



Llywodraeth Cymru
Welsh Government

Equality Exchange Network

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Building Equality into Public Sector Procurement

**Policy
Value Wales**

Gwerth Cymru / Value Wales

Agenda

- Wales Procurement Policy Statement
- Programme for Government
- Welsh Language Standards
- Equality Act & Public Sector Equality Duty on Procurement
- Overview of procurement cycle
- Consideration of equality at each stage, with examples and discussion
- Summary
- Discussion and feedback

Wales Procurement Policy Statement

- Wales Procurement Policy Statement (WPPS) issued by Finance Minister Dec 2012
- Underpins public procurement in Wales & outlines how it should be carried out
- Makes clear value for money in procurement not only relates to generating efficiency savings but also the **wider socio-economic and environmental benefits**
- Building social clauses into contracts through Community Benefits also promotes the equality and diversity agenda in Wales
- WPPS consists of 9 principles:-
 - Strategic
 - Professional Resources
 - Economic, Social & Environmental impact
 - Community Benefits
 - Open, Accessible Competition
 - Simplified, Standardised Processes
 - Collaboration
 - Supplier Engagement & Innovation
 - Measuring & Impact
- Adoption is not optional and uptake is being monitored closely

Equality Act 2010

- Legally protects people from discrimination in the workplace and in wider society
- Replaces previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations
- Sets out the different ways in which it's unlawful to treat someone.
- Introduced a new general public sector equality duty
- Public bodies have a statutory duty to eliminate discrimination and promote equality in all they do – **including procurement**

Specific Public Sector Duties for Wales

- Came into force April 2011 - means public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees.
- Also requires that public bodies:
 - Have due regard to the need to eliminate discrimination
 - Advance equality of opportunity
 - Foster good relations between different people when carrying out their activities
- Focus - having due regard to equalities considerations during the procurement process in the **award criteria** and **contract conditions**
- However, must be **related to** and **proportionate to** the **subject matter of the contract**
- These duties have been developed to:-
 - Improve transparency
 - Guide Welsh public authorities towards better performance of the general duty.
- Ultimate aim - **to better meet citizens' needs in Wales**

Programme for Government

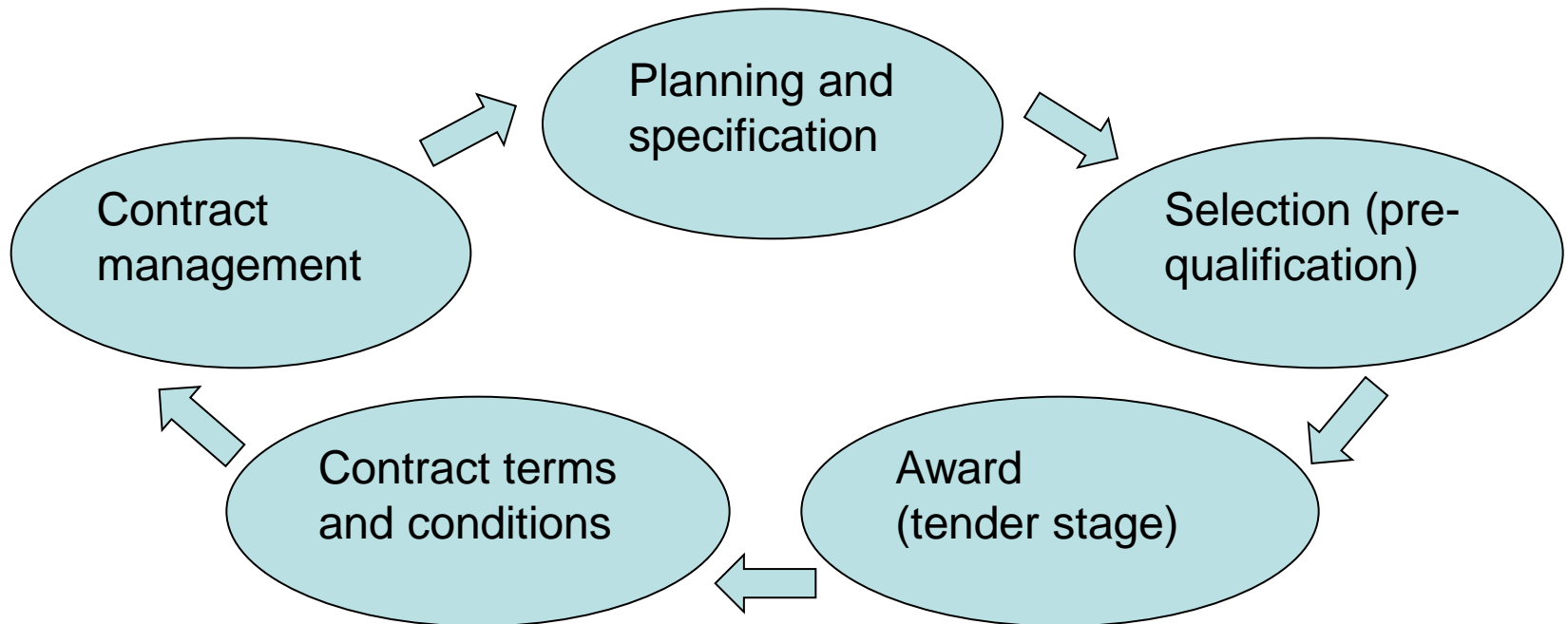
- The PfG translates the Labour Government's manifesto into a clear plan for 2011-16 setting out how progress will be measured & key actions needed to drive progress
- Aim: “Create a fair society free from discrimination, harassment and victimisation with cohesive and inclusive communities.”
- Equality commitments:
 - Advance equality of opportunity and tackle discrimination
 - More inclusive and cohesive communities
 - Monitor and work with listed public authorities in Wales and with the EHRC to ensure the public sector is fulfilling the specific equality duties and report on progress (added 2012)
 - Ensure that cultural differences are taken into account in the provision of public services through specific equalities duties (added 2012)

Welsh Language Standards

- First Minister announced last May that the regulations making the first set of Welsh language standards and making standards specifically applicable to persons, will be made by the end of 2014
- 6 Jan 2014 – Consultation on proposed standards relating to the Welsh language, access via: www.wales.gov.uk/welshlanguage
- Proposed standards:
 - Service delivery standard
 - Policy-making standard
 - Operational standard
 - Promotion standard
 - Record keeping standard
- Standards will gradually replace the existing system of Welsh language schemes provided for by the Welsh Language Act 1993
- Principles of **reasonableness and proportionality** will apply

Q. How can equality be considered in procurement?

Equality can be built in at each stage of the procurement cycle:-



Planning & Specification

Most important stage to build equality in - maximum opportunity to influence

- Stage at which public body identifies business need ie **what it wants to buy**
- Equality issues can be a **core requirement** within the specification provided they are **relevant** to subject of the contract
- Equality more relevant in some contracts than others – take **proportionate** view
- Take care to ensure the specification does not lead to unequal treatment of suppliers or disadvantage potential contractors from outside the EU
- Need to decide:-
 - How equality should be reflected in the specification
 - How the requirement is best structured to meet equality needs
- Complete the **Sustainability Risk Assessment (SRA)** - helps identify areas where sustainability considerations are needed (Equality and 'people' are covered)
- Access SRA on the Procurement Route Planner (PRP) at
- <http://prp.wales.gov.uk/>

Example of equality in specification

1. Tender for the design & construction of public buildings

Could specify that buildings must be accessible to people with disabilities or pushchairs

2. Tender for library services

Could specify that materials/books must be accessible to people who are blind or have hearing difficulties

3. Tender for catering contract in public outlets in Cardiff

Could specify that menus must be structured to reflect the multi-ethnic communities

Selection (or pre-qualification) Stage (1)

Often thought to be the key stage for equalities, but there are pitfalls to avoid

- This is stage at which it is identified which suppliers are capable (financially and technically) of delivering the requirements
- The "selection" stage applies in all procurements – **open** AND **restricted** procedure
- A backward look at track record / experience and current capability and capacity
- Strict rules for what can and can't be covered at "selection" stage
- Very important to keep "selection" and "award" stages **separate** (Lianakis) under current rules
- Specific equality duties don't mention the **selection** stage.... however...

Selection (or pre-qualification) Stage cont.

- Equality questions can be asked as long as **relevant** and the answers **will be used for evaluation**
- At this stage, bidders could be excluded if found guilty of grave professional misconduct – this could include breach of equality legislation
- At selection stage contracting authorities can take account of:-
 - *Any findings of discrimination against a supplier*
 - *Supplier's past record on workforce equality*
- Need to assess seriousness of offence and supplier should be given chance to demonstrate **remedial action** taken
- **Transparency** extends to selection stage - all selection criteria, scoring and weighting must be disclosed up front in contract notice or Invitation to Tender (ITT)

SQuID

- Supplier Qualification Information Database (SQuID)
- Promotes a **risk-based** and **proportionate** approach to procurement across Welsh public sector
- Common “core” question set and guidance
- “Once only” data entry (Sell2Wales) saves time & cost for suppliers
- Key aims of SQuID:–
 - Simplify and standardise selection process
 - Increase transparency so less risk
 - Increase efficiency for buyers AND suppliers
- Only ask **relevant** questions that will be scored
- Use more ‘**Yes/No**’ type answers rather than essay type
- Ensure **Pass / Fail** approach to make selection quicker & easier
- Allow self-declarations with only successful bidders providing info
- SQuID approach is now widely used across public sector in Wales
- 31 organisations have used the standard SQuID question set on 351 contracts via the eProcurement Service sourcing tools, allowing suppliers to bank over 144,000 answers for future re-use.

SQuID – Summary of equality at selection stage

- Key issue at this stage is to ensure supplier's compliance with equalities legislation
- Ask what **equality and diversity training** they provide for staff as that will have impact on quality of service they provide
- Keep it **light-touch** at selection stage
- Opportunity to ask more **in-depth, requirement-specific** questions at award stage
- Flow down to sub-contractors
- Link to your own organisational policies

Example of equality question

An environmental consultancy is asked how they monitor the make-up of their workforce by gender/ethnicity etc when bidding for a piece of consultancy work on countryside management.

What is the potential problem with this question?

Award (or tender) Stage

- This is **forward-looking** stage where value for money (VFM) is considered and tenders are evaluated against the award criteria
- Award criteria, scoring and weighting **must be disclosed up front** so suppliers know how their bids will be assessed
- EU Regulations list certain criteria to identify the most economically advantageous tender (MEAT)
- Equality not explicitly stated in the Regulations but can be relevant where it **affects the “quality”** of a service being delivered
- Award criteria would assess **how well tenderers are able to meet your requirements**
- Supplement award criteria by also building equalities into contract...

Examples of equality at award stage

- Tender for library services

Public body can assess how the supplier will meet the requirement to make material/books accessible to blind and hard of hearing people eg audio material, braille, visual material with sign language etc.

- Tender for services to help unemployed people find work

Public body could assess how the supplier plans to improve quality of service by tailoring programmes aimed at those disadvantaged in the workplace eg women returning to work, ethnic minorities, disabled

Contract Conditions

- Contract conditions relate to **performance** of the contract
- Equality-related conditions can be included as long as **relevant**
- Conditions must not be discriminatory, disadvantageous to suppliers outside the UK and ensure value for money is maintained
- Public bodies can use contract conditions to ensure:-
 - Good **equality practice** by supplier in carrying out contract
 - Supplier does not discriminate unlawfully
 - The supplier's workforce is recruited and managed in ways consistent with the public body's equality duties
- Winning tender is contractually binding
- Other clauses can be agreed and added as appropriate
- Need to ensure tight contract management...

Example of equality in contract conditions

- Community benefits clause could be (if using the “core” approach) a specified proportion of the workforce employed on a particular contract, are apprentices
- For more information and to access the Value Wales Community Benefits Guidance visit <http://prp.wales.gov.uk/>
- In a contract for support services to victims of domestic violence, a condition of contract could be that those who have direct contact with victims must be female, as most victims - therefore users of service - would be women (permissible as an “occupational requirement” under the Sex Discrimination Act)

Contract Management

Very important (often neglected) stage for dealing with equalities

To meet equality duties, public bodies need to:-

- Monitor how well the contractor is complying with the equality requirements from the specification and contract
- Set appropriate Key Performance Indicators (KPIs) that are regularly reported on
- Work with the supply base to improve practices and promote improved and consistent approach to equalities

Equality in procurement - summary

- Build key **relationships** with your procurement colleagues and equalities staff to identify steps to be taken
- Remember to take a **proportionate** approach and establish how **relevant** and **appropriate** equality issues are for each procurement exercise
- Keep in **light touch** at selection stage
- Include in-depth, **requirement-specific** questions at **award stage**
- The information below can be accessed at:-

Value Wales' Procurement Route Planner (PRP) - accessed via <http://prp.wales.gov.uk/planners/general/framework/ukprocurementlegislation/>

- Wales Procurement Policy Statement
- Sustainable Risk Assessment
- Equalities Act
- Equalities Guidance
- Welsh Language Act
- Guidance on 'Contracting Out Public Service Contracts and the Welsh Language'

Thank you for Listening

Any questions?