Equality of opportunity and sustainable development in procurement

- 2.18 The guide identifies how equality of opportunity and all three pillars of sustainable development policy (encompassing social, economic and environmental goals) can be incorporated into each stage of the procurement process and who should do it. It is important to recognise that procurement is used in its widest sense from the initial concept, through the design and contractual stages, to the implementation and ongoing performance management stages. While the guide covers public sector procurement in general, it focuses on the large value, multi-faceted projects subject to the European procurement rules (see annex 4) where there is potential for the most significant gains.
- 2.19 Having first considered the relevance of procurement to considerations of equality of opportunity and sustainable development the guide then more fully explores the context and the legislative and policy framework. Workforce matters are given separate attention in chapter 10. The guide presents an overview of the procurement process (chapter 3), and follows the various stages in chapters 4 to 9.

- 2.20 It is crucially important that equality is considered at all stages in the process of planning procurement and the life of the contract and sustainable objectives are integrated to achieve direct and indirect benefit locally and globally. Decisions and actions at any stage and throughout a procurement project have an impact on how fully the equality of opportunity and sustainable development objectives can be embraced during the contract. An aide-memoire which summarises the steps is set out at page 10.
- 2.21 In the context of its overall objectives, a public authority will decide what is to be procured and set the specification accordingly, and ensure that its requirement is subject to the normal public expenditure tests of need, affordability and cost-effectiveness. It is at this early specification stage that there is most scope to consider equality of opportunity and sustainable development issues. It is important to remember that the evaluation process to determine best value for money in procurement - *“the optimum combination of whole life cost and quality (fitness for purpose) to meet the users’ requirements”* - applies to the award stage of the procurement process (see chapter 7).
- 2.22 Issues and opportunities associated with equality of opportunity and sustainability include, for instance:
- design impact on local areas and individuals
 - the context of inequality and multiple deprivation
 - current and future service delivery
 - employment and workforce issues
 - regeneration and local economic impact
 - location
 - development of infrastructure, skills and employment
 - use of materials in a sustainable way
 - impact on the environment
 - unemployment.

- 2.23 Equality of opportunity and sustainable development should also be a factor in considering the procurement route itself to ensure the best choice.
- 2.24 Each person in the development and management of a project should understand how his or her role affects stages of the project. This includes when objectives are set, decisions made and changes adopted and how it has an impact on the capacity of the project to promote equality of opportunity and sustainable development. The right people need to be involved and to be familiar with the whole process. In larger projects this may mean the creation of a project board (see page 33).
- 2.25 The project board can also assist in clarifying the role of the lead body or the role of different bodies if, for instance another body is acting as the contracting authority on behalf of a designated public authority.
- 2.26 The consideration of equality of opportunity and sustainable development in EU procurement processes - particularly at the selection and evaluation stages - is complex and subject to the EU rules and complex case law. Whilst this guide is authoritative, authorities should take legal advice on these issues when applying them to specific projects.
- 2.27 The successful project is the one where the collective understanding of the project and the wide involvement of relevant people works best. The guide shows how procurement can be a means to ensure that equality of opportunity and sustainable development are mainstreamed throughout the functions of public authorities.

The importance of health promotion through healthy eating has been clearly recognised as a public policy matter. The procurement of school meals services is a way to further this policy direction. There are clear links to equality as certain groups of school age children and young people are more likely to have a poor diet than others.

Planning the delivery of the school meals service by using the s 75 processes will clearly identify the user groups and their needs.

In his foreword to the Sustainable Development Strategy for Northern Ireland the Secretary of State stated that part of Government's response to the challenges posed by sustainable development will be "to use the annual public procurement budget of £1.8 billion as an opportunity to lead and galvanise change in other sectors, to influence markets and to achieve a real shift towards sustainable development."

Source: First Steps towards Sustainability: A Sustainable Development Strategy for Northern Ireland - May 2006.

Taking equality into consideration will contribute to the delivery of outcomes. While one may not necessarily be directly related to the other, ensuring that the services are procured to a specification that sets out requirements on the transfer of any staff, identifying user needs and the quality of the service to be delivered, and that the decision is made on the best overall value, not lowest cost, then the outcomes should be delivered, with no adverse impact to that workforce.

Source: Report on a Formal Investigation into Competitive Tendering in Health and Education services in Northern Ireland, Equal Opportunities Commission NI, 1996.

When the London Borough of Barking and Dagenham let the contract for housing repairs and maintenance, the contract set objectives on regeneration of the local economy, promotion of equality of opportunity and celebration of diversity, raising pride in the Borough and making it a cleaner, safer and greener place.

Innovative thinking, ambition for change, flexibility throughout the project and imaginative partnership working are essential to such projects. In this case, an effective partnership board has been key to successful outcomes.

Wind turbine at Antrim Area Hospital

Antrim Area Hospital, part of the United Hospitals Trust, is one example of how Northern Ireland is taking on the responsibility of the global issues of today by installing its own wind turbine.

The wind turbine, which helps generate enough electricity to power a major Northern Ireland hospital throughout the night, will have recouped the hospital's outlay by the end of the year. The 660kW wind turbine generator provides nearly 1,900,000 units (kWh) of electricity annually, this equates to annual electricity savings of over £90,000. This money will be redirected straight back into patient care.

Raymond Milnes, chairman of the United Hospitals Trust, said they are "*very proud*" of the 40 metre high energy turbine at Antrim Area Hospital. He said: "It has the potential to provide enough electricity for the hospital during the night, and two-thirds of the power needed during the day. Not only will it pay for itself by the end of the year, saving the trust a considerable sum on electricity, but it emphasises our commitment to being an environment friendly organisation."

STRATEGIC DEVELOPMENT

3

This chapter maps out the project and the stages which are the best options for promoting equality of opportunity and sustainable development goals in a project. It shows how it is essential that, from the outset of the policy development stage, a clear evidence base for considering equality and sustainability and setting objectives is established. It identifies early decision points in the processes where such issues should be considered.

Roles, responsibilities and decision making

- 3.1 One of the guiding principles of sustainable development is to secure a strong, healthy and just society. In this regard, relevant public authorities in Northern Ireland must ensure that they are meeting their equality and sustainable development duties in identifying the outcomes they wish to achieve during the course of, and at the conclusion of, a procurement.
- 3.2 In many cases a strategy is developed and then the procurement project itself and the contract management are transferred to another authority. Equality of opportunity and sustainable development should be considered within each authority, at the scoping and strategic planning stage and at implementation and contract management stages. Each authority at each stage needs to satisfy itself that it has met its obligations and has acted in a way that does not inhibit next stage decisions.
- 3.3 The final responsibility for equality of opportunity and sustainable development lies with the public authority and therefore it needs to be sure that all equality and sustainability obligations are met and that such considerations are built into the final contract in a way that is compliant with EU rules, or procurement policy generally for those below the EU thresholds.
- 3.4 It should be borne in mind that equality of opportunity and sustainable development apply to all aspects of a project - goods, facilities and services issues and workforce matters.

Organisational arrangements

- 3.5 In considering how best to take projects forward through planning, implementation and execution an authority will be looking for ways to bring together the relevant people. This must include contributions from those with knowledge and experience of equality and sustainability issues.
- 3.6 Experience has shown that successful projects are the ones which have found the best ways to do this. Ownership, a feeling of collective responsibility, understanding of the principles and clarity of role are most important. The project board or group should be creative in whom it involves, including the officers who will be taking all different aspects of the project forward. The link between development and contract management is a crucial pivot for the project.
- 3.7 In larger and more complex projects, including PPPs, a board which is representative of all relevant interests for all stages of the project can protect the project from diverging visions. The lead body can use it to enhance accountability across the project. It will also be of use in supporting each of the authorities involved in meeting their statutory duties.
- 3.8 Many large and complex projects over the EU thresholds will have a Senior Responsible Owner (SRO) appointed to take overall responsibility for the project.

Procurement involving several public authorities

- 3.9 If more than one public authority is involved, the project board should consider allocating lead responsibility to one authority. This is likely to be the authority most closely linked to the SRO, where applicable. Where responsibility for overseeing and implementing policies and programmes lies with more than one body, there is a need for clear lines of accountability which provide transparency as to who is accountable for what and to whom. This is normally done in the form of a Memorandum of Understanding (MOU) to clarify responsibilities and accounting arrangements. Further advice on this is contained in Finance Directors' letter, FD (DFP) 08/06 Accountability for Joined up Projects.
- 3.10 Each authority will have to ensure that its interest in the project is in full compliance with its equality scheme commitments and sustainable development duty. It may be

necessary to have a different lead authority for certain stages. Having a clearly defined lead authority identifies ownership for equality purposes and establishes clear accountability and audit trails, assisting project management. It is also useful should any complaint, regarding equality scheme commitments or the procurement, be received.

Project Board

Purpose

Experience has shown that successful procurements are those that involve all the relevant people at all stages and in which communication is good. Large procurements will have a project board but it is worth considering how best to bring the people involved in the project and its management together in all procurement. In addition to ensuring that all the available imagination and skill is available, the project board model affords an opportunity to avoid conflicting financial demands, time constraints or other limiting factors.

Composition

At whatever stage the project board is established, equality, sustainable development and human resources colleagues need to be consulted, to ensure that the equality and sustainability considerations are part of the ongoing discussions and project development. The board is likely to include them, but they are not the only relevant people. Each public authority will need to establish and review membership of the board making any necessary adjustments to meet the changing needs of the project.

Training

Training needs analysis of the entire project board team will assist in ensuring that all players have had appropriate training on equality generally and s 75 specifically as required under the equality scheme as well as knowledge of sustainable development issues and IIA. This will ensure that both equality and sustainable development considerations are most effectively taken into account by the board. Advice and training should also be sought for fulfilling equality scheme requirements, such as for screening and EQIA/IIA.

Responsibilities

Time should be committed to establishing clear roles for those on the project board. Unambiguous terms of reference which make explicit reference to the need to promote equality of opportunity and sustainable development will be necessary. The chairperson of the board or SRO appointed to take overall responsibility for delivering the project should give a signed declaration when the business case or specification is agreed which states that equality of opportunity and sustainable development have been given full consideration throughout the project. This will contribute to the audit trail in decision making. Consideration needs to be given to providing reports throughout the project.

Gathering information on equality of opportunity and sustainable development considerations

An initial screening exercise and, where required, an EQIA/IIA will have to be carried out when options are being identified. It is essential that the project board assesses as early as possible the quality and quantity of information on equality of opportunity and sustainable development which is held and potential gaps or areas where information has yet to be gathered. The board should also put in place arrangements for developing information gathering. This may take the form of consultation before screening. This will clarify the board's position on equality of opportunity and sustainable development for those working on the project at a later stage when options are agreed and the procurement project developed and will assist in the early identification of equality impacts.

Information

The project board will consider how to ensure that all those involved in the project are given a clear steer on the equality considerations of the project. This could for example include providing guidance on the equality aspects to be included at each stage.

In preparing for consultations public authorities should consider how best to impart all of the pertinent information relating to potential policy options to enable meaningful consultation to take place. Consultation should be undertaken in accordance with Equality Commission guidance.

What role do consultants or external advisers play?

- 3.11 Where consultants are involved at any stage in the preparation of strategic options, the development of the procurement programme or the projects themselves, the responsibility to meet the statutory duties is not transferred. In these circumstances the public authority must be sure that the statutory duties are being met in accordance with its equality scheme.
- 3.12 The public authority should consider how to ensure that all people concerned are aware of the equality and sustainability requirements and the commitments in its equality scheme. Consultants or advisers should be briefed accordingly.

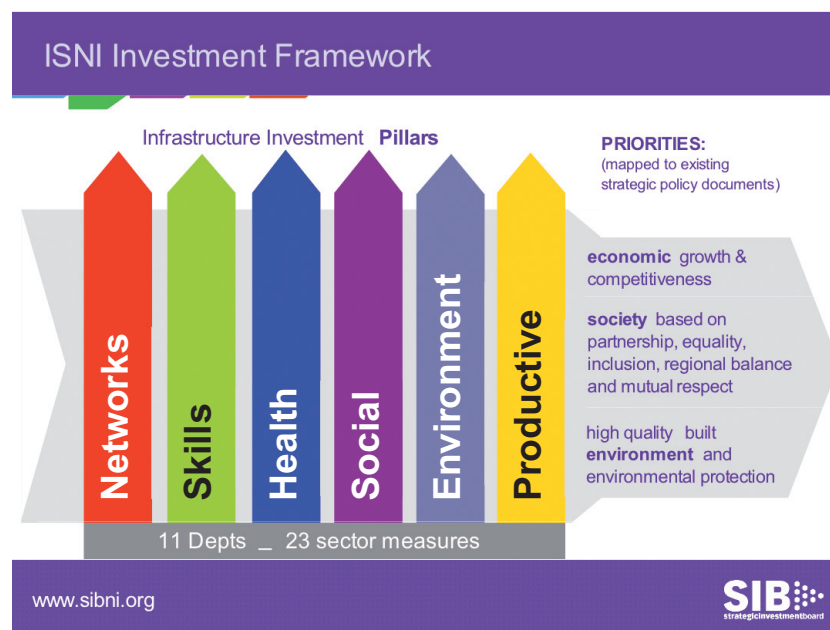
Delivering equality and sustainable development outcomes

- 3.13 As well as considering equality of opportunity and sustainable development outcomes at the strategic development stage, they need to be considered from the beginning of the procurement process and at all stages thereafter.
- 3.14 The process recommended in this guidance is based on the identification of key decision points. This is to help identify when screening should occur in the early stages and where objectives should be checked later. To ensure the appropriate outcomes of the procurement are identified and achieved, and objectives set accordingly, screening and any EQIA/IIA should be done at more than one point where details are decided at different points in the progression of procurement.
- 3.15 Compliance with legal requirements such as non-discrimination will be a requirement of all contracts. The scope for including specific equality of opportunity or sustainable development outcomes is broadest when identified at the early stages. Opportunities should be considered: before a particular procurement begins; and then in planning; when deciding the strategic objectives; the specification; when writing the contract documentation; and when the contract is being performed.
- 3.16 When a decision is taken that will limit future options on equality or sustainability considerations (eg options to

mitigate or use alternative policies), then an audit trail or evidence base should be available to show sustainability and equality have been taken into account and justification for the reasons for the decision given.⁴

What is the starting point?

- 3.17 It is simply too late to start considering equality of opportunity and sustainable development when the contract is being drawn up. They need to be thought about much earlier, as soon as the need for the investment or purchase is identified. Often, it is consideration at these early stages - concept and strategy development - that makes more impact in terms of equality of opportunity and sustainable development. In other words consideration needs to be given to what other good might this procurement achieve?
- 3.18 The Investment Strategy for Northern Ireland (ISNI) diagram below, shows the six ISNI investment pillars with the three cross-cutting themes which embrace equality of opportunity and sustainable development and show how they can be implemented in the investment framework.



Source: Strategic Investment Board 2007

- 3.19 Procurement and the decisions on the best procurement routes are established by various means, such as the legal, political and economic priorities of any given time.

4 See page 18 of s 75 guidance

- 3.20 The starting point for any strategic development may be:
- research recommendations
 - political commitments
 - Ministerial announcement
 - cumulative actions resulting in a specific commitment to take action
 - public pressure.
- 3.21 The assumption is that there will be a policy development stage, which will involve an assessment of the policy objectives, identification of the options to meet the objectives and a project in procurement terms. There will be a full assessment of these options and how best to achieve the business objectives.
- 3.22 This may, for example take the form of:
- developing a 15 year strategy for roads
 - a report making recommendations on how to prioritise a known budget for improvements to schools buildings
 - a review of acute health services across the region, and recommendations made on the siting of any new units.
- 3.23 At this stage relevant sustainable development objectives and equality obligations under s 75 must be considered in order to shape the strategy, outcomes and objectives. If the information being used to prepare options and strategy identify relevant information and issues arising on s 75 equality categories and provide details consistent with the equality and sustainable development duties, then these should be clear in the outcomes and objectives.
- 3.24 At this stage creation of the evidence base for good decision making begins. For example, if a consultant is to be asked to make recommendations regarding criteria for prioritising spend for capital investment, such as schools, hospitals or water treatment works, consideration should be given to how equality of opportunity and sustainable development are built into the terms of reference. Similarly, if research is being commissioned to inform early strategic options or development, then equality of opportunity and sustainable development should be considered in the terms of reference.
- 3.25 Therefore, at this stage, the question is whether the public authority has sufficient information on equality and sustainability to put forward a fully considered set of strategic options.

Checklist

It is important to look at the opportunities presented to promote equality of opportunity and sustainable development when defining the strategy and subsequent project. S 75 processes and the IIA are the framework to do this. Projects may offer wider opportunities to achieve equality of opportunity and sustainable development objectives.

Check the equality scheme

Every designated public authority has to produce an equality scheme as part of its s 75 duties. The key question which a public authority should be asking is “What are we doing, or what do we plan to do to ensure that policy options comply with our equality commitments and our agreed equality scheme?”

Check the Sustainable Development Strategy for Northern Ireland obligations and underlying Implementation Plan.

Government has set out clear targets and objectives in both the strategy and the underlying implementation plan. Check that all procurement projects are compliant with this. Ask questions of the right people in the authority and beyond. In order to ensure that equality of opportunity and sustainable development considerations are effectively built into the procurement project from the start of the policy development stage, it will be necessary to ensure that possible options are checked out with the authority’s equality team and also its human resources team and others who have a knowledge of equality issues as well as Sustainable Development Champions within. It would be useful to sound out others with experience in equality and sustainability matters from elsewhere to ensure that all options are identified.

Ownership (see also 4.12)

If more than one public authority is involved, consideration should be given to giving the lead responsibility to one authority. It may be necessary to have a different lead authority for certain stages of the project. The lead authority will have to ensure that the project is in full compliance with its equality scheme and communication and team working will have to be such that all the public authorities are satisfied that they are fulfilling their statutory duties on equality, good relations and sustainable development.

Training

Have the right people been trained on equality and sustainable development issues? There will be a training schedule in the authority arising from its equality scheme and which should ensure that everyone involved in the process has participated in training appropriate to their role in the project, both general equality training and training in specific processes including screening, EQIA and the IIA.

This might include reading, on-line learning, research and skills exchange. It is also important to be mindful that equality training and training in the assessment processes may need to be delivered on a project basis to supplement standard training schedules.

Setting up arrangements and gathering information on equality and sustainability development considerations

Researching options for the strategy will require use of various sources of information. The research or other sources should be checked to see if they consider s 75 categories or equality or sustainability generally. If they do not, consideration should be given to how the information to hand might be supplemented to ensure these are considered in emerging options.

Early engagement

If it is found that there is little equality information to go on, it may be necessary to consider sounding out others who may be able to identify the main issues from their experience. This can be carried out in the context of the equality scheme or through Sustainable Development Champions.

How to identify equality of opportunity and sustainable development outcomes at a strategic level

- 3.26 The identification of key issues and priorities in a strategy should demonstrate that equality of opportunity and sustainable development have been fully taken into account in accordance with the public authority's equality scheme. In practice, this will mean screening the strategy (see also the Guide to the Statutory Duties).

- 3.27 Policies linked to large procurement projects will be screened at more than one stage given the different decision making stages involved. This includes the initial strategy and any project determined by it including the procurement route which is to be used. Any changes to the initial policy option made later in the project should lead to rescreening if they significantly alter the nature of the policy.
- 3.28 Screening will identify equality of opportunity implications and may also signpost the public authority to mitigating actions: "Arrangements must be made to obtain relevant information, whether quantitative or qualitative, so that an authority can clearly demonstrate why a policy is screened in for impact assessment or screened out as not requiring an EQIA." (Guide to the Statutory Duties).
- 3.29 Screening will assist the public authority in taking steps to ensure that any decision does not limit options for later mitigation of adverse impact.
- 3.30 There may not be data available at this stage for screening. So consider asking groups which may be affected (see section 5 of the Guidance on Equality Impact Assessment) to help identify equality issues at the outset. Ensure that any research commissioned draws upon and provides information to help fulfil the equality duties.
- 3.31 Where there is a potential adverse impact the public authority must always consider the options to mitigate such. Further consideration of alternative policies must be undertaken. All policy options must be considered and the alternatives detailed. The authority should ensure that information can be provided on the justification for the action taken and the reason for any constraints.
- 3.32 Consideration should be given to the equality aspects of the service provision associated with capital projects at all stages.

Costs of equality and sustainable development objectives

- 3.33 Any strategic planning will include a cost evaluation of the options. If equality of opportunity and sustainable development objectives are considered early enough, they inform the options through identifying outcomes and objectives. The decision needs to be made whether the outcomes should be achieved through the procurement or another policy option.

For example, all Government estate management contracts could include provisions requiring on-site crèche facilities for working parents. This could legitimately be part of the user requirement under EU rules. This would also support the Government's aim to promote family-friendly and flexible working and to assist single parents.

However, this would most certainly also add cost, so it would be important to consider if this additional money would be more effective if spent directly on setting up nursery schemes in the area. This might be more successful in achieving the Government's aim because it would provide permanent places for all children (not just the children of staff) in an environment specifically designed and dedicated to their learning and development.

Source: Social Issues in Purchasing, Office of Government Commerce, 2006, p12

During the strategic decision making for the Government's Priorities and Budgets in 2002, it was agreed that an objective of procurement in some instances should be to recruit from the long-term unemployed. This is initiated at a time of high levels of unemployment in Northern Ireland.

The advertisement for a road maintenance contract sets out that candidates will be expected to fulfil an employment plan as a contract condition. Candidates who are invited to tender for the maintenance contract are asked to submit a plan of how they would do this, along with their experience and capacity to implement such proposals.

(See also case study 7)

Where else should equality of opportunity and sustainable development be considered in the gathering and preparation of information?

- 3.34 All of the processes inherent in planning and scoping a general procurement or PPP will have structures which lend themselves to consideration of equality objectives such as market testing, economic appraisal or programme level evaluation.

3.35 The processes in this guidance are consistent with other forms of assessments required of government departments in policy development, for example:

- environmental impact assessment
- health impact assessment
- regulatory impact assessment
- integrated impact assessment and
- rural proofing.

For example, if the user requirement was to build a hospital, a public authority's awareness of regional neighbourhood renewal issues might lead it to consider locations in certain deprived areas to facilitate their regeneration.

Source: Social Issues in Purchasing, Office of Government Commerce 2006, p11

The department, in scoping the objectives and outcomes, decides that it will promote good relations through locating a concert hall in an area that is currently derelict and which acts as an interface between two communities. The decision to do this has been based on cost assessments and alternatives considered.

DFP's Energy Conservation Branch (ECB) provides professional support to its public sector clients to assist them in reducing the energy consumption and carbon emissions of their estate. The Government has set a target equating to a 1% per annum reduction in carbon emissions from public sector buildings (based on 1999/2000 levels).

During the past seven years the heating systems for 125 public sector properties have been converted to natural gas firing. Prior to conversion, 75% of the office buildings were heated by oil fired heating systems and 25% had electric heating installations.

As a direct result of this conversion programme the amount of carbon released to the environment has been reduced by 1250 tonnes of carbon (4500 tonnes CO₂) this year. The total carbon saving over the 7 years of the project is estimated at 5500 tonnes of carbon (20,000 tonnes of CO₂).

The Government has also set targets for the installation of Combined Heat and Power (CHP). ECB collaborated on the installation of a 215kw unit in 2000 and has just completed the installation of a mini CHP unit generating 5.5kw of electricity and 12.5kw of heat at Stormont House (BAXI CHP unit), on the Stormont Estate. Currently ECB is developing at a large-scale (1000kWe) Community Energy project incorporating CHP for the Stormont Estate.

4 PROJECT DEVELOPMENT

This chapter covers initial progress from the point at which the project is decided upon and specific objectives/outcomes identified. These stages may involve a change of authority in lead role, specifically a transfer from the Department to the implementing public authority.

The subject matter of the contract

- 4.1 The strategic development work will determine the outcomes and objectives of the project and any procurement as a result. These objectives and outcomes will determine the subject matter of the contract in procurement terms. The “subject matter of the contract” is a technical term, is determined in each procurement, sets the parameters of what will be delivered in the contract and is a term used to illustrate points in this guidance.

In the case of Concordia, the decision was made to purchase a bus service (not the purchase of buses). The award criteria and scoring scheme allowed additional points for delivery of the service using buses which had low levels of nitrous oxide emissions and noise below defined levels with the aim of promoting a better environment. These criteria effectively favoured gas powered buses. The European Court of Justice ruled (Case C - 513/99) that they were linked to the subject matter of the contract; the delivery of the bus services themselves ties in very closely and has a direct link with the specification of the buses.

The objective of a contract is defined to be the supply of food to schools in a way that caters to a broad mix of pupils of differing faiths (and none), and to ensure delivery over time to accommodate any future demographic change. The technical capacity of the contractor to handle halal or kosher meat, or cater for specific dietary requirements that are associated to a particular religion or faith will be relevant to the subject matter of the contract.

4

Does the project need to be screened?

- 4.2 Yes. If an authority is planning and developing a project, it will require decisions to be made at appropriate points. Equality of opportunity as well as sustainable development obligations and targets need to be taken into account in these decisions. Through the development stages decisions could be taken that will change existing practice. This is a policy change for the purposes of s 75 and must be screened.
- 4.3 For more details on screening see the Equality Commission's *Guide to the Statutory Duties*⁵. Details of the IIA Tool and Sustainability Assessment Guidance are available from OFMDFM's website - www.ofmdfmni.gov.uk
- 4.4 For complex procurements, this is reinforced by the range of decisions still to be taken.
- 4.5 In the Government's PPP policy documents, the expectation is clear that the public authority will screen, and EQIA as necessary, all PPP projects.

How should screening/EQIA/IIA information be used?

- 4.6 The data gathered will inform the outcome of the screening and any EQIA/IIA and ultimately the decisions on objectives and outcomes. Screening and EQIA/IIA data will then be useful for decision making to ensure the solutions are correct to meet user need and the objectives. Setting out user needs according to the nine s 75 equality categories will ensure that solutions are appropriate and identify specific monitoring requirements.
- 4.7 Having identified early on the outcomes or solutions that relate to the subject matter of the contract, equality of opportunity and sustainable development in the specification, contract and performance monitoring will follow (see also chapter 5).
- 4.8 The authority will need to agree contract monitoring which will collect ongoing evidence to determine whether there is an adverse impact and uses this in reviews of the contract for any variations needed.

5 At the time of printing, the current version of the guidance is that issued in February 2005, Chapter 5, page 24. See also ECNI website for further information.

The public authority has identified from screening that the project does have equality or sustainable development implications, and therefore screened it in and has now undertaken an EQIA/IIA from the early stages. Equality issues are evident in the project.

In the case of sustainable development obligations the authority should look at ways in which it can comply with the Sustainable Development Strategy for Northern Ireland and sustainable development targets.

In relation to equality of opportunity, as identified in the s 75 guidance, the public authority identifies mitigating measures and alternative policies to deliver the aims of the project.

“The consideration of mitigating measures and alternative policies is at the heart of the EQIA process. Different options must be developed which reflect different ways of delivering the policy aims. The consideration of mitigation of adverse impacts is intertwined with the consideration of alternative policies. Mitigation can take the form of lessening the severity of the adverse impact.

Ways of delivering policy aims which have a less adverse effect on the relevant equality category, or which better promote equality of opportunity for the relevant equality category, must in particular be considered. Consideration must be given to whether separate implementation strategies are necessary for the policy to be effective for the relevant group.”⁶

The public authority should ensure that the potential adverse impact is recorded, both in the EQIA/IIA process and as part of the decision making/approval routes through the project board. In accordance with equality scheme requirements the resulting actions must be monitored, and this should be over a three year period, for any actual adverse impact and action taken accordingly.

The screening/EQIA for the infrastructure needs for an FE college highlights the use of the local FE college currently by a large number of disabled students. In addition to meeting the requirements of the Disability Discrimination Act with standard provision, in discussion with a number of user groups, particularly comprising the disabled students, further user needs are identified for the IT infrastructure and facilities.

The public authority consults for current industry standards and best practice to ensure that the specification for the IT facilities, hardware and software will meet the user need, establish a service which maintains accessible IT facilities and will be flexible enough to adapt to opportunities afforded by future technological development.

How should a bundle of projects within one contract be treated for the purposes of s 75?

- 4.9 Equality of opportunity should have been considered in the decision to bundle the projects together, so there should be data to inform this stage. For example, the strategic decision to combine the refurbishment of three schools with one new build school. The screening/EQIA may have identified changing community demographics which influenced its decision to create the bundle.
- 4.10 The public authority that is awarding the contract will have to screen at project development stage, using the previous information and then ensure that all the relevant equality issues are identified by separating each component of the bundle and considering the equality issues.
- 4.11 Again, the lead body and the project board can ensure focused thinking, a shared vision, maximum accountability and compliance with equality schemes on the part of all public authorities involved.

Travelwise Northern Ireland Safer Routes to Schools initiative

The Travelwise NI Safer Routes to Schools (SRS) initiative aims to encourage parents, children and teachers to use sustainable methods of transport for the journey to and from school. This involves getting more children to walk, cycle, use public transport or car share as a healthier and more environmentally friendly alternative to the car.

Why we need it

There has been a major shift in the last 20 years in the way young people travel to and from school. It is estimated that 20% of morning and early afternoon road traffic is related to the 'school run'. This has led to several adverse effects, ranging from increased traffic congestion and environmental damage, to children having a reduced level of physical activity and poorer road safety skills.

The SRS initiative will improve the health and safety of pupils by reducing traffic around school facilities and encouraging greater physical activity among students. It also provides opportunities for learning, particularly under the theme of citizenship.

Sustainable transport benefits

Improved safety, access and mobility for pedestrians and cyclists bring a better quality of life to the school neighbourhood and local community.

SRS aims to make it easier to walk, cycle, use public transport and car share for the school journey. Children can practice road safety skills and develop greater independence. Parents are also freed from the need for a car journey for the school run.

The initiative entails the school receiving a range of education and awareness materials and where appropriate, physical movement measures. These are provided as part of the SRS Accelerated or SRS Enhanced programme which aims to raise awareness of sustainable transport options such as walking, cycling and public transport for the school journey. The programme provides traffic management improvements as appropriate; sustainable travel resource packs, road safety training and opportunities for parents to car-share for the school run.

There are a limited number of places available on the SRS programme each year, therefore schools are considered and prioritised against the SRS assessment process. This process has been 'screened out' from the need for a full EQIA by the Central Equality Unit under s 75.

Respect for People

Under the auspices of the Construction Industry Forum for Northern Ireland (CIFNI) a task group, set up to consider a number of issues relating to employment in construction and including representatives of the Construction Industry Group for Northern Ireland, Trades Unions and the Government Construction Clients' Group (GCCG) has developed a Code of Practice for Industrial Relations and Health and Safety.

The GCCG has agreed that the Code of Practice will form part of the Respect for People requirements to be included in future contracts. The Code includes the payment of operatives, which should be, at a minimum, the rates agreed in the Working Rules Agreements which are relevant to the Construction Industry.

What about screening/EQIA/IIA by multiple authorities?

- 4.12 When working in a bundle of projects public authorities still have to comply with their duties, therefore they need to decide how best to do this for the project concerned. Authorities need to satisfy themselves that they have met their duty should any questions be raised or complaints made about their compliance with their equality scheme.
- 4.13 The project board overseeing the project and contract should decide who takes the lead to co-ordinate any screening and EQIA at this stage, for example, if three schools and a library are included in a project and they are in two education and library board areas (see page 38 Ownership). Any implications of having non-designated public bodies taking the lead on the project should be considered during the strategic planning.
- 4.14 Some projects may include bodies which are not designated under s 75. These might be schools in an education project or voluntary organisations which provide health or social services. It is still in their interests to ensure that the

screening and EQIA are conducted so as to contribute to the delivery of the best solution from the contract. However, if this not agreed, care needs to be taken in the use of data to ensure the results are not distorted.

- 4.15 This approach makes good business sense, as it will ensure that there are clear responsibilities and therefore clarity should any complaint be made.

Do s 75 and sustainable development obligations get transferred to a private contractor?

- 4.16 No, but the authority will still be covered by its equality obligations, whether the function or service is delivered directly or contracted out. The authority needs to ensure that it can meet its duties through any contract. This means the authority should consider the contract terms, the overarching aims and objectives of the function or service which is going through procurement user need, what equality considerations need to be incorporated in the contract, and how performance monitoring will be carried out, with future changes negotiated from the monitoring information.

An authority planning a new school build undertakes screening and if necessary an EQIA as part of its general scoping to determine the specific requirements and user needs for the school. During this process the authority identifies a higher level of children with cystic fibrosis in the geographic area. Given the government policy of ensuring access for disabled children to mainstream schools, the specification is developed to ensure the school is accessible in accordance with the Disability Discrimination Act but also with specific requirements in the layout and design of the school building that will meet the needs of children from this particular group. The authority takes account of this disability in monitoring and performance management measures in order that the school remains accessible according to student profile and can ensure that any wider community use of the school also takes account of this disability for people of school age and older.

Essential Skills

The essential skills of reading, writing and mathematics are the building blocks that make it possible for us to learn and participate fully in our communities and in the workplace. An international adult literacy survey highlighted that almost one in four people in Northern Ireland need support with reading, writing and mathematics. For an individual who struggles with essential skills the impact can be profound, not only on them, but their family, the local community, society and the economy. However, there is evidence that, as people improve their skills, the rewards they reap are substantial - not just the intangible benefits such as increased confidence but concrete, measurable outcomes such as improved job and pay prospects.

Since the start of the widely recognised gremlins campaign in 2003, the Department for Employment and Learning's (DEL's) Essential Skills programme has helped over 25,000 adults in Northern Ireland to improve their reading, writing and mathematic skills.

One strand of the DEL initiative was to start a voluntary initiative approaching contractors currently providing services to the public sector in the facilities management and construction sectors while continuing with the distribution of promotion material generally.

Meetings have been held with a number of existing service providers associated with cleaning, catering and security contracts and contractors within the construction sector. Progress to date has been encouraging as a number of employers have agreed specific steps to take forward the concept of addressing the essential skills deficit in their workforces through training in the context of the needs of the business.

DEL is continuing its voluntary approach to tackling the essential skills deficit in the workforces through working with contractors providing facility management services and the construction sector. A meeting has also taken place with the Construction Employers Federation (CEF) and GCCG to initiate a pilot essential skills project in the construction industry. This will demonstrate the business merits of facilitating Essential Skills development for both employers and clients in the construction sector.

The amalgamation of library services results in the refurbishment of a library building and an assessment of the services provided. The EQIA identifies that there is a significant Indian and Chinese community in the catchment area for the library, some of whose first language is not English. There is also an ageing age profile for the local area, with a greater incidence of disability. This has an influence on how access and signage are planned both for language and for locations. The specification includes a number of requirements to ensure that signage for and within the library is appropriate for these groups. It also allows for review and change along with the local profile and continuous review of how the library services are engaging with and meeting the needs of the local community.

The construction of a new hospital wing is undertaken while the rest of the hospital is open for business as usual. All of the authority's staff and other contracted staff undertake training on equality issues, as part of the implementation of the authority's equality scheme, to ensure that the front line services are delivered in an appropriate way. Given the construction will impact directly on service users, the authority also requires that the construction site staff undertake equality training, which it sets out in the specification, and the training standards requirement is then monitored against.

This chapter covers getting to the stage where the public authority is clear in what it wants the contractor to do from the objectives which have been set. The better this is planned and the project scoped and the clearer the public authority can be in what it wants the contractor to do, the more likely it is that the final contract terms will deliver what is required, the contractor will meet them and the public authority can monitor this.

- 5.1 The contract specification gives the opportunity and freedom to potential bidders to propose innovative solutions and define outcomes which integrate equality of opportunity and sustainable development into a new or existing public facility or service. There may be more scope in larger or complex projects but regardless of the size the specification should:
- focus on the outputs and outcomes required rather than the means of delivery and encourage candidates to use their skills and experience to develop innovative technical solutions and provide the capital investment required to maximise the objectives of the procurement policy including equality of opportunity and sustainable development
 - set out clearly the requirements of the procurement
 - be sufficiently broad to allow value to be added by the contractor but not so broad as to allow candidates to feel exposed to risks that are difficult to quantify and, consequently, inflate their price
 - build in flexibility. For example, it is important that there is flexibility in the design of a facility as usage may change over the 25 to 30 year life of the contract. This is also true of equality of opportunity or sustainable development as goals and objectives are likely to change over the life of the contract. Flexibility in design and service delivery saves time, money and resources in the long term
 - relate to the subject matter of the contract but should also take account of appropriate aims, objectives and cross-cutting policies as well as legal obligations and market soundings about what industry can supply

- move away from old fashioned style contracts of performance managing and contract monitoring to working in partnership, shoulder to shoulder with contractors, managing the risks to achieve the objectives which have been set.

How should our equality and sustainability requirements be specified?

- 5.2 Since the strategic development stage described in chapter 3 and through the screening process, objectives will have been developed which include equality of opportunity and sustainable development considerations. These will now provide indicators which the descriptive documents and technical specifications will require the contractor to meet in carrying the project through. At the pre-advertisement scoping stage the public authority will consider how the objectives and user needs can be defined so as to incorporate the equality and sustainability considerations identified so far, they will then define contract conditions and performance management.
- 5.3 These will vary with the scale and nature of the contract but for example the authority might specify:
 - the location of a new theatre complex which will regenerate a geographic area
 - the process of detailed consultation with users to determine service delivery needs over time
 - the equality training required for all those who will be engaged in delivering services through the contract.
- 5.4 Where technical specifications include obligations, for example, to comply with good employment practice relevant to the delivery of the contract or requirements for community use, an authority can use these factors as criteria for selection and award. These are factors in the specification and subject matter of the contract.
- 5.5 Wherever possible the technical specification should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

- 5.6 These factors, as appropriate, can be linked to technical knowledge and ability at the selection stage and the subject matter of the contract at the tender evaluation and negotiation stage. This will also allow development of the way in which the public authority expects the project to be delivered with appropriate consultation, training, monitoring and variance mechanisms.
- 5.7 If the planning, objective setting, identification of user need and decisions on outcomes have not been considered fully and equality of opportunity and sustainable development included at this stage, equality of opportunity and sustainable development will not be mainstreamed and there will be little scope to achieve effective outcomes.

An authority decides to re-organise its telephone helpline service, resulting in the decision to contract out this service. The telephone helpline is for fault and complaint reporting by the authority's residents. Under the non-discrimination rules in procurement, the authority cannot specify where the helpline office must be based, but it does specify the training that the helpline operators must have in equality to ensure the service is delivered appropriately to the residents.

The same authority also decides to contract out its cleaning services. Again, it cannot stipulate where the contractor must be based, but it does stipulate that the service must be delivered in its buildings, and therefore in a particular location. It also has specification requirements about the cleaners wearing their uniform, and protective clothing. The authority has used a uniform that has been developed to ensure it complies with dress requirements for certain religious groups and ensures the same specification requirements are in the contract.

Soft market testing's contribution to specifying equality of opportunity and sustainable development objectives

- 5.8 Soft market testing is a process allowed for under EU rules to compare current services with similar services which may be available to explore the benefits which can be achieved in improving performance (some public authorities use benchmarking instead of soft market testing). If the public authority is considering this approach, equality of opportunity and sustainable development should be taken into consideration in this.

- 5.9 Public authorities may choose to talk with potential contractors to establish what may or may not be commercially viable in terms of delivery. Equality and sustainability issues can be written into the soft market testing programme by, for example, specifying that criteria include those relating to equality of opportunity and sustainable development.
- 5.10 The soft market testing process could include discussions on the effect of the inclusion of equality of opportunity and sustainability considerations in the project in terms of cost, complexity and outcomes. Early dialogue at this stage, and indeed before an individual procurement begins, with the supplier community can be useful in finding out what is available, in informing the market of future requirements and in stimulating more innovative responses. Care must be taken not to distort competition - this process should not give advantage to any particular supplier.

Weighting criteria for the specification

- 5.11 The public authority will have to consider the weighting of sustainability and equality considerations against one another and against the other considerations within the specifications in preparation for evaluation. EQIA will have shown the equality objectives which will have been incorporated into the specification. The weighting arrangements will be proportionate to the relevance of the various considerations to the overall subject matter of the contract, and decided for each procurement project.

Using the equality scheme to help with specifications

- 5.12 The public authority will have a scheme which states its arrangements for promoting equality of opportunity and good relations in the delivery of all its functions. It makes good sense to use the scheme as a template to specify requirements (ie through EQIA to identify outcomes and beneficiaries, through progress against scheme) in delivery of the project and use them in ongoing performance management. The contractor can draw on it to understand how for example to:
- monitor for any adverse impact on the promotion of equality of opportunity and good relations

- provide information including the results of monitoring
- make sure people have access to information about the service provided under the contract and to the service itself.

5.13 It also will explain why, particularly in PPPs and other contracts extending over several years, regular planned improvements in equality outcomes with periodic reviews demonstrating progress should be specified.

How to get added value from this process

5.14 Where a public authority is allowing the use of variants it is possible to take account of tenders submitted which not only meet but exceed the minimum requirements it has deemed necessary to fulfil a contract. By accepting variants when assessing which bid is best to fulfil its needs, public authorities would then be able to see if tenders are proposing additional equality of opportunity or sustainability elements and decide if these are affordable. An example of a contract where variants have been successfully used is at case study 4 in annex 3 in relation to the procurement of legal and sustainable timber.

5.15 Where this is not the case, public authorities could still choose from the bids meeting only the minimum requirements without having to re-advertise. This option is available as long as tenders are assessed on a MEAT basis and where the minimum technical specifications to be delivered are mentioned in the contract notice. The notice must also indicate if variants will be accepted.

5.16 One model to do this was tested following recommendations from the Review of Public Procurement (2002) to initiate a pilot project that involved a condition being included in certain contracts to utilise the unemployed in work on the contract and requiring contractors to implement an Unemployed Utilisation Plan on award of the contracts within the Pilot Project.

5.17 The Pilot (see case study 7 in annex 3) established a model that can be used to integrate wider sustainable development goals, where appropriate, within the public procurement process and include a stipulation that the Conditions of Contract incorporate sustainable development

considerations. The model achieves integration without the chosen sustainable development activity forming part of the evaluation process to identify the most economically advantageous tender. Only in the event of two or more tenders being judged equal in the identification of the MEAT will the tenderers' proposals for sustainable development activity be taken into consideration to decide the award of contract.

- 5.18 If the authority wants to consider the delivery of any objectives through the project which are additions to the subject of the contract as determined in the scoping and planning stages, then it should seek further advice to ensure these are not inadvertently used in the selection or award stages.

Capital contracts will nearly always require timber

The minimum public sector requirement is that all timber used in public sector buildings be obtained from legal sources.

However public authorities can also procure timber from accredited sustainable sources but this is not a mandatory requirement and if requesting the provision of sustainable timber this should be on an optional basis using a variant specification which includes all of the minimum requirements and plans additional criteria that require the majority of timber supplied to be either recycled or from a sustainable source.

For further information see the model set out in case study 4 at annex 3.

This chapter focuses on large projects considering how the EU rules apply to selecting candidates and how equality of opportunity and sustainable development can feature in the selection process. It suggests what information needs to be exchanged - how the public authority finds out about the company and how the contractor finds out about the project. Contractors will be able to offer, from their experience, negotiated voluntary additions. It also shows how criteria apply to consortia or partnerships set up to engage in a particular procurement project. The principles are transferable to smaller projects.

How much detail should be included for selection?

- 6.1 At advertisement and selection stage the authority is bound both by the detailed requirements of the procurement legislation (Directive and Regulations) and, regardless of the size of contract, the general principles derived from the EC Treaty, including those of equal treatment of all candidates (wherever they are based) and transparency.
- 6.2 If the planning, objective setting, identification of user need and decisions on outcomes have not been considered fully and equality of opportunity and sustainable development included at this stage, equality of opportunity and sustainable development will not be mainstreamed and there will be little scope to achieve effective outcomes.

Should equality of opportunity and sustainable development requirements be included in the advertisement?

- 6.3 Yes. Notices, whether in local and national newspapers, specialist journals, websites or the Official Journal of the European Union (OJEU), must give basic information about the nature of the contract and selection criteria. Therefore the equality and sustainability information should be clearly set out in the objectives, outcomes and criteria for selection at this stage, drawn from the specification. Where these are not included in the Notice, they must be included in the tender documentation.

- 6.4 The Notice must also include any objectives of equality of opportunity or sustainable development that will be a requirement of the contractor as a contract condition. For example, the objectives may be to refurbish a road and to recruit from the long term unemployed. The latter will not be part of the selection process but needs to be included at this stage.

Shortlisting candidates (see also annex 3)

- 6.5 After placing the advertisement, the authority will receive a number of expressions of interest from candidates wishing to participate in the tender process. The pre-qualification or selection or shortlisting stage is permitted under three procurement procedures from the EU rules - restricted, competitive dialogue and negotiated. For smaller projects, many authorities may shortlist candidates if there is a lot of interest. It is the means by which the public authority can select the best qualified candidates to move forward in the tender process. This stage is referred to in the procurement legislation as the 'selection' stage. The following focuses on procurement where the competitive dialogue procedures are used but should be useful in procurement projects generally.
- 6.6 The selection stage can be broken down into two distinct phases:
- excluding candidates from the process
 - selecting the candidates with the right professional and technical knowledge or ability.
- 6.7 The EU rules list the grounds upon which candidates must and may be excluded and also set out a list of selection criteria which can be used.

Grounds for exclusion

- 6.8 The fair employment legislation provides that a public authority shall not contract with an unqualified person, that is, a person or company, which has been served a notice by the Equality Commission for failures in respect of non-registration or failures to submit a monitoring return or to comply with an order of a tribunal or court. Public authorities can, therefore, exclude candidates who have not complied with Northern Ireland employment discrimination obligations, and in the case of obligations under the Fair

Employment and Treatment (NI) Order 1998 (FETO) are required by that legislation to do so in particular circumstances.

- 6.9 An authority may have to put in place arrangements for disqualifying bidders for reasons that go beyond simply not being qualified. This involves the issue of the disqualification of bidders as a penalty for previous wrongdoing, or to prevent public bodies contracting with those who are currently failing to achieve a particular standard of expected behaviour, for example where the public authority specifies that a candidate will be disqualified from tendering for a contract if they have been found to have failed to comply with anti-discrimination or equality requirements.
- 6.10 Whilst public authorities may introduce these disqualifications, domestic and EU law specify strictly the types of exclusions which are permitted, and authorities may not go beyond these. Candidates may legitimately be excluded from participation in a contract where it falls into one or more categories that are regarded as unacceptable for a potential contractor with government, such as bankruptcy, non-payment of social security contributions, non-payment of taxes. In addition, and particularly relevant for the purposes of this guidance, candidates may be excluded if they have been convicted of a criminal offence relating to the conduct of his business or profession, or has committed a grave misconduct in the course of his business or profession. These provisions are concerned not only with establishing technical or professional capacity, but with professional probity.
- 6.11 In general, the public authority may require a candidate to provide such information as it considers it needs to make the necessary evaluation.
- 6.12 Candidates from other countries can be excluded for relevant convictions under the national laws of the country in which they are based.
- 6.13 It is the responsibility of the public authority to decide if it wishes to pursue this option and exclude candidates as a result of the information obtained, from the candidate or otherwise, related to convictions or grave misconduct findings.

Criteria for selection

- 6.14 The aim of the selection process is to assess the candidates' ability to deliver the contract requirements. Selection criteria are generally backward looking and assess a candidate's track record and aims to ensure that candidates selected to tender have 'economic and financial standing and technical or professional ability'⁷. The assessment can only relate to the candidate's ability to deliver the contract which is the subject matter of the procurement.
- 6.15 The public authority will want to be satisfied that those candidates with which it is considering contracting are up to the job, in the sense that they have the professional and technical knowledge or ability to undertake the contract successfully. The authority will want to decide what are the minimum levels of capacity which it wants to be satisfied that the candidate has, in order to fulfill the contract. The public authority will want to notify candidates what those minimum levels of professional and technical capacity are, and should indicate these in the contract notice.
- 6.16 The public authority will also want to decide how best to assess and examine the extent to which the candidates' professional and technical abilities meets the minimum requirements. Evidence of technical abilities may be provided by one or more of several specified means, such as:
- by providing evidence of previous contracts completed
 - an indication of the "technicians" or technical bodies to be involved by the economic operator on the relevant contract
 - a description of the technical facilities and measures used by the contractor
 - the educational and professional qualifications of the contractor
 - details of the workforce of the service provider and numbers of managerial staff
 - indications of the proportion of the contract that may be sub-contracted and

- in certain cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

6.17 A public authority will need to balance an appropriate desire on its part that it satisfy itself that the candidate will be able to deliver on what it has been contracted to do, with the need that contractors do not have excessive burdens placed on them by the authorities. The extent of the information required by the public authority and the minimum levels of ability required for a specific contract must be related and proportionate to the subject-matter of the contract.

6.18 If the subject matter of the contract is defined to include particular equality or sustainable development related elements, then the technical and professional expertise required will include the expertise related directly to satisfying those equality or sustainable development aspects of the subject matter of the contract.

The London Borough of Harrow⁸ put out to tender three housing management contracts. The authority regarded this as the first step in a longer term process which would eventually result in the transfer of housing stock to the private sector. The procurement process was therefore structured so as to assess, amongst other criteria, the ability of providers to purchase the housing at a later stage. This was despite the fact that the contracts to be awarded were only for housing management services and there was no obligation on either side to go ahead with the privatisation. The court ruled that the authority could only consider exclusion factors or ability in relation to the performance of the actual contract to be awarded and so, in this case, the ability of the provider to meet the authority's long term aims and take on a transfer of housing stock was not relevant and could not be used as criterion in the selection of candidates.

Use of pre-qualification questionnaires (PQQs)

6.19 There is no set format for the way in which selection criteria are communicated or pre-qualification information is requested. It is quite common to see just a list of the information required set out in the OJEU notice. However, it is standard practice in the UK, particularly for complex projects, to use a PQQ which sets out questions for candidates to complete.

8 R v Secretary of State for the Environment ex p. Harrow BC (1997) 29 HLR1

- 6.20 The advantage of using a PQQ is that it is clear what information is required and it ensures that it is delivered in a consistent format. This significantly assists in the administration of the selection process and in ensuring equal treatment and transparency.
- 6.21 However, standard PQQs should be applied with caution, to ensure that:
- irrelevant information is not being requested, which will not be used in the assessment
 - crucial questions are not missed
 - questions meet the rules and conditions for selection
 - questions are relevant and useful for the selection process for the particular project.

Broad equality of opportunity and sustainable development issues and PQQ questions

- 6.22 Assuming that the stringent conditions, as determined within the EU conditions, are met, then the PQQ can be used to explore equality of opportunity and sustainable development issues. Contractors can be asked if they are complying with their own national legal requirements.
- 6.23 It is therefore very important to consider carefully the types of questions that are asked on the standard forms which are used for a whole host of public procurement contracts. Questions relating to aspects of equality or sustainability policies must be similarly tailored to each specific contract. There are generally agreed and accepted equality questions which may be included subject to the conditions referred to above. PQQs need to be considered on a project by project basis and public authorities may wish to take legal advice on their content.

Equality in the workplace

The principles contained within this example apply and could be transferred to projects in Northern Ireland, where appropriate.

1. Is it the policy of the Bidder and/or its named supply chain members as employers to comply with the statutory obligations under the Race Relations Act 1976, which apply in United Kingdom, or equivalent legislation that applies in the countries in which the Bidder or its named supply chain members employs staff?
2. Is it the policy of the Bidder and/or its named supply chain members as employers to promote race equality as set down in the Race Relations (Amendment) Act 2000 or equivalent?
3. In the last three years, has any finding of unlawful racial discrimination in the employment field been made against the Bidder and/or its named supply chain members by the employment tribunal, the employment appeal tribunal, or any court, or in comparable proceedings in any other jurisdiction?
4. In the last three years, has the Bidder and/or any of its named supply chain members been the subject of formal investigation by the Commission for Racial Equality (CRE), or a comparable body, on the grounds of alleged unlawful discrimination in the employment field?
5. If the answer to question 3 is yes or, in relation to question 4, the CRE or comparable body made a finding adverse to the Bidder and/or any of the named supply chain members, what steps have been taken as a result of that finding?
6. Is the policy of the Bidder and/or its named supply chain members on race relations set out:
 - in instructions to those concerned with recruitment, selection, remuneration, training, and promotion
 - in documents available to employees, recognised trade unions, or other representative groups of employees and
 - in recruitment advertisements or other literature?
7. If the answer to questions 1 or 2 is 'No', please provide other evidence to show how the Bidder and/or its named supply chain members (as appropriate) promote race equality in employment?

8. Are the staff of the Bidder and/or its named supply chain members (as appropriate) who have managerial responsibilities required to receive training on equal opportunities?
9. Does the Bidder and/or its named supply chain members observe, as far as possible, the CRE's code of practice for employment, as approved by parliament in 1983, or a comparable statutory code? Or guidance issued under equivalent legislation in another member state, which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including monitoring of workforce matters and steps that can be taken to encourage people from ethnic minorities to apply for jobs or take up training opportunities?
10. Is it the policy of the Bidder and/or its named supply chain members as employers to comply with their statutory obligations under the Sex Discrimination Act 1975, as amended, the Equal Pay Act 1970, and the Disability Discrimination Act 1995 - all of which apply in the United Kingdom - or equivalent legislation in the countries in which the Bidder and/or its named supply chain members employ staff?
11. In the last three years, has any finding of unlawful sex or disability discrimination in the employment field been made against the Bidder and/or its named supply chain members by the employment tribunal, or any court, or in comparable proceedings in any other jurisdiction?
12. If the answer to question 11 is 'yes', what steps have been taken as a result of that finding?
13. If the Bidder and/or its named supply chain members are not currently subject to UK legislation, please supply details of the Bidder's and/or its named supply chain members' experience (as appropriate) in complying with equivalent legislation that is designed to eliminate discrimination (including, but not limited to, racial, sexual and disability discrimination) and to promote equality of opportunity.

Source: example taken from the English Building Schools for the Future standard form PQQ

Broader equality and sustainability issues and non standard PQQ questions

- 6.24 There are non standard questions which explore broader equality and sustainability issues, though always subject to the basic conditions applying to selection criteria. These will relate to the candidate's track record or history of delivering similar projects, and so will be determined on a project by project basis. Some example questions are set out below.
- 6.25 Public contracting authorities need to exercise care in selecting such questions as even if they do not intend to take some information into account during a procurement process, the fact that this information has been requested means that the courts may assume it was taken into account when selecting candidates should a complaint arise.

The following points are included as they have been used in a range of specific projects to demonstrate technical ability, where they were linked to the subject matter of the contract.

- Please provide details of how you have successfully built collaborative relationships between schools and wider community groups including groups with differing racial, ethnic, religious backgrounds or with specific needs in terms of access to facilities and services, with reference to specific projects and partnering arrangements.
- Please provide details of partnering arrangements or procurements in which you have been involved which were reliant on building co-operative and collaborative relationships. Please explain how and what relationships you have built.
- Please provide examples of how you have previously managed practical changes in attitude and culture and details of the subsequent results.
- Please provide details of how you have helped to integrate building programmes with wider planning for [education support and school services], how has this had an impact on to other strategic planning with an equality focus?

- Please provide details of how you have successfully built collaborative relationships with public sector organisations, with reference to specific projects and partnering arrangements.
- Please provide details of how and where you have developed and/or implemented flexible and fully integrated ICT strategies to complement building programmes. Has this ever specifically related to DDA or other arrangements?
- Please provide details of how you have previously delivered performance management [and monitored trends] with particular reference to equality issues. Please provide practical examples of how you have anticipated potential problems and what steps you have taken to minimise the impact.
- Please describe what method you have previously used to collect performance data and benchmarking information and how this information has been used to improve future productivity of health care related facilities (or other facilities or services if you have no experience of [health care]).
- How have you previously optimised selection and specification of equipment and material and exploited the latest technological developments. How has this been particularly relevant to people who have difficulty accessing the equipment or how have these measures ensured equal access across a diverse community?
- Please demonstrate how your approach to design quality has previously provided direct improvement in the delivery of community based health and/or social care related facilities or services with particular reference to diverse community needs.
- Please describe your experience of public sector projects in which you have previously been involved requiring you to work with multiple occupants (where the provision of a facility was involved) and/or multiple clients with differing social needs.
- Please describe how you embed sustainability and renewable energy practices into buildings and services over time and describe how you have transferred skills to the local labour market.

6.26 Using this type of approach and questioning candidates has a great deal to offer as it develops the relationship between the public authority and the candidate in meeting the challenges of the project. Those equality of opportunity and sustainable development issues that are regarded as additional objectives not directly related to the subject matter of the contract cannot form requirements in a particular procurement, but public authorities can also discuss the possibility of working voluntarily with contractors after award to achieve these aims. A voluntary approach allows innovation and develops shared thinking.

Scoring and weighting

6.27 There is no statutory obligation to score PQQ responses in a particular way, using a specified methodology or to weight criteria or indicate an order of importance⁹. Nor is there an obligation to establish how scoring is to be undertaken before PQQ responses are received. However, it would be good procurement practice to do so. This helps promote openness and transparency. Where a scoring and weighting scheme is produced and disclosed in advance to all participants, this ensures that the whole process is open, with all involved understanding the relative importance of different factors. PQQs form one part of a selection procedure. The EU rules do however require public authorities to specify, in the contract notice, the minimum standards and the objective and non-discriminatory criteria to be applied to limit the number of candidates.

6.28 When structuring a scoring scheme or methodology it is important to ensure that scores are proportionate and appropriate to the project in question. This means that care needs to be taken to ensure that scoring and weighting attributed to equality of opportunity and sustainable development considerations are also proportionate and appropriate.

9 The position is different with award criteria used at the next stage of the process where there is an obligation to set out the criteria and either the weightings to be applied or the order of importance of those criteria for contract award.

6.29 For example, it may be appropriate, in the context of procurement of a domiciliary care service, to score equality compliance and training as high importance as this involves very direct, personal contact by individuals with members of the community. For a road building programme, the score and weighting for equality elements may be lower whereas environmental and other sustainability considerations are likely to be significant.

Consortia and partnerships

6.30 For large and complex projects, it is likely that the candidates will include consortia such as:

- a special purpose company which is set up for the purposes of tendering for a particular contract
- a special purpose company which is set up to bid for certain types of contract or in a particular market or
- an arrangement where a group of individuals/organisations work together to submit a bid.

6.31 In the case where the consortium is a newly constituted organisation, the selection criteria can apply to those organisations which make up the consortium, and their track record looked at.

6.32 The public authority needs to make sure that it sets out the questions in such a way as to get the information it needs from the constituent parts of the consortium.

Coolkeeragh ESB Power Station

Coolkeeragh Power Ltd is a major investment in the electricity infrastructure of Northern Ireland and uses the latest technology to generate electricity from natural gas. It is approximately twice as efficient as the plant it replaces with the result that Northern Ireland will benefit from cleaner and lower cost energy.

Coolkeeragh plant is creating local business and employment opportunities. Over 700 people, mainly from the local area, were involved in the construction of the power plant and 40 long-term jobs have been created to operate and maintain the new plant. Locally based subcontractors and suppliers have secured contracts valued in excess of £30 million in connection with work on the site. In addition, the station will also help local businesses in the north-west with supply contracts worth up to £7 million per annum.

The construction of the Coolkeeragh plant, apart from its obvious electricity value, also opened up the possibility to develop Northern Ireland's natural gas infrastructure. The BGE NI North-West gas pipeline from Belfast to Londonderry/Derry, which was commissioned 2006, serves the Coolkeeragh power station and also enables the development of gas networks in five towns adjacent to the route - Ballymena, Ballymoney, Coleraine, Limavady and Londonderry/Derry. Construction has commenced on the gas networks for the first of these towns with a view to BGE anticipate supplying gas to their initial customers before the end of 2007.

INVITATION TO TENDER/EVALUATION OF BIDS

7

This part of the guide outlines the procedures for moving, after shortlisting, to final selection of the contractor. The guidance can be adapted for any of the formal procedures including where your contract is outside the EU directives. All this will allow clear outcomes, outputs and resultant key performance indicators. Contractors will be able to offer from their experience negotiated voluntary additions.

Procedures for tendering

- 7.1 On completion of the selection process public authorities must follow the procurement route chosen at the advertisement stage, to invite candidates to submit tenders. A number of routes are open to public authorities and they should take the advice of their CoPE in choosing the most appropriate route.

Evaluation of bids

- 7.2 The evaluation of bids allows an opportunity to examine how candidates have responded to the requirements in the specification including the equality of opportunity and sustainability aspects.
- 7.3 The evaluation methodology for the contract will need to both test the compliance of bids to the specification and give proportionate weight to the importance of the various criteria being evaluated. The evaluation process may therefore include a specific consideration of how the bidder is proposing to handle various issues of equality of opportunity and sustainable development set out in the specification.
- 7.4 Project teams should be looking for candidates to demonstrate that they have understood the needs of the public authority and that they have the ability to develop appropriate solutions which meet any requirements in relation to equality of opportunity or sustainable development both during construction, in the case of a works contract, and generally during the life time of the project.
- 7.5 The evaluation methodology should be clear about how the costs and benefits of proposals are to be measured and also about who is to carry out the assessment of the bid

proposal. This might be suitable work for legal or technical advisors or for departmental energy and environmental managers.

- 7.6 As the EU Rules require public authorities to provide feedback if requested by unsuccessful candidates there will be an opportunity to comment on the equality and sustainability aspects of their proposals and how these were evaluated. Such feedback should help to transform the market into taking greater account of these considerations.

Complex projects

- 7.7 Competitive dialogue is a new procedure introduced in accordance with the EU Rules for use in the procurement of particularly complex projects such as PFI. In the majority of these complex cases it is therefore sensible to assume that, where the open or restricted procedures are not appropriate (these procedures must always be considered first) then the competitive dialogue procedure will be the procedure which will be followed.
- 7.8 In the competitive dialogue process candidates selected following the pre-qualification stage are invited to participate in a dialogue. The competitive dialogue stage enables the public authority to have discussions with candidates with the aim of identifying and defining the means best suited to meet the public authority's needs. The dialogue may take place in successive stages to reduce the number of solutions discussed and the number of candidates involved. A solution need not be just a technical solution but can also be a solution which covers all the public authority's requirements, including pricing (equivalent to a preliminary bid). It is during this dialogue phase the authority can explore in further detail equality or sustainability issues as part of delivering the project. Once the required solutions have been identified the public authority declares the dialogue to be concluded.
- 7.9 Those candidates remaining at the conclusion of the dialogue are then invited to submit final tenders based on the solution(s) identified. Final tenders can be 'clarified, specified and fine tuned' provided that this does not involve changes to the basic features of the tender (variations in which are likely to distort competition or have a discriminatory effect).

7.10 At this stage it is unlikely that equality of opportunity or sustainable development can be factors to consider as they should have already been covered during the competitive dialogue phase.

Award

7.11 The EU rules permit contracts to be awarded on the basis of either lowest price or most economically advantageous tender (MEAT). This latter option is equivalent to 'value for money' and, according to Government Accounting policy, should be chosen by public authorities.

7.12 HM Treasury states that value for money must be assessed over the whole lifetime of a project, including disposal, estimating the costs and benefits to society as a whole and not simply those directly relevant to the purchaser, for example the environmental aspect. This equates closely to Northern Ireland Procurement Policy's Best Value for Money which is defined as "the optimum combination of whole life and quality (or fitness for purpose) to meet the customers' requirements." Acceptable criteria for determining MEAT must meet certain conditions:

- be relevant to the subject of the contract
- be representative of best value for money from the point of view of the public authority
- be consistent with basic EU Treaty principles
- relate to the specification
- be distinct from selection criteria.

7.13 Lowest price is not available as a basis for overall award under the competitive dialogue procedure. The only basis for award under this procedure is MEAT. Once a preferred bidder has been identified (ie the bidder providing the MEAT), there is a further opportunity to 'clarify aspects of the tender or confirm commitments' provided, again, that there are no substantial changes to the tender and that this does not risk distorting competition or causing discrimination.

- 7.14 The competition may allow for the evaluation of additional equality of opportunity and sustainable development proposals submitted by candidates, which are not eligible for evaluation under the MEAT criteria should the need arise to determine between two or more bids considered equal on value for money (MEAT) grounds as defined in the tender documentation.

This chapter reinforces that public authorities be specific about how the commitments will be monitored and measured, making sure they are proportionate with the procurement in question. It says that contract clauses for equality should be included. It suggests some clauses and other factors to be considered, depending on the nature of the project, to meet sustainable development objectives, within the EU rules. The focus is on projects which are covered by the EU rules but principles apply to other procurement projects and contracts.

The need for contract conditions

8.1 Contract conditions relate to the performance of the contract. Contract conditions can be used in two ways:

- To reflect the basic requirements of the contract (the subject matter). These simply reflect the specifications, etc. as covered in chapter 6 and the contractor's ability to meet these specifications (and hence the contract conditions reflecting these). These may include standard conditions used in various contracts to cover areas frequently included in contracts.
- The use of "additional" contract conditions that do not reflect the subject matter of the contract but which are sufficiently important to be included in the contract and which providing they are relevant and do not undermine value for money considerations, can offer significant scope for working with suppliers in partnership which maximises the impact for equality of opportunity and sustainable development of a particular contract.

8.2 Working with suppliers after the contract has been awarded also provides an additional opportunity for procurement to contribute to the achievement of the relevant objectives. Writing the equality of opportunity and sustainable development considerations into the contract makes the public authority's intentions clear. It is easy to get these contractual arrangements right if, at the early stages of the process, the project team has been rigorous in how it has developed the objectives and the specification.

- 8.3 Equality of opportunity and sustainable development considerations will be very specific, translating into the monitoring arrangements, and appropriate variance clauses to meet changes over time.

Standard conditions

- 8.4 There are standard conditions that can be used in contracts. However, these should be carefully considered on each occasion. This consideration should include whether they are necessary. As a general rule, laws relating to social, environmental and employment obligations should not be highlighted in the conditions as contractors should be abiding by the law irrespective of the contract and highlighting selected ones suggests some laws are more important than others. These conditions and the contract as a whole are only as good as the monitoring against them. Amongst standard conditions are:

- the model equality of opportunity condition developed for Northern Ireland (see below)
- other standard conditions to meet s 75 obligations, such as the consultation required with users, monitoring and reporting arrangements and any related variance clauses
- conditions specific to individual contracts to ensure that the objectives and outcomes are delivered, including variance clauses.

- 8.5 However, there are limitations to the use of standardised clauses. Monitoring whether contractors are following the law generally is difficult and potentially costly. It must be assumed that organisations adhere to the law generally and public authorities are no different with regards to their contractors. Therefore, as stated earlier, the better the specification of objectives for the project, the easier it is to create clauses that allow measurement of equality of opportunity and sustainable development indicators.

Equality of opportunity contract condition

(1) The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and the Employment Rights (Northern Ireland) Order 1996 and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Contractor under this agreement he has due regard to the need to promote equality of treatment and opportunity between:

- a. persons of different religious beliefs or political opinions;
- b. men and women or married and unmarried persons;
- c. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);
- d. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- e. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- f. persons of different ages; and
- g. persons of differing sexual orientation.

(2) The Contractor shall take all reasonable steps to ensure the observance of the provisions of the above clause (1) by all servants, agents, employees, consultants and sub-contractors of the Contractor.

Source: Central Procurement Directorate, Department of Finance and Personnel, January 2006

Additional contract conditions and equality of opportunity and sustainable development considerations

- 8.6 Both EU and domestic law provide for the inclusion of additional contract conditions, but they must be compatible with Community Law and they must be included in the contract notice or in the specifications. The conditions may, in particular, concern social and environmental considerations. These may include, for example:
- provision of on-site vocational training
 - provision of apprenticeships
 - the employment of people experiencing particular difficulty in achieving integration or
 - a requirement to develop policies to tackle unemployment
 - to recruit long-term job-seekers, more disabled people or
 - implement training measures for the unemployed or young people.
- 8.7 There are several particular issues that arise, affecting the use of additional contract conditions. First the conditions must relate to the performance of the contract. A contract condition would not relate to the performance of the contract if it required, for example, that the contractor hire a proportion of disabled workers on another contract.
- 8.8 Second, these contract conditions are permitted, provided that these are compatible with Community law. Direct and indirect discrimination must be avoided, in the sense that the choice of contract conditions must not be such as to disadvantage unfairly potential contractors from another state. This is also important because it sets the parameters of the type of contract condition that is acceptable on equality of opportunity principles. For example, a contract condition regarding the “employment of people experiencing particular difficulty in achieving integration,” could not require contractors to employ 20 percent of the workforce working on the contract on the basis of a particular racial origin, because that would be contrary to the Race Directive and Race Relations (Northern Ireland) Order 1997.

- 8.9 These conditions are separate from selection/award criteria and the objectives of the project set out in the specification.
- 8.10 Further information or the application of this guidance can be obtained from CPD, or legal adviser in the public authority.

For example, in a procurement for the construction of a new community centre, a public authority might consider whether there would be significant benefits to be gained from including a targeted recruitment and training requirement in the conditions of the contract. It might therefore include the clause:

“10 % of the person-weeks required to complete all of the works is to be delivered by new entrants that have an apprenticeship, trainee or employment contract with the contractor or a sub-contractor and are engaged in a training programme that is accepted by the Employer”.

Source: Social Issues in Purchasing, Office of Government Commerce, 2006, p29

S 75 and affirmative action

- 8.11 S 75 provides mechanisms for considering promotion of equality of opportunity and positive or affirmative action. There are frameworks for building in affirmative action measures as required under FETO, or taking advantage of the positive action measures allowed for under the gender and race discrimination legislation. All of these should have informed the setting of outcomes and so will be considered for the contract conditions and then the performance management arrangements needed.
- 8.12 Key processes to ensure that the public authority can deliver on its equality scheme commitments should also be considered in the development of contract conditions, such as:
- monitoring
 - consultation
 - complaints
 - reporting
 - targets
 - improvement.

Workforce requirements

8.13 The s 75 framework also applies in relation to the workforce requirements in the contract as well as to the service provision. The contract will be written to comply with the law and with s 75 guidance. Also, the commitments made in the dialogue stages around training and support can be recorded (see also chapter 10).

Contract conditions and legal obligations

8.14 The contractor will have his own obligations in law and it is not the role of contract to monitor these. However, when a public authority contracts out one of its functions it must ensure that its obligations under s 75 continue to be met. Thus in procurement an authority must consider how to ensure its own compliance with the duty.

8.15 The public authority will have to ensure it is in compliance with its equality scheme, monitoring against the objectives and purpose of the project. The Equality Commission's general guidance on s 75 and its guidance on monitoring are useful in establishing mechanisms for monitoring and reporting.

Key points to remember

- Contract conditions must be compatible with the fundamental Treaty principles, particularly the provision of non-discrimination.
- The need for transparency requires that conditions of contract should be advised in advance to candidates. Details should be included in the tender documentation.
- Evidence of compliance with contract conditions should generally not be requested at selection or award stage. Suppliers must accept the conditions in order to be awarded the contract.

Example contract condition

Statutory and other regulations

The Contractor shall be deemed to have acquainted himself with any and all Acts of Parliament, Statutory Regulations, or other such laws, recommendations, guidance or practices as may affect the provision of the service(s) specified under the contract.

The Contractor shall be deemed to have acquainted himself with British/European standards and codes of practice as may be relevant to this contract.

The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practical the standards and codes of practice are observed.

Partnerships and sub-contractors

- 8.16 The contract conditions should also take into account the range of partnerships, whether between public authorities or consortium members. The competitive dialogue and contract management process should also ensure that the contract requirements are stepped down to sub-contractors, who are also part of the performance management and reporting requirements.

Clare House

Clare House is a dynamic new workplace on the edge of Belfast Lough. It is a Workplace 2010 pathfinder project - exemplifying new workplace concepts and standards for the Northern Ireland Civil Service. The building itself has incorporated a number of renewable technologies.

Solar thermal hot water heating

Two 30 tube solar thermal panels have been installed on the roof. They collect energy from the sun and provide hot water to a solar buffer vessel located within the plantroom. This 600 litre vessel is used to preheat or supply all of the domestic hot water requirements for the kitchen.

Photovoltaics

Two 36m² arrays of photovoltaic solar panels have been installed on the roof, to provide 10kW of electricity. The panels are used to convert sunlight directly into DC electricity, which is then converted by inverters back to the AC supply for use within the building.

Ground water cooling

By using a 150 metre deep borehole, associated pump, pipework and heat exchanger units the ventilation system for the building benefits from an element of Free Cooling. Water is pumped from a large underground aquifer in the rock structure, via heat exchangers to the air handling plant. The internal temperature of the building benefits from free cooling if the temperature cannot be achieved by forced fresh air. Once the cooled water has been utilised it is returned to Belfast Lough.

This chapter deals with how the public authority and contractor should manage their relationship to ensure that equality of opportunity and sustainable development objectives and outcomes are achieved. It sets out the parameters for monitoring and compliance, linking the procurement process to the ongoing contract management requirements and expectations of the contractor. It identifies the value of the relationships, partnership working and opportunities to agree additional voluntary commitments. It also considers how a contract might change over its life.

The focus is on large value projects and those that cover a considerable time but, again, the principles of managing performance apply in all procurements.

Contract management

- 9.1. Effective contract management is crucial to the success of procurement to ensure that the supplier is meeting the performance criteria, for example, service levels and quality laid down for improvement. It is the responsibility of the procurement practitioners to negotiate and agree appropriate performance outcomes at the time the contract is let. This, together with a partnership approach to contract management by the public authority and contractor during the life of the contract, will then ensure that the procurement continues to deliver sustainable outcomes which reflect the need at the time and point of delivery.
- 9.2. The case of larger contracts such as the PFI relationship (covering investment, maintenance and operation) it is essential that a real partnering relationship is established between public authority and contractor and contract management will require a different approach than shorter contracts. The project board or group has a crucial role to play here and the advantages of consideration of who is in the group will be demonstrated.

Monitoring

- 9.3. In all contracts monitoring is key to making sure that the value of all the work done to date is maximised. The success of a project large or small, will depend on how the specification was drawn up, particularly the emphasis on

outcomes over the period of the contract, how the contractor is chosen and then what mechanisms are put in place to see that it is being run as specified and if, at any time, change is necessary.

- 9.4. In larger, more complex projects, people may become involved who were not part of the project at earlier stages and it is important that an opportunity quickly be found to review membership of the project board. If there are new people significant to the contract or specifically involved in managing the contract, membership of the project board should be considered. In any case steps should be taken to ensure that they understand the equality of opportunity requirements and the sustainable development objectives of the contract and receive any training necessary.
- 9.5. An effective payment mechanism which takes account of all requirements of the contract will provide the basis for ensuring that the contractor delivers the service to the required standard. It will ensure that the contractor has financial disincentives should the service fall below an acceptable standard, or any potential incentives to exceed baseline targets.
- 9.6. As well as the payment mechanism there are further opportunities for exploring how the equality of opportunity or sustainable development aspects of contracts are being handled.

Gate 5 of the Gateway Process

Gate 5 of the Gateway Process focuses on ensuring that a project is delivering the benefits and value for money identified in the business case. This Gateway Review should ideally be held 6 to 12 months after the asset is available for service when evidence of the benefits is available and a post implementation review has been carried out. For long term contracts such as PPPs a Gate 5 Review should be repeated at appropriate intervals, with consideration for s 75 reporting periods, to ensure delivery of benefits and improving value for money. These reviews can be used to monitor progress on the delivery of equality of opportunity and sustainable development aspects of the PPP and the authority will wish to ensure that the contractor is collecting information needed for it to complete its s 75 report.

See: http://www.cpdni.gov.uk/index/guidance-for-purchasers/gateway_review_process.htm for more details

- 9.7. There will have been discussions, agreements and appropriate contract clauses and conditions drawn up between the public authority and the contractor relating to the responsibilities for promoting equality and sustainable development objectives. The monitoring arrangements present the opportunity to consolidate and build on those and clarify the responsibilities in general. This will involve looking together at the equality of opportunity and sustainable development commitments in the contract, how the contractor will demonstrate compliance with them and circumstances which could lead to defaults or bonuses, where featured in the contract. This will include handling complaints. It is necessary that the contractor understands any references to the legislation, notably s 75, or the codes of practice in employment or service provision.
- 9.8. The contractor will be expected to provide results of monitoring, other information about the service, or information about the workforce employed on the contract where this is relevant to the subject matter of the contract. It will be necessary to explain to the contractor why this information is required and how regular monitoring of equality performance can help meet other requirements of the contract. Reporting dates and how the public authority responds will need to be agreed and periodic meetings to discuss the contractor's monitoring reports will have to be planned.
- 9.9. Actions which will assist include identifying training, information and advice needs with the contractor. The public authority can then make clear what it will offer by way of training, advice and information to help the contractor in delivering good quality monitoring.

Developing monitoring information

	Objectives	Key performance indicator (KPI)	Target
1	To promote a better quality of life through the efficient use of resources in a way that is socially, economically and environmentally sustainable.	Percentage of schools completed which achieve a Very Good BREEAM* rating.	To achieve the requisite performance standard.
2	To increase the popularity of neighbourhood schools and thereby decrease the mean distance travelled by young people to school.	Percentage reduction in the mean distance travelled by young people to school.	To cause a specified improvement in the KPI relative to current trends in the school.
3	To develop ways in which schools can become the focal point for learning within the wider community.	Ratio of hours that a school is used by the local community for learning related activities to the hours that a school is used by its pupils for learning related activities.	To cause a specified improvement and appropriate increase in the KPI relative to current trends in the school.
4	To develop ways in which schools can become the focal point for the delivery of all services to children within a community.	Percentage area of a school that is devoted to the delivery of other non education services to children within the local community.	To cause a specified improvement in the KPI relative to current trends in the school.

5	To make a real contribution to the wider social and economic regeneration of the areas in which schools, libraries and youth clubs are located.	Percentage reduction in long term unemployment levels within the local community and percentage improvement in job opportunities and apprenticeships.	To cause a specified improvement in the KPIs relative to current trends.
6	To promote equality of opportunity, social inclusion, and staff retention and development across all areas of activity, employment and processes.	<p>Percentage reduction in levels of staff turnover within schools and the authority.</p> <p>Percentage increase in levels of participation from all sections of the community.</p> <p>Percentage increase in staff morale as measured by staff satisfaction surveys.</p>	To cause a specified improvement in the KPIs relative to current trends.
<p>* Building Research Establishment Environmental Assessment Method - www.breeam.org</p>			

Asking contractors to take on additional commitments

- 9.10. The public authority should seek to build and maintain a good relationship with the contractor to encourage them to take steps, on a voluntary basis, to prevent unlawful discrimination, to promote equality of opportunity and good relations and contribute to achieving sustainable development in Northern Ireland.

9.11. For example, the contractor may agree to:

- adopt an equal opportunities policy for their organisation generally
- monitor their UK-based workforce on all grounds
- take positive or affirmative action, according to the framework allowed in the anti-discrimination legislation, in relation to under-representation of particular groups
- incorporate energy efficiency in their work processes.

M1/Westlink Upgrade

Consultations with the community and statutory bodies

Throughout the planning of the M1/Westlink Upgrade consultations have formed a key part of this process. This has involved businesses, local residents, relevant authorities, including the statutory agencies and emergency services, as well as other interested parties and affected landowners which have been ongoing and commenced prior to the signing of the contract. This included a Public Information Day in January 2006 with over 60 people attending. Bodies represented included Belfast City Council, the Freight Transport Association, Isaac Agnew, the Park Centre, the Royal Victoria Hospital, the PSNI as well as local residents association.

Emergency services

Consultation with the Emergency Services including the PSNI, the Ambulance Service and the Fire Service has been an integral and essential part of the liaison efforts. This ensures they are aware of each phase of work, including road closures, land closures and any other traffic management activities that may affect their operations.

Local residents

Consultation and liaison with local residents is central to the successful operation and completion to the contract. The contractor has appointed a public liaison manager and is also working closely with a number of local groups ensuring that disruption is kept to a minimum. A temporary five-a-side playing field has been created to facilitate the Grosvenor Recreation Centre which has been affected by the works.

Youth Diversionary Activities

Over the summer months the contractor will work with local communities on a number of projects to provide diversionary activities for young people. This is part of their commitment to local communities and meetings are underway to deliver projects that complement summer schemes already in place.

Liaison with Schools

The activities for young people will be complemented by ongoing liaison with local schools. An information day for principals and staff was held in early April 2006 and over 50 schools were invited to hear information on the scheme and get advice on construction activities for distribution to pupils and parents.

How should the contractor's performance of the requirements be monitored?

- 9.12. All public authorities will have set out in their equality scheme how they will monitor for adverse impact and act appropriately. To ensure effective performance of the contract regular and systematic monitoring will need to be carried out. The objective, to secure best possible performance, is far more likely to be achieved if, in line with the partnership approach, monitoring methods and criteria are agreed with the contractor. The process for reviewing the contractor's performance must be transparent and trusted by both parties. If the outcomes have been clearly identified in the project specification and equality of opportunity and sustainable development conditions included, this will be monitored alongside the rest of the contract.
- 9.13. The public authority should work to enable the contractor to provide the information to meet the requirements of its equality scheme. To get a full picture of changes over time and delivery of the contract objectives, it may be necessary for the public authority to supplement the data from the contractor. This may include:
- use of datasets available on local demographic change or other qualitative information used for the scheme
 - interviews or surveys of users/unions/NGOs
 - general satisfaction surveys to measure how the authority is generally seen to be performing.

9.14. This, together with the monitoring specific to the contract, will give the evidence base for negotiating any change to the contracts over time via the regular reviews and variance clauses written in. The monitoring by the contractor may also result in the contractor recommending changes to the public authority.

Improving poor equality or sustainability performance

9.15. If monitoring suggests that the contractor is not meeting the equality of opportunity or sustainable development requirements, which are relevant to the subject matter of the contract the following cumulative steps should be taken, assuming that the contract provides for resolution of issues in this manner:

- The notice procedures set out in the contract should be used. A meeting with the contractor should be sought to review in detail any problem areas and spell out clearly (again) what is expected from the contractor. The contractor should be helped identify the reasons for poor performance and how to make improvements - for example, through more training or better monitoring systems - and agree the improvements expected by the next monitoring report.
- If, despite efforts to help the contractor make needed improvements, there is serious and persistent failure to meet the equality of opportunity or sustainable development requirements of the contract, the default provisions of the contract conditions can be invoked. However any action must be reasonable, appropriate and proportionate.

A changing environment

9.16. A feature of PFI contracts is the length of time over which they run. It can be in excess of two decades. With this time frame economic, social and environmental situations will change and therefore the equality imperatives may change. If the public authority has planned the project and screened and carried out appropriate EQIAs on the proposals, it may have an estimated time frame eg anticipated demographic changes within a decade for the delivery of services within a geographical area. If this can be identified then the contract conditions on this aspect of the project may be different from the overall contract.

9.17. There may also be specific objectives in the project that can be delivered within the overall contract time span. Clear objectives and an evidence base will enable anticipated changes over time, and associated deliverables in the project, to be specified. However there will be some changes which are not predicted over time. If the monitoring identifies changes which are needed or gaps which need to be met, this should then be negotiated with the contractor in the usual way using the variance clauses in the contract.

Lessons for future contracts

9.18. From time to time, and especially as the contract nears its end, it is recommended that the project as a whole is reviewed or evaluated for its success, or otherwise, in promoting equality of opportunity or achieving sustainable development objectives. As suggested in chapter 4, this review is a vital element in planning how future projects could be more successful in meeting these aims.

9.19. Reference should be made to the monitoring records and any feedback from users, would-be users, and other stakeholders. Public authorities may want to seek the views of the contractor, trade unions and users or their representatives on how well the equality of opportunity and sustainable development objectives have been achieved, or why they objectives have not been fully realised.

9.20. Lessons for future projects can then be drawn up and reported. In the case of equality of opportunity, these can be reported against the equality scheme and could address such issues as:

- would a wider, or narrower, scope for the project have made a difference to the outcomes
- how could the specification have been drafted to produce better outcomes
- would different conditions of contract have been more effective in securing high standards of equality in employment or in service delivery
- how could the monitoring and management of the contract have been more successful in achieving higher standards in performance?

Market testing/benchmarking if outsourcing occurs

- 9.21. Market testing is a process available to public authorities to periodically assess providers available for projects. It is an option for public authorities, and is not a requirement. During the life of the contract it could assist in achieving any changes which equality of opportunity or sustainable development considerations demand.
- 9.22. Market testing for facilities management (FM) provisions are included in standard form project contracts in respect of 'soft' FM services, for example cleaning, catering, portering and building supervision. Most of the cost of providing these 'soft FM' services generally lies in the cost of the staff rather than consumables or equipment. This is in contrast to 'hard FM' services, such as maintenance of the building and grounds and gardens, the cost of which is largely determined by cost of replacement parts, plant and equipment.
- 9.23. By market testing these services every five to seven years in accordance with the project agreement, the risk of general increases in wages, pensions and other benefits is limited, as the contractor will get the opportunity to rebase its costs at regular intervals. As such, market testing helps to ensure the public sector receives better value for money by limiting the unknown risk the private sector is required to price for these services.
- 9.24. A successful market testing exercise requires communication between the public sector and the contractor in relation to the timetable, process and scope of the market test. This information is also of use to the contractor and the public authority for the purposes of reporting progress on its equality scheme.
- 9.25. Some public authorities use other mechanisms such as benchmarking. These too can be considered with regards to how they can assist in achieving change.
- 9.26. See also annex 3 for further examples.

As part of the market testing procedure, NHS Standard Form requires Project Co (the contractor) and the trust to meet prior to the tender going out to the market not only to review the Service Level Specifications and Method Statements, but also “to agree the basis on which the Tenderers shall be selected by Project Co.” Part of those selection criteria could be linked to its staff or quality accreditations, and possibly also its equality policies and procedures (although note that these candidates should not be subjected to more onerous criteria than was the case at the original PQQ). In reviewing the Service Level Specifications, the Trust is able to obtain a market price to reflect changes in its requirements, for example a change in demographics may result in a hospital requiring the provision of different catering services.

Parties interested in providing the market tested services would then complete a PQQ, to ensure candidates who go on to be shortlisted have the appropriate skills, experience, approach to equality in the delivery of services and financial capability to successfully perform the contract. There is nothing to prevent the public sector’s in-house team from submitting a bid, however the public sector will be evaluated in the same way as the other candidates, and must accept the existing contractual arrangements including a performance based payment mechanism. Shortlisted candidates would be invited to submit a tender against the contract specifications (which includes the payment mechanism), and the tender would also request additional information about management of staff transfers and other commercial issues. The evaluation criteria would be established prior to opening submitted bids, and clearly would need to satisfy the usual requirements of objectivity.

After market testing has taken place, Project Co selects the bid which is deemed to provide best value for money. The financial model (and consequentially the unitary charge) is updated to reflect the revised service costs. The public sector takes full risk of costs rising as a result of the market test (and full benefit should the same costs fall). The parties must be clear between themselves with regard to the effective date of any resulting price adjustment, particularly if the start of the process is delayed or it takes longer than anticipated.

EMPLOYMENT AND WORKFORCE MATTERS

10

This chapter identifies the framework for procurement where a workforce may transfer to a different employer. It sets out the equality issues that need to be considered and the current policy framework, including protections for workers from adverse impacts on their terms and conditions.

- 10.1 The responsibilities to comply with equality obligations and to meet sustainable development objectives extend to workforce matters. To do this requires an understanding of the procurement stages at which workforce issues should be considered.
- 10.2 This also requires attention to the present position in law and the approach to workforce matters as set out in The Code of Practice on Workforce Matters in Public Sector Service Contracts. The information below is intended to highlight key equality issues which are known from experience, it does not attempt to address the range of matters covered in employment law.

Choice of procurement route and the impact on workers

- 10.3 Protections exist for workers where the procurement route chosen might determine that there would be transfer of staff to another employer. Public authorities should always ensure fair and reasonable treatment; with projects retaining flexibility in public sector delivery and complying with the legislative and policy requirements to protect terms and conditions for both transferred and newly recruited workers and protecting staff pensions.
- 10.4 Since 1997 extended protections have included: Fair Deal for Staff Pensions; Cabinet Office Statement of Practice 2001; Retention of Employment Model for the NHS 2001; Best Value Code of Practice.
- 10.5 These have supplemented the overarching Transfer of Undertakings and Protection of Employment (TUPE) guarantees and the Code of Practice on Workforce Matters.

Protection is offered by TUPE

- 10.6 The framework for protection of any workers affected by a contracted out project is quite extensive. Central to it is

TUPE which provides specific protection for transferred workers. TUPE regulations protect the interests of employees where a business is transferred or an element of an undertaking is transferred and for contracting out, tendering or re-tendering of services or where the contract for those services passes to a new contractor. This TUPE protection means that the employees transfer to the new contractor, preserving their existing wages and other employment conditions. If an employee is dismissed, the new employer is responsible for unfair dismissal or redundancy payments.

- 10.7 Public authorities should also acquire and adhere to guidance on pensions and the Government Actuary will examine final arrangements.
- 10.8 Public bodies are under a statutory requirement which obliges them to consult with employees and their representatives, including recognised trade unions, employees' associations and staff throughout the process. They are required to disclose all information on matters affecting the workforce including the TUPE based transfers.
- 10.9 It is especially important that the public authority monitors and seeks guarantees of fair treatment for the initial transfer and also any contracts that subsequently change hands. In particular, public authorities should not attempt to design service specifications for procurements so as to evade the application of TUPE when the procurement involves the contract changing hands between different external contractors.
- 10.10 Further guidance has been issued in the form of the Code of Practice on Workforce Matters to ensure that worsening of terms and conditions, resulting in a two tier workforce, do not develop through transfer of employment by acquisition or merger or through any subsequent recruitment.

Code of Practice on Workforce Matters

- 10.11 OFMDFM is consulting on a draft Code of Practice on Workforce Matters in Public Sector Contracts in Northern Ireland. In the interim public authorities have been directed to observe the Cabinet Office Code of Practice on

Workforce Matters in Public Sector Contracts. Observance of the Cabinet Office Code now forms part of the service specification and conditions for all contracts which involve a transfer of staff from the public sector to a contractor or service provider and staff transferred under TUPE in a re-tender of a contract. A Northern Ireland Code of Practice is expected to replace the use of Cabinet Office version in due course.

- 10.12 The Cabinet Office Code of Practice extends the key provisions of an earlier code into the greater public sector including the civil service, NHS and maintained schools. The aim of the Code is to prevent the emergence of a two-tier workforce in cases where public sector employees are contracted out to a service provider. It stipulates that where a contractor has been awarded a contract that resulted in employees transferring across under TUPE, any new employees recruited to work alongside the TUPE transferees should receive “overall no less favourable terms and conditions” than the transferees.
- 10.13 The promotion of equality of opportunity is core to the aims of the Code. In addition to its measures on new starter employees, it also reinforces the application of TUPE to protect the transferring workforce. In circumstances where it might be argued that TUPE legislation does not strictly apply legally, the Code highlights that the core principles should be followed so that the employees would transfer across, preserving their terms and conditions as under TUPE. This protection applies on initial outsourcings, subsequent re-lets and any bringing back of services in-house.

The central elements of the Cabinet Office Code

- Public sector organisations will only select providers who offer staff a package of terms and conditions which will ensure high quality service delivery.
- Terms and conditions must prevent the emergence of a two tier workforce dividing transferees and new joiners.
- Public sector organisations will apply the Cabinet Office Statement of Practice on Staff Transfers including A Fair Deal for Staff Pensions, meaning that staff transferred must continue to have access to the public sector pension scheme or an alternative good quality pension scheme which is broadly comparable to the public sector scheme which they are leaving.
- Where the service provider recruits new staff alongside staff transferred from the public sector it must offer terms and conditions which are overall no less favourable than those of transferred employees. The precise package offered to new staff can differ from that of the transferred staff so long as the overall package is no less favourable.
- Public sector organisations will apply the Cabinet Office Statement of Practice on Staff Transfers including A Fair Deal for Staff Pensions, meaning that staff transferred must continue to have access to the public sector pension scheme or an alternative good quality pension scheme which is broadly comparable to the public sector scheme which they are leaving.
- New starter employees working alongside TUPE transferees must be offered a good quality employer or stakeholder pension, with the employer matching employee contributions up to 6%.
- Public authorities will monitor the operation of the code and the contractor or service provider must provide the authority with information to allow monitoring of compliance with the code.
- The public authority will enforce the obligations under the code including taking non compliance into consideration in relation to future work.

Responsibility for best value for money

10.14 There is no conflict between good employment practice and best value for money. The procurement principles referred to in paragraph 2.16 facilitate and encourage sustainability and fairness and equality in employment and outline the interaction between planning and determining best value for money at award stage. It is the responsibility of each contracting public authority to have regard to its employment equality obligations and to ensure that any employees likely to be affected by the project, either staff transferring or newly recruited to the contract, are treated fairly and in accordance with all legal obligations.

Considering workforce matters throughout the procurement process

- 10.15 The duties on public authorities to have due regard to the need to promote equality of opportunity and sustainable development still apply when provision of a public service is out-sourced. Importantly good management of workforce issues should form part of the service specification and contract conditions of such contracts.
- 10.16 If the actions of contractors in awarding contracts mean that public authorities are not fulfilling their s 75 responsibilities and appropriate sustainable development requirements, the public authority may be found to be in breach of its equality scheme or s 25. Consequently, it is important that the public authorities report on the actions they require contractors to take in order to act in a manner that is consistent with these duties and on the progress made by contractors in adhering to these actions. This information should be contained in the annual report of progress to the Equality Commission.
- 10.17 While the interests of the workforce are constantly considered there are particular stages of the procurement process where specific action can be taken for equality of opportunity and sustainable development objectives. The following points should be considered with the detailed guidance in earlier chapters.

Developing the project

- 10.18 It is important that the potential equality of opportunity and sustainable development issues relating to employment are identified at the policy initiation, development, monitoring and evaluation stages. Where the project includes provision of services, equality of opportunity and sustainable development need to be addressed in the appraisal of any options being considered; in assessing the policy objectives and the identification of options to meet the objectives, the potential effect on workforce issues should be considered.
- 10.19 If it is considered that there is insufficient information on which to make a decision, screening and where required an EQIA/IIA will be appropriate to gather the necessary information to put forward a fully considered set of options. Public authorities are required by the Cabinet Office Code to have effective consultation and communication policies and practices which ensure that consultation is inclusive and meaningful. This in turn requires that consultation is seen to have a direct impact on the decision making process.

A public authority with responsibility for maintenance to public buildings has an ongoing contract with a firm to do this. The authority operates in an area of high unemployment as much of the traditional manufacturing industry has closed in the past 20 years. When setting up the procurement project for this maintenance, the authority decided to include an additional contract condition that requires the contractor to offer an apprenticeship for every £100,000 spent by the authority.

A project to replace a number of existing schools with new buildings is being designed. There is uncertainty around building supervision services (eg caretakers). The public authority through EQIA identifies options and seeks to assess the equality implications including through consultation as the EQIA requires. Following consultation it may be decided that, given the number, composition and locations of caretakers, it would be inappropriate to transfer them to the private sector contractor who will be responsible for the design, build and management of the new schools. In such a case it would be preferable if the staff concerned were to remain public sector employees. On the other hand it may be concluded that, given limited resources within the schools, the external provider could best provide the supervision and support. The terms and conditions of the employees would be protected through TUPE and the Code of Conduct. Performance measures would be developed from the scoping of the procurement and outcomes to ensure broader equality considerations, including s 75 requirements, are met.

Specification

- 10.20 Rigorous contract specification linked to the subject matter of the contract (see chapter 5) can ensure private sector compliance with good employment equality practice. Importantly an authority can require, at specification stage, that the information from a contractor or service provider through the contract will not just relate to the avoidance of unlawful discrimination but will also enable the authority to report on all its s 75 and sustainable development responsibilities. (see also chapter 5).

Compliance with domestic employment laws

- 10.21 A public authority is permitted by both domestic and EU law to include in the contract documents relating to a public works contract or to a public services contract, information as to where a contractor or service provider may obtain information about the obligations relating to, among other things, “employment protection and working conditions” applying to the work or works to be carried out under a public works contract or the services to be provided under a public services contract.

- 10.22 Although there is some doubt, the better view is that obligations on employers operating in Northern Ireland regarding employment discrimination are included within the phrase “employment protection and working conditions”, and so it is permissible for the public authority to specify where the contractor or service provider may obtain information relating to such Northern Ireland employment discrimination obligations, such as from the Equality Commission, for example. Public authorities should include such information.
- 10.23 Contractors might be expected to know relevant legislation and employment rules in the country where they intended to operate, but in the interests of transparency it is clearly better if public authorities help contractors by informing them from where the appropriate information may be obtained.
- 10.24 If the public authority provides this information, the public authority is then legally required to request contractors or services providers to indicate that they have taken account of relevant legislation and employment rules in preparing their tender or in negotiating the contract¹⁰.

Selection stage

- 10.25 A public authority which advertises for a contractor or service provider will receive expressions of interest from potential candidates and may seek from them further information to assist it to move forward to the selection stage. Matters that the public authority can request the bidders provide information on include employment policies and practices. There are some examples below, but each question in any PQQ must be drawn up with the specific project in mind to ensure that it is relevant to that contract (see also chapter 6).

10 See Reg 38 of the Public Contracts Regulations 2006 and Reg 35 of the Utilities Contracts Regulations 2006

Workforce issues in contract conditions and performance management

10.26 A public authority when awarding a contract should ensure that it provides for adequate performance monitoring in relation to relevant workforce issues, bearing in mind requirements in its equality scheme to monitor for adverse impact. Monitoring will be essential to the authority in assessing the contractor or service provider in relation to those issues. Accordingly the authority may wish to require proportionate performance monitoring parameters such as those in the box below (see also chapters 8 & 9).

Tools for performance management

- Information relating to the implementation of equality of opportunity which should be supplied in a timely manner and in an agreed format.
- Information on the equality monitoring systems to be implemented to measure the extent to which the contractor is providing equality of opportunity and fair participation.
- Information on the nature of the contractors' arrangements for reporting on its compliance with agreed equality measures at its most senior operational and strategic levels.
- Information that staff with managerial responsibilities are receiving equality training.
- Information on the composition of the contractor's or service provider's workforce.
- Regular reports of reviews of the approach to equal opportunity in employment.
- Reports of affirmative or positive action measures, goals and targets set to improve workforce composition, where necessary, and associated activity such as outreach measures to achieve these targets.

ANNEXES

Section 75 (s 75)

- (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity
 - (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - (b) between men and women generally;
 - (c) between persons with a disability and persons without; and
 - (d) between persons with dependants and persons without.
- (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

Section 25 Sustainable development

- (1) A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case.
- (2) For this purpose:-
 - (a) a public authority must have regard to any strategy or guidance relating to sustainable development issued by the Department of the Environment, and
 - (b) a public authority other than a Northern Ireland department must have regard to any guidance relating to sustainable development issued by a Northern Ireland department other than the Department of the Environment.

- (3) In this section 'public authority' means:-
- (a) a Northern Ireland department,
 - (b) a district council in Northern Ireland, and
 - (c) any other person designated for the purposes of this section by order made by the Office of the First Minister and Deputy First Minister.
- (4) The power to make an order under subsection (3)(c) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 [N.I.12]).
- (5) Such an order may not be made unless a draft of the Order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

Annual review of progress - The review of progress committed to by a public authority in its equality scheme on which the Equality Commission base its review of progress in s 75.

BREEAM - Building Research Establishment Environmental Assessment Method. The BREEAM family of assessment methods and tools are all designed to help construction professionals understand and mitigate the environmental impacts of the developments they design and build.

<http://www.breeam.org>

Community and voluntary sector - The "voluntary and community sector embraces those independent, non-profit organisations in Northern Ireland governed by their own constitution and existing to contribute benefit to society; those who work in those organisations; and those who volunteer either formally through those organisations or otherwise."

Complex projects - (procurement definition) A particularly complex contract is one where the contracting authority is not objectively able to:

- a) Define technical means capable of satisfying its needs or objectives, or
- b) Specify either legal or financial make up of a project or both.

Contracting authorities - Contracting authorities include Ministers of the Crown, government departments, district councils and bodies governed by public law, that do not have an industrial or commercial character and are financed wholly or mainly (more than 50%) by another contracting authority - such as Non-Departmental Bodies. All contracting authorities are subject to compliance with the Procurement Regulations where the procurement of any goods, works or service exceeds the EU thresholds. A complete definition of a contracting authority is given in The Public Contracts Regulations 2006 - Regulations 3 (www.opsi.gov.uk/si/si2006/20060005.htm#3) and details of the current thresholds can be found on CPD's website www.cpdni.gov.uk

DFP - Department of Finance and Personnel

EQIA - Equality Impact Assessment (see page 22)

IIA - Integrated Impact Assessment (see page 23)

KPIs - Key Performance Indicators

OFMDFM - Office of First Minister and Deputy First Minister

Public Private Partnerships and Private Finance Initiatives

(PPP and PFI) - In 2000, the Government published *Public Private Partnerships - the Government's Approach* (HM Treasury) which defined PPPs into three categories:

- The introduction of private sector ownership into state owned businesses, using the full range of possible structures (whether by flotation or the introduction of a strategic partner), with sales of either a majority or a minority stake.
- PFI and other arrangements where the public sector contracts to purchase quality services on a long term basis so as to take advantage of private sector management skills incentivised by having private finance at risk. This includes concessions and franchises, where a private sector partner takes on the responsibility for providing a public service, including maintaining, enhancing or constructing the necessary infrastructure.
- Selling government services into wider markets and other partnership arrangements where private sector expertise and finance are used to exploit the commercial potential of government assets.

PPP Working Group and PPPs - The PPP Working Group in its report *Review of Opportunities for Public Private Partnerships in Northern Ireland* (May 2002) provides the following definition:

“A Public Private Partnership is generally a medium to long-term relationship between the public and private sectors (including the voluntary and community sector), involving the sharing of risks and rewards and the utilisation of multi-sector skills, expertise and finance to deliver desired policy outcomes that are in the public interest”.

Project Board - Projects are managed by a project board. The board consists of a team of key decision makers, with reporting lines and delegated authority between it, its individual members, the body's authority and project team clearly laid down.

Public authority - A public authority designated for the purposes of s 75.

Equality scheme - A document which outlines a public authority's arrangements for complying with its s 75 obligations. An equality scheme must include an outline of the public authority's arrangements for carrying out consultations, screening, EQIAs, monitoring, training and arrangements for ensuring access to information and services.

Screening - The procedure for identifying which policies will be subject to a full EQIA and how these impact assessments will be prioritised. The purpose of screening is to identify the policies which are likely to have a significant impact on equality of opportunity so that greatest resources can be devoted to improving these policies. Screening requires a systematic review of existing and proposed policies.

Senior Responsible Owner (SRO) - The SRO is the individual responsible for ensuring that a project or programme of change meets its objectives and delivers the projected benefits. They should be the owner of the overall business change that is being supported by the project. The SRO should ensure that the change maintains its business focus, has clear authority and that the context, including risks, is actively managed. This individual must be senior and must take personal responsibility for successful delivery of the project. They should be recognised as the owner throughout the organisation.

An individual's responsibilities as an SRO should be explicitly included in their personal objectives and the individual should remain in place throughout the project or programme or change only when a distinct phase of benefit delivery has been completed.

http://www.ogc.gov.uk/User_roles_in_the_toolkit_senior_responsible_owner.asp

Strategic partnerships - A relationship between two or more organisations that involves building mutual long-term goals and commitments; a partnership or agreement with another organisation for mutual benefit.

Sustainable development - Development which meets the needs of the present without compromising the ability of future generations to meet their own needs.

ANNEX 2 RESOURCES

A2

There is a rapidly developing bank of resources to support public authorities in making and managing PPPs and other procurement projects. Some are listed below and each of these will have links to other sources but this is not an exhaustive list. It is also useful to look at material prepared by other public authorities on their practice, other equality bodies and organisations who work with and for people affected by s 75.

Equality Commission

This guidance has been written to integrate within and complement the earlier guidance on s 75.

Guide to the Statutory Duties - A guide to the implementation of the statutory duties on public authorities arising from s 75 of the Northern Ireland Act 1998 (2005, revised).

Section 75 of the Northern Ireland Act 1998 - Practical guidance on Equality Impact Assessment (2005, revised).

These and other guides and codes of practice can be found on www.equalityni.org

Role of the Equality Commission

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. It has responsibilities under the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation disability and age. The remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under s 75 of the Northern Ireland Act.

The Equality Commission's general duties include:

- working towards the elimination of discrimination
- promoting equality of opportunity and encouraging good practice
- promoting positive / affirmative action
- promoting good relations between people of different racial groups
- overseeing the implementation and effectiveness of the statutory duties on relevant public authorities
- keeping the legislation under review.

The Equality Commission has specific responsibilities under s 75 which include advice giving, equality scheme approval and a complaints and investigation role. See the *Guide to the Statutory Duties* for more detail.

Central Procurement Directorate (CPD)

CPD has the complete tool kit for procurement excellence including extensive material on the Gateway Review Process (see www.cpdni.gov.uk).

Role of CPD

CPD within the Department of Finance and Personnel (DFP), came into existence on 1 April 2002 as a result of the Review of Public Procurement which recommended the merger of the Construction Service and Government Purchasing Agency into a single directorate. CPD - with its expertise in the field of procurement and construction - helps departments to achieve real savings in procurement budgets which can free up resources to be used on service delivery and improving Northern Ireland's physical infrastructure.

CPD's role is to support the Procurement Board in developing and reviewing procurement policy and to carry out an executive function in relation to the procurement of supplies, services and works for the public sector. It is responsible for disseminating policies approved by the Board and monitoring their implementation as well as developing and promoting best practice in procurement within the Northern Ireland public sector.

In addition to CPD there are a number of centres with specialist procurement expertise across the public sector. These CoPEs add considerable value in developing operable policies and provide a procurement service together with advice and guidance within their spheres of responsibility.

The public procurement policy approved in May 2002 applies to procurement carried out by Northern Ireland Departments and their agencies, Northern Ireland public corporations, Northern Ireland non-departmental public bodies and local authorities. The policy is guided by the concept of best value for money which allows for appropriate integration, within the procurement process, of sustainable development goals under the pillars of social, economic and environmental objectives. More detail on this policy and the 12 guiding principles which underpin it are set out in chapter 2 of this guide.

CPD has, with the approval of the Procurement Board, produced guidance on the integration of sustainable development goals into the procurement process for conventional purchases. Individual guidance notes on each of the three pillars are available on the CPD website www.cpdni.gov.uk. The objective of these guidance notes is to provide an outline of the range of possibilities for integration under the existing procurement rules.

Office of the First Minister and Deputy First Minister (OFMDFM)

OFMDFM's Economic Policy Unit is developing the Code of Practice on Workforce Matters for Northern Ireland use. There is also a link to a sub-website specifically on PPP www.ofmdfmini.gov.uk and www.ppp-ni.gov.ni

Strategic Investment Board (SIB)

SIB is responsible for accelerating delivery of infrastructure projects. It publishes the Standard Guidance of PFI Contracts, Northern Ireland. See www.sibni.org

Office of Government Commerce (OGC) www.ogc.gov.uk

HM Treasury www.hm-treasury.gov.uk

Advisory Council on Infrastructure Investment www.acii-ni.org

CBI

The CBI (Confederation of British Industry) has produced a range of good practice guidance on procurement, contract management and partnering arrangements. See www.cbi.org.uk/publicservices

Unison

Unison has considered, amongst other areas, matters of staff transfer. It has practical examples and, in some instances, shows how things might have been done differently www.unison.org.uk/pfi/

Role of the Sustainable Development Commission (SDC)

The SDC is Government's independent advisory body on sustainable development and aims to put sustainable development at the centre of government and corporate policy. The SDC is charged with advocating sustainable development and building consensus on the commitments and actions needed

for progress to be achieved. The Commission reports directly to the Prime Minister and to the First Minister and deputy First Minister.

The SDC has played an important role in the development and delivery of the Sustainable Development Strategy for Northern Ireland. With a Chair and an active board of 19 Commissioners who play a central role of determining priorities, developing and steering work programmes.

The SDC's specific tasks are to:

- identify unsustainable trends which will not be reversed on basis of planned action, and recommend action to reverse the trends
- encourage and stimulate good practice
- act as a “critical friend” to government in appraising its performance in delivering sustainable development
- establish good working relationships with key parts of government in promoting sustainable development
- deepen awareness of the concept of sustainable development within key sectors, increase awareness of the issues it raises and build agreement on how to address them.

Sustainable Development Commission www.sd-commission.org.uk

Some more codes of practice and guidance

Age Diversity in Employment: A Code of Practice (DEE, 1999, Nottingham)

Age Discrimination in Northern Ireland - The Law and Good Practice for Employers (ECNI, 2006, Belfast)

Code of Practice for the Elimination of Discrimination in the field of employment against disabled persons or persons who have had a disability (DED, 1996, TSO)

Disability Code of Practice - Employment and Occupation, (ECNI, 2005, Belfast)

Guidance on matters to be taken into account in determining questions relating to the definition of disability (DED, 1996, TSO)

Code of Practice - Rights of Access, Goods, Facilities, Services and Premises (ECNI, 2003, Belfast)

Code of Practice for Employers for the Elimination of Race Discrimination and the Promotion of Equality of Opportunity (CRE NI, 1999, Belfast)

Code of Practice on Equal Pay (EOC NI, 1999, Belfast)

Removing Sex Bias from Recruitment and Selection: A Code of Practice (EOC NI, 1995, Belfast)

Fair Employment in Northern Ireland: Code of Practice (FEC, 1999, Belfast)

Sexual Orientation Discrimination in Northern Ireland - The Law and Good Practice (ECNI, 2004, Belfast)

ANNEX 3 EXAMPLES AND CASE STUDIES

A3

The following examples and case studies will be helpful in illustrating how this guidance applies in practice. However the requirements for any project need to be considered on a case by case basis.

Example 1 - Works - design and construction

	New road build
Concept stage (define outcomes)	<p>The strategic framework for the roads build programme is established in a 15 year strategy for the roads infrastructure for Northern Ireland. This strategy will have been screened and then subjected to a full Equality Impact Assessment in compliance with the roads authority's equality scheme.</p> <p>At the strategy stage, the decision to upgrade the road between A and B will have been taken. A detailed analysis of possible alternatives will have been assessed against the five criteria of Economy, Environment, Safety, Accessibility and Integration including upgrading existing roads, providing entirely new roads or a combination of these. Public consultation plays a part in this analysis, with consideration being given to how the route would impact on people, including whether the route would benefit certain groups, through improved travel to work times, or their ability to better access public services or facilities such as town centres etc. A preferred route for the road which in this example concluded that construction on a new alignment was required will have been selected. Details of the preferred route are then published as part of the planning process and may be subject to public enquiries etc.</p> <p>If the route of the road is agreed, then the outcomes of the road build need to identify this.</p>

Specification	The outcomes should translate into objectives for the road build. The objectives need to include the routing of the road to provide the benefits identified. In PFI roads projects, the road authority retains the planning risk and defines in detailed terms the corridor through which the road should pass and the end product that is required. An illustrative design is prepared against which the contractor's proposals are measured.
Contractor selection	
Tender evaluation	
Contract	The objectives need to be expressed in contract terms, which can be managed and monitored.
Contract management	

Example 2 - Works - construction

	Upgrading main road from A to B
Concept stage (define outcomes)	<p>The strategic framework for the roads build/maintenance programme is established in a 15 year strategy for the roads infrastructure for Northern Ireland. This strategy will have been screened in compliance with the roads authority's equality scheme.</p> <p>The development of the strategy identified the need to upgrade the A to B road, due to increased road use. Screening and EQIA identified that part of the road cuts through a residential area of family housing and also sheltered housing. The facilities for this area are on the other side of the road. The groups affected by any upgrading to the road</p>

	<p>will be primarily: disabled people, those with dependents, younger and older people.</p> <p>The potential adverse impacts identified were:</p> <ul style="list-style-type: none"> • the increased traffic on this road and health and safety of the residential community • worsening access from the housing to the shops and health care centre. <p>The constraints on mitigation and alternative solutions include: planning regulations, and a new road as an alternative route is not an option.</p> <p>The outcomes sought through the road upgrade are to ensure the safe and effective flow of traffic from A to B, for an average of X vehicles per day, and to ensure the ongoing, effective access between the residential area and the local facilities.</p>
Specification	<p>To inform the detailed specification, appropriate user groups are consulted.</p> <p>The consultation will need to address equality considerations in the context of practical issues. User groups could include prospective road users and users of the housing, shops and healthcare centre (workers/owners as well as members of the public) and should, themselves, be convened with equality of opportunity in mind.</p> <p>The affected groups identify that the health centre serves a wider area than just one estate. The estate provides the pedestrian route to the health centre, and there are a significant number of disabled people, specifically wheelchair users, who use that route. The solution proposed is for an underpass, to which the local community agrees.</p>

	<p>The public authority sets out the requirement of an underpass in the specification.</p> <p>However, on the issue of children playing in the local area, there is no single solution. The specification is clear that the outcome is a safe environment, and the contractor is asked for the solution on road features and landscaping.</p>
Contractor selection	<p>The candidates are routinely asked for evidence of their workforce practices, policies and procedures on equality using questions appropriate to the project.</p> <p>Technical capacity.</p> <p>The candidates are asked to provide evidence of their experience of creating a safe environment in consultation with a diverse local community.</p>
Tender evaluation	<p>Evaluation by the project team may also refer back (on specific issues) to the relevant user groups who were consulted at the specification stage.</p> <p>The tenderers are asked to provide evidence of how they will meet best practice standards on design and accessibility issues.</p>
Contract	<p>The contract stipulates that:</p> <ul style="list-style-type: none"> • all the road features, including footbridges and underpasses, are fit for purpose • access from residential area to health centre is maintained • the road is available for use. <p>One of the candidates puts forward a proposal during the competitive dialogue to ensure that the junction by the residential</p>

	<p>area allows for both entry and exit onto the road, creating a new route for accessing B, decreasing travel to work times for local residents who do not otherwise count in B's Travel to Work Area.</p>
Contract management	<p>The agreed monitoring against the contract includes the points below.</p> <p>The contractor provides a sign with telephone contact numbers for complaints about the road being available for use. The data is collated annually for the public authority.</p> <p>The public authority surveys road use every five years to measure the number of vehicles.</p> <p>The public authority has set up a system to contact the health centre, the local authority community planning forum, and the residents' association once every two years to ask whether access is maintained (along with asking for feedback on other services).</p> <p>As a result of this monitoring, it becomes clear that the perception is that the underpass is unsafe. Litter is left in it and the lights are not replaced if broken. The public authority discusses this with the contractor as part of monitoring contract performance to improve this.</p> <p>However, the public authority considers how CCTV in use for traffic monitoring could be extended in use to add value to a community safety initiative, as it sees opportunities to promote good relations in doing this in partnership with others.</p>

Example 3 - Construction/design and services

	Further education (FE) college (including ITC provision)
Concept stage (define outcomes)	<p>The strategic framework for the development of FE colleges identifies the need to build a new college in the north west.</p>
	<p>The screening and EQIA of the strategy identifies an adverse impact on Protestant students with the current provision. The outcomes sought through the building of a new college include:</p> <ul style="list-style-type: none"> • to build a new FE college • to improve access for Protestant students to the college site and educational services.
Specification	<p>User groups made up of relevant parties from the FE body as well as prospective student groups and the wider public who are likely to have access to the facilities will provide their views on the requirements for the new FE college.</p> <p>It is decided that the contractor can influence where the site of the new college will be, as there are a number of options. However as access for Protestant students is one of the clear outcomes, the specification and advertisement (OJEU notice) are clear that the choice of location must facilitate better access for this group while balancing the other factors which have resulted from the user group meetings.</p>
Contractor selection	<p>The candidates will need to demonstrate, as part of technical competence, that they understand location issues and the equality considerations for the siting of the buildings.</p> <p>The candidates' track record on equality and anti-discrimination will need to be assessed in a PQQ.</p>

	<p>The PQQ may also include a question aimed at establishing the candidate's technical ability in terms of their understanding of location issues and equality considerations demonstrated by previous experience in similar or equivalent circumstances (ensuring that experience outside Northern Ireland will be accepted).</p>
Tender evaluation	<p>Evaluation by the project team may also refer back (on specific issues) to the relevant user groups who were consulted at the specification stage.</p> <p>During the competitive dialogue phase the candidates are asked to demonstrate how their designs meet the requirements in terms of encouraging integration and community involvement.</p>
Contract	<p>The contract will stipulate that the location of the building will be agreed according to the outcomes sought.</p> <p>The contract will specify the levels of access that should be achieved in the location, and physical access to the new buildings.</p> <p>The contract will stipulate that the workforce employed subsequently to provide services in the new building will be covered by the code of practice.</p> <p>The contractor could also agree to additional voluntary arrangements that ensure that all their workforce policies are to the same standard as those applying to this contract.</p>
Contract management	<p>The actual usage of the new building is monitored by the public authority in terms of community background of students enrolled on courses.</p> <p>The authority also sets out a monitoring regime to measure student satisfaction levels every five years to determine perceptions of access.</p>

	<p>The contractor provides annual monitoring information on the workforce employed to within the college under the terms of the contract.</p> <p>The contractor has also agreed a positive action programme to increase representation from x community within the catering services and cleaning services.</p>
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Example 4 - (Soft) Services

	<p>Hospital meals service - including delivery and service to the wards and patients</p>
<p>Concept stage (define outcomes)</p>	<p>Part of an identified procurement project is the provision of the hospital meals service which covers both the provision of the meals and an “at bed” service direct to patients. This includes direct contact with patients to establish what their meal preferences are, take orders, serve the meals and clear away.</p> <p>The screening at project development stage identified that inappropriate catering services could have a potential adverse impact on difference minority ethnic groups, of which there are small but significant Jewish and Indian communities within the hospital catchment area.</p> <p>The hospital also provides paediatric and geriatric in-patient wards, so meals need to be appropriate for children and older people.</p> <p>The desired outcomes for the catering services is that appropriate meals are provided, to agreed nutritional standards, and meals that meet treatment needs are provided.</p> <p>Because of the direct personal contact between the contractor’s staff and patients/users from diverse backgrounds, equality awareness and training of staff is regarded as a vital requirement.</p>

Specification	<p>User groups of staff and a representative group of patients should be consulted as to the desired outcomes from the contract including the availability and quality of meals which are appropriate for a diverse population group.</p> <p>Taking the outcomes, the public authority decides to investigate further the patient profile in the hospital to ensure that no other groups need to be accommodated to ensure that appropriate meals are provided.</p> <p>The specification sets out the standards to be met and gives the patient profile to potential contractors.</p>
Contractor selection	<p>The technical ability of candidates is tested by their ability to supply food appropriate for specific religious and ethnic groups, measured on a pass or fail rating.</p> <p>The candidates are given PQQs and asked questions to determine their track record on equality and anti-discrimination measures including evidence of their ongoing staff training programmes on equality issues.</p> <p>They are also asked about experience of production of meals to meet the needs of specific patient/user groups.</p>
Tender evaluation	<p>Evaluation by the project team may also refer back (on specific issues) to the relevant user groups who were consulted at the specification stage.</p> <p>The candidates are asked for their approach to provide different food appropriate for different groups by provision of sample menus and are measured on the basis of how innovative the menu is.</p>
Contract	<p>The contract stipulates that appropriate meals must be provided, accommodating specific dietary requirements.</p>

<p>Contract management</p>	<p>The contractor has to provide annual monitoring information on the requests for specific meals and complaints received.</p> <p>The contractor conducts an annual patient satisfaction survey (agreed with the public authority) which asks questions about the meals. This survey is monitored for age, ethnicity and gender.</p> <p>The public authority also initiates an assessment of the meals service following press research into malnutrition amongst in-patients in a geriatric ward. It identifies problems with the way the meals are delivered to the wards, as many are not eaten. Through the variation clauses in the contract, the service to the geriatric ward is amended to address the problems identified.</p>
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Case Study 1 - Developing sustainable specifications

An example of the use of sustainable specifications

For the design of schools and other similar buildings bidders are required to provide a self-evaluation of the BREEAM for Schools, proving that a score of at least 'very good' is achievable.

Accompanying text and drawings should expand on how the materials and components specification and elemental services specification above meet BREEAM and related objectives (particular mention must be made of the achievements in relation to the low carbon initiative and the ventilation strategy on each site, including confirmation of the monitoring and remedial proposals in relation to the stated targets).

Bidders need to describe their approach and strategy towards lifecycle replacements, and how work and any decanting is to be organised and executed to ensure minimum disruption to each of the schemes they are proposing irrespective of effects on the performance monitoring regime. This should be sufficiently articulated to support their life cycle profile.

Health and well-being: including an explanation of the proposals for lighting, ventilation and acoustic insulation (from both airborne and impact sound) to achieve the requirements of relevant standards.

Energy: in particular the target energy consumption for fuel and electricity, including details of proposed sources of energy, energy management systems features, how energy usage can be reduced, how renewable energy has been integrated in to the design and how sub-metering can be used for all utilities in each of the buildings they are proposing.

Transport: including proposals for cycle storage and how the landscape design minimises risks to pedestrians and cyclists whilst allowing appropriate 'drop-off' facilities.

Water: including details of target water consumption and how it can be reduced.

Materials: demonstrating how they will be responsibly resourced, environmentally sustainable and appropriately recycled.

Land use and ecology: identifying how the design team would act on ecological advice such as a biodiversity action plan.

Pollution: meeting the local and regional plan targets for renewable energy (Consistent with Communities and Local Government Policy Planning Standard PPS22 and guidance planning for renewable energy).

Description of zoning plans for heating and ventilation indicating which rooms require forced ventilation and/or cooling and how this helps achieve environmental and sustainability aims.

Case Study 2 - Victoria Square

Background

The Victoria Square Development Scheme in Belfast is a major retail led regeneration scheme which consolidates the main shopping area in the city centre, creating a link with the existing Castlecourt shopping area and linking the city centre core with Laganside and the rejuvenated river front. It will also link with the second major retail led regeneration scheme in the North East Quarter of the city.

The key economic and social benefits for the community presented by the Victoria Square scheme include:

- an estimated 3,000 jobs to be provided during the construction period to 2008
- an estimated 3,000 permanent jobs in retailing and leisure to be provided when the scheme opens in March 2008.

Additional significant benefits arising from Victoria Square are:

- over £400m private investment
- 4.5 acres of redevelopment within the main shopping core of Belfast city centre
- in excess of 55,000sq m of additional retail space in the city centre
- a flagship House of Fraser department store
- residential apartments in the main shopping core
- entertainment and leisure at a cinema, restaurants and bars.

Opened in March 2008, it will help strengthen the city centre as a premier regional shopping and tourist destination.

New TSN

In expectation that the development scheme would generate a significant number of jobs both in construction and when completed, the Northern Ireland Executive, prior to the formal announcement of the development scheme, placed great

emphasis on the need for the Department to secure the maximum New Targeting Social Need (New TSN) and equality benefits from the chosen development. New TSN aims to tackle social need and social exclusion by targeting efforts and available resources within existing Departmental programmes towards people, groups and areas objectively defined as being in greatest social need.

The Department therefore as part of this brief required the developer to make an acceptable proposal to address this issue. The Development Agreement (the legal contract between the Developer and the Department) provides that the developer shall ensure that the works are carried out in compliance with all statutory orders and regulations made under or deriving validity from them, and any requirements and codes of practice of local authorities and competent authorities affecting the development and/or the development site. The developer has complied with this requirement in relation to the Department's New TSN and equality obligations through the development of a New TSN Action Plan (Community and Business Opportunity Plan - CBOP) published by Department of Social Development (DSD) on Tuesday 30 May 2006.

The plan sets out a framework of social and economic opportunities at Victoria Square to benefit the community. The Department and the developer as the main public and private sector partners involved in Victoria Square have jointly lead on the implementation of the CBOP. Other implementation partners are involved such as DEL, DETI, Belfast City Council, Arts Council for NI, Belfast Visitor and Convention Bureau and Invest NI.

The implementation partners will work together to realise the anticipated social and economic regeneration benefits from Victoria Square under six action areas:

- *Employment* - Promoting access to job opportunities for unemployed people. Community groups from disadvantaged areas across Belfast will be invited to help shape the employment initiatives
- *Community Involvement* - A Victoria Square community forum has been established to assist communication and outreach within local communities particularly in areas of disadvantage in the city

- *Shared Space* - Encourage all citizens and sections of the community to use and enjoy Victoria Square as a shared space for employment, living and leisure time
- *Access for Disabled People* - Promote accessibility to Victoria Square for disabled people by working with representative groups and professional bodies to ensure best practice in accessibility
- *Business* - local sourcing of materials, goods and services. Promote economic development through the local sourcing in Northern Ireland of materials, goods and services required to construct and run Victoria Square
- *Tourism Development* - Implement a specific Belfast tourism campaign to coincide with the opening of Victoria Square aimed at local, national and international markets.

Case Study 3 - Procurement of sustainable food products

The Regional Supplies Service worked with what was then a Health and Personal Social Services Trust as lead body to develop a model for encouraging sustainable development of the rural economy in public sector procurement. This is outlined in the following paragraphs.

Renaissance of Atlantic Food Authenticity and Economic Links (RAFAEL), is a project to support and promote authentic food in different regions of the Atlantic coastal area of Europe. The project is being delivered by organisations from nine regions in Spain, Portugal, France and the United Kingdom who share a passion for authentic food and whose landscapes entirely reflect their systems of food production.

Authentic food is food that is locally grown and sold and is linked to the natural, cultural and historical assets of the region. It comes from sustainable farming and processing systems, often certified organic and can be traced along the food chain. It is concerned with people, those who produce and process the food, ensuring good work ethics and fair-trade, and the people consuming the food, so that they receive high quality, healthy and safe food that has been produced GM free and to high animal welfare standards. The concept of food covered by this project includes every kind of raw and processed food from the wide climatic diversity of the participating regions. The project focuses on land based production systems and includes all parts of the food chain from production, processing, marketing, retailing, consumption and associated products and activities such as agri-tourism.

The Western Health and Social Care Trust is the lead partner for the RAFAEL project in Northern Ireland. There are a number of other partners who are working closely with the Western Health and Social Care Trust to achieve the objectives of the RAFAEL project. These partners are Western Investment for Health, Department of Agriculture and Rural Development (DARD), Atlantic Organics, North West Rural Development Limited, Central Services Agency - Regional Supplies Service Project. Management support is provided by Strabane Farmers Forum.

Each year the health and social services sector in Northern Ireland spends an average of £60,000 for the supply and delivery of ice cream. While the expenditure in this area is significant it was felt after doing some research that a contract of this size could be manageable by a smaller organisation.

Below we detail the tendering process and provided a procurement model used to meet the objectives of procuring an authentic product.

Tendering Process

1. The tender was written in such a way as to incorporate the RAFAEL ethos:

- contract period of 1 year - as research indicated several new entrants into the market - who may be better placed to bid when they have more experience
- break down of deliveries by facility
- opportunity to bid for 1 or all products
- opportunity to bid for 1 of all delivery points
- opportunity to bid for supply and delivery of product
- opportunity to sub-contract any element of the contract
- consultation with Loughry College on product specification
- guide line speciation provided
- supplier to submit their product specification
- dietician involved in specification assessment
- environmental Policy sought
- organic product sought.

2. Tender advertised via www.csa.net and local paper

Tenders requested - nine companies requested tender documents

Tenders received - five tenders were received

Analysis of bid provided to catering managers

Contract award - Mullins Ice Cream

The award of this contract to this company was consistent with the RAFAEL ethos of awarding to a local supplier of a local product, produced by local labour.

Case Study 3 - Local procurement (continued)

RAFAEL Procurement Model

ICE CREAM

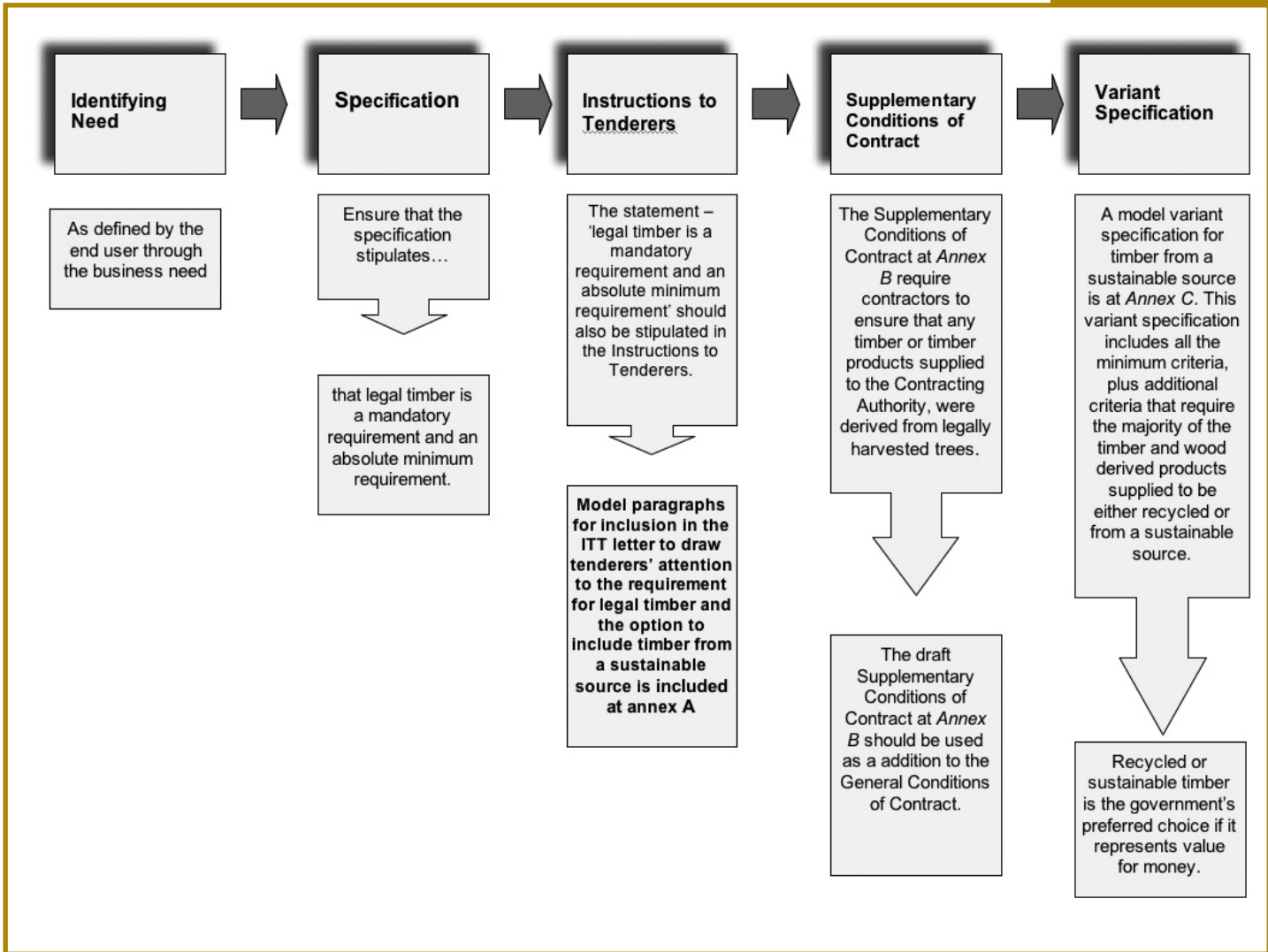
Input	Actions	Desired Outcome	Actual Outcome
Market research	Internet search Meet the Buyer Contact previous bidders Request details Other	Encourage SMEs to bid for business	9 companies downloaded / requested documents - 1 of which was a new entrant into the market
Incorporating RAFAEL ethos	Documents to include: Delivery schedules Flexible structure Environmental considerations Technical support	Flexible documentation to encourage SMEs to bid for business	While SMEs did bid for the business it was noted that a number identified at research stage did not bid
Tender process	Carried out in accordance with EU legislation	To meet EU requirements	Outcome met
Contract award	As above - and incorporating RAFAEL ethos		Contract awarded to local supplier
Debriefing / follow up with unsuccessful bidders	Visit with bidders	To try and retain SMEs interest	Bidder visits carried out - bidders will be bidding when contract is due for renewal

Case Study 4 - Procurement of legal and sustainable timber

Timber and Wood Derived Products

The following model is designed to illustrate how legal and sustainable timber can be purchased in line with EU procurement rules and public procurement policy.

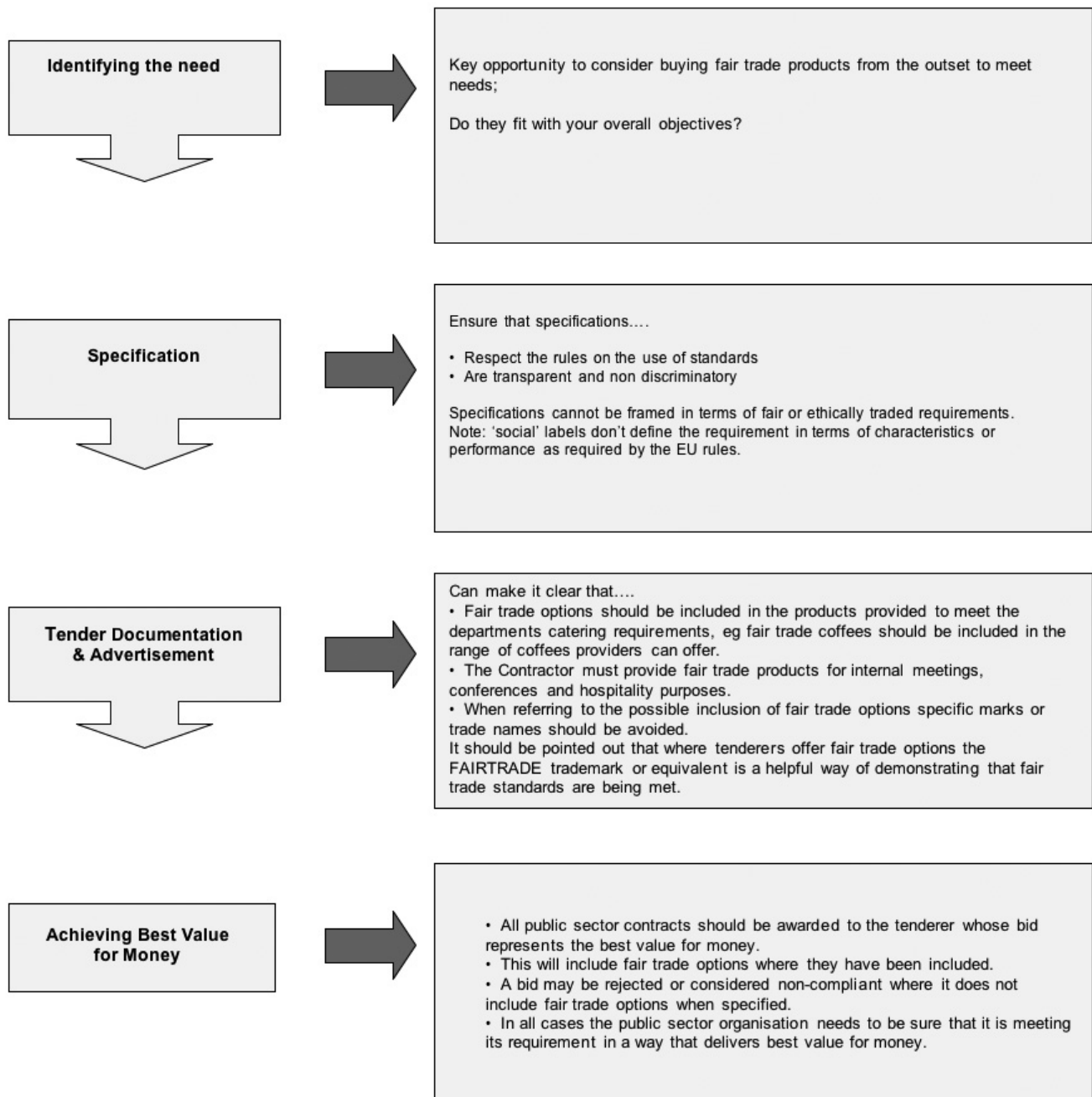
It should be used in conjunction with the relevant sections and model paragraphs included in the detailed Guidance Note (04/06) which can be found on the CPD website www.cpdni.gov.uk



Case Study 5 - Procurement of Fair Trade Products

The following procurement process model sets out how fair trade products may be procured under the EU procurement rules and procurement policy, to achieve fair trade objectives. This model should be used in conjunction with the CPD Guidance Note (02/06) which can be found on www.cpdni.gov.uk.

This guidance note also includes model paragraphs which can be built into the tender documentation.



Case Study 6 - Sustainable regeneration

Sustainable regeneration of the former Mackies complex to create Forth River Business Park

Design and construction of phase 2 site development

This project concerned the redevelopment of a brown field industrial site in west Belfast. In the letting of the contract the opportunity was taken to investigate environmental objectives and both design development and construction issues that arose in the delivery of the contract were addressed in an environmentally friendly manner. This approach resulted in significant cost savings to the client.

The main works associated with Phase 2 Site Development were:

- provision of site access road and infrastructure
- breaking out, crushing and reuse of existing concrete structures
- excavation and reuse of the existing bituminous materials on site
- on site treatment of contamination
- drainage system compliant with the principals of Sustainable Urban Drainage Systems (SUDS)
- construction of timber crib walling to retain unstable embankments.
- perimeter fencing
- provision of services for future business and industrial development.

Site investigations, a dewatering project and Phase 1 were undertaken prior to Phase 2 Site Development.

Site investigations

From the late 1800s to 1999 the Mackies site had been used as a brick works, for glass production, aircraft and munitions manufacture and foundries. These industrial activities had caused contamination to the site.

The contamination investigations revealed:

- Total Petroleum Hydrocarbon (TPH) soil contamination, especially around the area of oil storage
- chlorinated solvent contamination of shallow groundwater
- dispersed heavy metal, TPH and minor asbestos contamination of fill materials.

A remediation strategy for the site was then produced to provide a site suitable for industrial development as required by the Industrial Development Board/Invest NI.

A detailed geotechnical investigation of the site identified that the subsoil properties comprised weathered mercia mudstone, overlain in areas by fill material from previous industrial activities on the site. The fill material varied in composition and depth across the majority of the site and comprised demolition rubble, foundry ash, soot, clay, sand, gravel and quarry aggregate. Sherwood sandstone, which is a regionally important aquifer, underlies the mudstone at depth.

Downtaking Project

This involved the careful dismantling of all of the large factory buildings for reuse and recycling of the materials. Two of the buildings were carefully dismantled for re-building, steel stanchions, cladding, cranes and other heavy lifting equipment were all carefully removed for reuse.

Phase 1 (Springfield Road Entrance)

This involved the culverting of 150m of the Forth River upstream of the Springfield Road, infilling of the ravine to allow localised widening of the Springfield Road to accommodate a new signalised junction and construction of a new entrance road and associated infrastructure. This work was managed by CPD.

Phase 2 Site Development

CPD was appointed to develop the masterplan through detailed design, planning, tender procurement and construction supervision as Phase 2 of the works. Techniques were applied to ensure that the development was sustainable and that measures were taken to protect and enhance the natural environment.

Developing the Masterplan

During the development of the masterplan through detailed design a number of changes to the site layout were considered. The extent of the site was adjusted along the western boundary to account for the unstable banks of the Forth River. A highly active main badger sett was located in the embankment on the eastern side of the site and it was decided to adjust the site layout to accommodate the badgers. Landscaping within the site included native planting to encourage and enhance wildlife habitats and wildlife corridors have been maintained including access through new fencing. The road layout and finished site levels were revised to balance cut/fill quantities.

These changes from the original masterplan layout avoided the need to culvert the river or strengthen the banks of the ravine, reduced the quantity of imported fill and the extent of retaining structures and realised savings in excess of £750,000.

Reuse of Concrete Structures

The contract documents required that all concrete floor slabs, underground concrete structures and foundations should be excavated, crushed and reused on site. More than 10,000m³ of concrete structures were crushed, with all the resulting material being reused in the development.

The reinforcement from the concrete structures was removed during crushing, stockpiled and taken off site for recycling. The retention of the concrete on site had both financial and environmental benefits. Cost savings are estimated in region of £125,000 in comparison to the disposal of the concrete off site and importing an equivalent quantity of stone fill. Traffic movements through a residential area were also minimised, reducing nuisance, noise, exhaust emissions and dust pollution.

Reuse of bituminous materials

Approximately 1,000m³ of existing bituminous surfacing was excavated and crushed on site for reuse. The crushed material was placed and rolled in specific areas across the site to form an impermeable capping over areas of low level contamination. This impermeable layer will reduce the potential for rainwater to percolate through the material and leach contaminants into the Forth River.

Contamination treatment

Bioremediation of TPH Contaminated Soils

Contamination of soils with TPH was confined to the area of fill material located directly beneath the former oil storage tanks. Due to the impermeable nature of the underlying mudstone, the vertical migration of the contaminants had been restricted significantly. TPH contaminated material was excavated and placed in windrows for treatment on site. The method involved placing the contaminated soils in uniform rows and stimulating aerobic microbial activity within the soils through aeration and the addition of nutrients.

After treatment the soils were considered suitable for reuse on the site. The cost of the treatment was comparable to the cost of off site disposal and proved to be a successful example of reclamation of contaminated soils while avoiding the nuisance of transportation and disposal to our fast reducing landfill sites.

Solvent Treatment

The method chosen for treating the solvent contaminated groundwater involved pumped removal and on site filtration. The groundwater was extracted from the ground and passed through an activated carbon filter to remove the dissolved solvent. Validation sampling of the treated water was carried out before discharge to ensure complete removal of all the solvents and the 'spent' filter media was disposed of to a licensed landfill.

Contaminated Foundry Ash

During the removal of underground concrete tanks and foundations, an unexpected quantity of contaminated foundry ash was encountered. This necessitated an urgent re-assessment of treatment options. The ash was tested and found to contain elevated concentrations of heavy metals. Cement stabilisation was chosen as a treatment method to enable the retention of the ash on site for reuse. Again, this approach reduces transportation and disposal to landfill compared to the traditional "dig and dump" techniques. Significant cost savings in the region of £100,000 are anticipated from this sustainable approach to waste management.

Storm Water Management System

Urban discharges can increase flood risk in rivers by altering the natural flow patterns and are also major cause of surface water pollution. Rainwater runoff from large areas of hard standing often contaminated with oils, sediments, rubber, chemicals and organic matter can produce sudden peak flows to the receiving watercourse. Global warming is also adding to the problem with increased rain fall and storm intensity.

A SUDS concept has been adopted within this development. Additional retention has been created within the storm sewers with the use of oversized pipework and a 'throttled' discharge. Storm water is also passed through an interceptor for the removal of oils and sediments before discharge to the Forth River.

Japanese Knotweed

Japanese Knotweed was discovered on the western boundary of the site along the top of the Forth River ravine during the start of the site works. A detailed investigation of the site confirmed that the Knotweed was present in large clumps along the Forth River valley and on adjacent lands.

Advice on the treatment and management of the knotweed was given by DARD, Applied Plant Science Division. Dig and dump

was not considered a viable option due to the extensive spread of the knotweed throughout the Forth River ravine. A management programme, which included the periodic spraying with herbicides and monitoring was recommended.

The location of the new fence along this boundary was also amended to create a sterile buffer zone between the Knotweed and the site boundary. Off site disposal or dig and dump on site would have cost in excess of £100,000. This highlights the importance of identifying this troublesome plant at an early stage.

Waste Management

The policies of on site reuse, remediation and stabilisation adopted on this project have dramatically reduced the amount of waste produced. Only small quantities of special waste such as asbestos sheeting and the carbon filters from the solvent treatment have had to be taken offsite for disposal.

Conclusions

This project provides confirmation that a sustainable approach to design and construction of civil engineering projects will result in a viable contract being delivered which can achieve significant cost savings to the client while enhancing the environment.

Case Study 7 - Assisting the unemployed back into employment

Pilot projects on utilising the unemployed in public contracts

Introduction

One of the recommendations from the Review of Public Procurement (2002) was to initiate a Pilot Project that involved a condition being included in certain contracts to utilise the unemployed in work on the contract and requiring contractors to implement an Unemployed Utilisation Plan (referred to as 'Employment Plan' throughout this paper) on award of the contracts within the Pilot Project. It was envisaged that the Pilot would involve encouraging employers to recruit and train people who had been unemployed for at least 3 months ('the target group'), to work on significant contracts with government departments, their agencies, NDPBs and public corporations. Departments were invited to nominate projects for the Pilot with values above £3.86m for construction and £0.5m for services. To ensure a comprehensive sample, construction contracts between £1m and £3.86m and service contracts between £0.25m and £0.5m were also to be identified. The Tender documentation required prospective Bidders to provide an Employment Plan that set out the firm's Social Policy and details of specific proposals offered for utilising the unemployed in work on the contract. Tenderers were also required to provide details of their experience and their capacity to implement their proposals. The Plan would also include work carried out by sub-contractors on the contract.

The Procurement Board approved the commencement of the Pilot and CPD undertook the management of the Project. Detailed guidance for public authorities and tenderers was provided by CPD and can be accessed on the CPD website www.cpdni.gov.uk. One aspect worthy of note is that while the evaluation of the Employment Plan at selection or award stage would not count towards the identification of the most economically advantageous tender, in the event of two, or more, bids being assessed as equal the public authority may award the contract to the bidder it judges to offer the Employment Plan most advantageous in meeting the objective.

Employment Plan

The Employment Plan that tenderers were required to submit was divided into three parts:

Social Policy Statement

This set out the firm's general policy in relation to the recruitment, training and retention of employees from the target group. This took the form of a strategic management document signed by the Managing Director, Chief Executive or Senior Partner.

Project Implementation Plan

This plan outlined proposals for recruitment and retention of employees from the target group for this contract and how the firm proposed to make contact with prospective employees. It also outlined a proposed monitoring and reporting system to inform the employer/public authority during the execution of the contract.

Previous Experience

This provided details of any current or previous experience in this field either in partnership with other government departments, private firms or as an initiative operated directly by the bidder.

In fourteen of the fifteen projects all the winning tenderers submitted an Employment Plan with their bid. One of the contracts failed to obtain any Employment Plans from tenderers due to the public authority's failure to include the guidance notes on the Pilot in the tender documentation. A total of 75 Employment Plans were submitted across 14 contracts and in all but one case all plans submitted were deemed to be bona fide which shows that tenderers took time and effort to prepare their plans to a professional standard.

During the two-year period 51 people commenced employment on the Pilot of which 46 were still in employment at the end of June 2005. The break down shows that 32 people have been employed in the service sector and 19 in the construction sector. The job titles of people employed include a site supervisor, HGV drivers, a head chef and general labour operatives. As of June 2005 only 4 of the 15 contracts had been completed with one more substantially finished.

At the end of the evaluation period questionnaires were distributed to all the winning contractors and the client contract managers. The return rate of the survey was excellent with 63%

of contractor questionnaires returned and an impressive 93% (14 out of 15) client questionnaires returned. Key results from the survey showed that on the contractor side 90% of respondents believed that the Pilot did not lead to an increase in direct costs while on the client side over 64% considered that the Pilot did not result in any significant increase in workload.

Outcomes

The outcomes that were anticipated from the Pilot included:

- reduced unemployment and social welfare payments
- ensuring that the supply market is more responsive to the government's goals
- improving the future career prospects for employees
- there have been no EU challenges.

Overall Evaluation

Overall the Pilot Project has demonstrated that public procurement policy in relation to social goals, specifically unemployment, can be achieved economically, efficiently and effectively.

Cost Benefit Analysis

The NI Pilot was chosen as one of six case studies for further analysis under a study commissioned by Department for Environment, Food and Rural Affairs (DEFRA) and undertaken by SQW Ltd in association with Professor Ken Willis of the University of Newcastle. The aim of this study was *“to deliver peer reviewed robust evidence of a cost benefit analysis of a sample of sustainable public procurement initiatives to evaluate their efficacy as a policy tool”*. The study can be viewed at www.defra.gov.uk

The cost benefit analysis compares the unemployment situation of the previously unemployed workers with the situation that would have pertained in its absence.

In summary the cost benefit analysis of the Pilot shows a Gross Present Value of benefits of employing the previously unemployed amounted to £264,785 while the Gross Present Value of costs amounted to £167,615, at a 3.5% discount rate. The Pilot therefore generated a small social gain with a net present value (NPV) of £97,170 and a benefit /cost ratio of 1.58.

Conclusions

- While a limited number of people were employed from the target group, a number of factors need to be taken into account. First, there was a state of high employment in Northern Ireland generally, and specifically in the Construction sector, during the evaluation period. Secondly, it was argued that it was more difficult to employ people on contracts covered by TUPE regulations, for example the NICS cleaning, catering and security guarding service contracts, as staff of the previous provider transfer over to the winning contractor. Thirdly, in some contracts the rates of pay or conditions of service are a deterrent from encouraging people from the target group to return to employment. Finally, there was a particular concern over health and safety in some of the construction projects, especially those that were relatively short term, as untrained employees would not be able to make a full contribution on site until training was provided.
- The Pilot led to the recruitment of 51 new employees from the target group of whom the contractors have retained 46. Those who have left employment will have benefited from their work experience. The creation of these jobs was achieved with very little additional direct cost. The overall 'project cost per job created' during the evaluation period was £900,000, against a construction industry benchmark of £1m. However, given that only 4 projects had been fully completed (and one substantially), and others had several years yet to run, it is anticipated that the number of people employed will be greater. It may also be the case that employing people from the target group is more difficult and therefore more expensive than the industry standard. Finally, given variations in commitment to the Pilot across the projects, and the greater difficulty in some projects than others to employ people from the target group (for example, there was virtually full employment in the Construction sector during the period of the evaluation), a better indicator of project cost per job created is to only include those projects in which jobs were created. This results in a project cost per job created of £0.61m.
- The Employment Plan process has quickly become an embedded part of the culture of contracting with government amongst construction contractors. The survey issued to all contractors at the end of the pilot showed that almost two-thirds believed that the inclusion of the Employment Plan as part of the contract did not dissuade them from tendering for the contract.

- The procedures generally operated successfully although there was a small number of instances of non-compliance. It is clear from the Evaluation Report that these were isolated cases, which came about through lack of clarity about the procedures. This was despite the clear and comprehensive guidance that was made available to all project clients by CPD.
- The lack of a coherent link-up to training agencies has been a noticeable weakness in the Pilot. Nevertheless several firms, both successful and unsuccessful, demonstrated evidence in their employment plans of involvement in training initiatives such as Learn Direct, New Start and Skillbuild through local FE colleges.
- When subjected to a cost benefit analysis the benefits of the Pilot are relatively small because the procurement policy reduces the average period of unemployment by a few weeks only. Benefits are reduced by skilled workers being displaced by the unemployed and themselves becoming temporarily unemployed. The NPV is also sensitive to the costs of the Pilot both to contractors who employ the labour and to government departments awarding the contract. Since these costs are low the benefits of the Pilot to the unemployed outweigh the costs and give a positive Benefit/Cost ratio of 1.58.
- Overall the Pilot Project has demonstrated that public procurement policy in relation to social goals, specifically unemployment, can be achieved economically, efficiently and effectively and without breach of EU rules in relation to the wide range of contracts within the Pilot and that the Pilot can be used as a model to integrate sustainable development goals, where appropriate, within the public procurement process.

All procurement

In Northern Ireland equality and now sustainable development considerations must be central to public policy processes. Section 75 of the Northern Ireland Act 1998 requires a designated public authority in carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability to promote good relations between different groups of people. The aim of this is to ensure that equality of opportunity is mainstreamed by public authorities in their policy making, policy implementation and policy review.

Organisations involved in procurement also need to pay attention to the anti-discrimination legislation on the grounds of religious belief and political opinion, sex, race, sexual orientation, disability and age.

In addition, following the introduction of the statutory duty on sustainable development, relevant public authorities must, in exercising their functions, act in the way considered best to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that any such action is not reasonably practicable in all the circumstances of the case.¹¹

Employment

Chapter 10 looks in detail at relevant employment law.

Procurement subject to European Union Directives and EU Rules

All public procurement procedures must comply with the EC Treaty¹². The key principles in the Treaty, from a public procurement point of view, are the free movement of goods, the freedom of establishment and the freedom to provide services. There are also important principles derived from these freedoms which are highly relevant to fair and competitive public procurement: equal treatment, of which non-discrimination on the grounds of nationality is a specific expression, transparency, proportionality, mutual recognition and openness to competition.

11 Statutory Duty on Sustainable Development on NI Departments and District Councils

12 Treaty of Rome, 1957, as amended

The EU Procurement Directives¹³ flesh out the principles of the Treaty with detailed procedures and criteria for specifications, selection and award of contracts above certain financial thresholds. They reflect previously decided case law and provide the context within which public sector contracting and procurement processes operate. The Directives have been implemented in UK by way of the Public Contracts Regulations 2006 (SI 2006 No.5) and the Utilities Contract Regulations 2006 (SI 2006 No.6), referred to as Regulations.

This guide has been prepared to take account of EC Treaty principles, the Directive and Regulations. It is authoritative but not a definitive guide to procurement and employment law. The law constantly changes and legal advice should always be sought on these matters.

This guide refers to 'EU rules' to mean the Treaty, Directive and Regulations.

13 Directive 2004/18/EC; (Public Contracts) and Directive 2004/17/EC (Utilities Contracts)

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A5

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FOR NORTHERN IRELAND



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