

The duty to promote race equality

RACE EQUALITY AND PROCUREMENT IN LOCAL GOVERNMENT

A guide for authorities
and contractors



'Local authorities' in this guide means the following:

- **Local authorities in England**
 - Common Council of the City of London, in its capacity as a local authority
 - Council of the Isles of Scilly
 - county councils
 - district councils
 - Greater London Authority, as far as it exercises its functions through the Mayor
 - London borough councils
 - parish councils, or parish meetings of parishes that do not have separate parish councils
- **Local authorities in Wales**
 - community councils
 - county councils
 - county borough councils
- **Local authorities in Scotland**
 - community councils
 - councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, including unitary fire authorities in Scotland
- **Police authorities**
 - authorities established under section 3 of the Police Act 1996
 - Common Council of the City of London, in its capacity as a police authority
 - Metropolitan Police Authority
- **Police authorities in Scotland**
 - authorities established under section 2 of the Police (Scotland) Act 1967
- **Fire authorities**
 - authorities constituted by a combination scheme and a metropolitan county fire and civil defence authority
 - joint boards within the meaning of section 235(1) of the Local Government (Scotland) Act 1973
 - joint fire boards constituted by an administration scheme under section 36 of the Fire Services Act 1947 (c.41), or section 147 of the Local Government (Scotland) Act 1973
- **Other**
 - London Development Agency
 - London Fire and Emergency Planning Authority
 - metropolitan county passenger transport authorities
 - national park authorities
 - Passenger Transport Authority for Strathclyde
 - Transport for London
 - waste disposal authorities

Note: This guide also applies to the operational responsibilities of chief constables of police, in respect of police authority contracts.

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Foreword

This guide for local authorities, and a companion guide for other public authorities, has been published in response to the many requests for advice on how the new duty to promote race equality will affect the way local and public authorities procure goods, works, and services from external suppliers.

This guide gives local authorities the information they need to be confident of meeting their race equality duty when they carry out procurement, within EC rules, best value, and other UK laws and policies. It also offers guidance to private and voluntary sector organisations on the new race equality expectations they will meet when they do business with local authorities.

The primary aim is that both parts of this guide should be useful, usable, and used. They should make the relevance of race equality to public procurement clear and comprehensible to anyone who is involved or interested. Thanks are due for the advice and support received in developing this guide from local authorities in England, Scotland, and Wales, private and voluntary sector organisations, trade unions, and others. It has also benefited from the contribution of the many authorities and other organisations that responded to the CRE consultation on an earlier draft.

This guide is the first detailed example of how the duty to promote race equality should work in practice in a particular area of a public authority's work. A majority of those who responded to the consultation endorsed the guide's step-by-step approach and numerous examples, despite the resulting length. However, like other manuals, the guide is organised so that once you are familiar with its contents, you should be able to go directly to the information you need.

In March 2003, the Cabinet Office Strategy Unit published its final report on *Ethnic Minorities in the Labour Market*, which recognises the potential role of public procurement in improving equality of employment opportunities. The report's recommendation that 'comprehensive and clear guidance on race equality issues in public procurement is now required' is now government policy. We believe that this guide goes some way to fulfilling this important policy objective.

Promoting race equality through contracts matters. It matters to local authorities. It matters to their contractors, including small businesses and other organisations in the community that could deliver services for the council. But most of all it matters to the people who pay for, and are entitled to benefit from, local services. Everyone in our communities, whatever their ethnic origin, should receive public services appropriate to their needs, and job opportunities suitable to their talents. And everyone in our communities has a right to expect that public money is spent in a way that promotes equality of opportunity and delivers high quality goods and services.

We commend this guide to all authorities and contractors.



Trevor Phillips
Chair, CRE



Sir Jeremy Beecham
Chair, LGA



Cllr Sir Harry Jones
Chair, WLGA

Introduction

Local authorities in Britain spend billions every year on contracts with private and voluntary organisations for goods, works, and services. It is vital, therefore, that they take full account of all the implications – both economic and social – of their investment. They must now also ensure that this investment is consistent with their race equality obligations.

The Race Relations (Amendment) Act 2000, which amended the Race Relations Act 1976, has important implications. The amended Race Relations Act (RRA) outlaws discrimination in all functions of local authorities, including procurement.

The new section 71(1) of the RRA gives all local authorities a clearer, more direct, positive legal duty to eliminate discrimination and to promote equality of opportunity and good race relations in carrying out all their functions. The duty to promote race equality applies to procurement itself. Where a local authority's function is carried out by an external supplier on its behalf, the local authority remains responsible for meeting the duty. Contractors themselves must not discriminate, but they do not have the same legal obligation to promote equality of opportunity. So, local authorities must now build relevant race equality considerations into the procurement process, to ensure that all their functions meet the requirements of the RRA, regardless of who is carrying them out.

So, to comply with their duty under the RRA, local authorities should make sure that public money is not spent on practices that lead to unlawful racial discrimination, but is used instead to support and encourage equality of opportunity and good community relations.

Contractors, and potential contractors, need to be aware of the legal duty on local authorities, since it has implications for them.

The CRE's *Code of Practice on the Duty to Promote Race Equality* provides practical guidance to help local authorities meet their duty under the RRA. Two paragraphs in this code refer specifically to how authorities can carry out procurement in the context of their duty (see appendix 1). These paragraphs do not in themselves limit what can be done to secure race equality in procurement, within the wider context of EC rules, best value, and value for money principles.

This guide expands and develops the guidance in our code of practice and accompanying guides, in relation to procurement. It sets out in more detail what local authorities can do to meet their responsibilities under the duty.

What does this guide offer, and who is it for?

Part I is for 'local authorities' in England, Scotland and Wales. For the purposes of this guide, these include English, Welsh, and Scottish local authorities, police and fire authorities, and Scottish joint boards. (For the full list of authorities to which this guide applies, see page 2.)¹

The aim of part I is to help local authorities meet their duty under the RRA when procuring goods, works, and services from external suppliers. It explains how local authorities should take account of their duty to promote race equality in their general procurement policies and practice and, for individual contracts, at each stage of the procurement process. It also sets out additional good practice measures. It should be used alongside other guidance on procurement and race equality, especially our statutory codes of practice on the duty to promote race equality, our guides for public authorities, and our guides to ethnic monitoring.²

Part II is for suppliers of goods, works, and services from both the private and voluntary sectors, including small businesses interested in tendering for local authority contracts. We hope this guide reaches the full range of businesses owned or run by people from ethnic minorities. The aim of this part is to give external suppliers the information they need on race equality to do business successfully with local authorities.

At the end of each chapter in part I, and as a final chapter in part II, you will find a short summary of the key points. Throughout the guide you will find examples that show how the recommendations of the guide have been, or could be, implemented in practice. The guide begins with a glossary and the appendices provide additional reference material.

What are the benefits of building race equality into the procurement process?

For local authorities, ensuring race equality is integrated into the procurement process can improve the quality of their services, making these more appropriate and more responsive to the needs of different communities. It can also improve the overall value for money of the goods, works, or services they purchase. For private and voluntary organisations, good race equality practice makes good business sense. It makes them better employers, and improves their ability to provide goods and services suitable for all their potential 'customers'. It can also give them a competitive edge when they tender for public contracts.

1. A separate guide, *Race Equality and Public Procurement*, has been produced for 'public authorities', including central government departments, the Scottish Executive, the Welsh Assembly Government, NHS institutions, and the governing bodies of further and higher education institutions and schools.

2. There are separate versions of all these guides for Scotland, and for England and Wales.

What types of contract does this guide cover?

The guide applies generally to contracts between a local authority and an external supplier in the private or voluntary sector. It also applies to the following types of contract.

- The policies and practices of formal and informal consortia for local authority procurement.
- Joint commissioning between local authorities and other public authorities, such as strategic health authorities or primary care trusts. In such cases, all parties are subject to the duty to promote race equality, so any joint procurement must meet the standards set out in this guide.

The principles of the guide are relevant to the following types of contract, which are not specifically covered.

- Contracts where both the 'buyer' and 'seller' are local authorities. In such agreements, each party is subject to the duty to promote race equality and will want to be confident that the other is applying comparable race equality standards.
- Local authority grants to voluntary organisations.

Does this guide cover other equality areas?

Yes. The focus of this guide is on race equality and the clearer statutory duty local authorities now have under the RRA. However, we also recommend that both local authorities and contractors make every effort to ensure equal treatment in other respects as well, such as sex, disability, religion or belief, sexual orientation, and age.

The law is always changing

This guide has been prepared just as Parliament has approved regulations³ to amend the RRA, to comply with the EC race directive (see appendix 1). By December 2003, there will be new legislation outlawing discrimination in employment on grounds of sexual orientation and religion or belief, to comply with the EC employment framework directive.⁴ Proposals to revise the EC procurement directives are currently going through the EC legislative process, and new directives may be adopted in 2004. The final version of any new directive may be relevant to some parts of this guide. Decisions of the UK courts and the European Court of Justice may also be relevant to matters we deal with in this guide.

Although we have made every effort to make this guide as accurate as possible, you will need to make sure there have been no changes in the relevant UK or EC law when you put our recommendations into practice.

This guide is not an authoritative statement of the law, and we recommend that you seek legal advice for each new procurement project.

3. The Race Relations Act 1976 (Amendment) Regulations 2003.

4. EC Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Employment Equality (Religion or Belief) Regulations 2003, and Employment Equality (Sexual Orientation) Regulations 2003.

Glossary

In this guide, the words below have the meanings shown beneath them.

approved list

a list of external suppliers that a local authority has accepted as suitable to be invited to tender for particular types of contracts. Also referred to as 'standing list' by some local authorities.

core requirement

in the context of an individual contract, a requirement which the local authority has determined the contractor must meet, to provide effectively and efficiently the goods, works, or services that are the subject of the contract.

EC directives

the EC public procurement directives, and the UK procurement regulations giving effect to the directives in the UK.

EC rules

the EC Treaty, EC procurement directives, UK procurement regulations, and relevant decisions of the European Court of Justice.

ethnic minorities

people who have classified themselves as members of ethnic groups other than 'white British'.

ethnic minority business

a business 51% or more of which is owned by members of one or more ethnic minority groups. Or, if there are few owners, where at least 50% of the owners are members of one or more ethnic minority groups.

ethnic monitoring

a process for collecting, storing, and analysing data about people's ethnic (or racial) backgrounds.

firm or business

any private or voluntary organisation, such as a company, partnership, charitable trust, or other type of body, which can enter into a contract to provide goods, works, or services.

framework agreement

an agreement setting out terms and conditions under which specific purchases ('call offs') can be made throughout the period of the agreement. Also known as 'call off contracts'.

functions

the full range of a local authority's duties and powers.

local authority

English, Welsh, and Scottish local authorities, police and fire authorities, and Scottish joint boards. For a full list, see page 2.

packaging

the formal dimensions of a contract – its length (how many years), its scale and complexity, and its application (to a geographic area or to a particular population).

positive action

- providing facilities to meet special education, welfare, or training needs of people from particular racial groups; and
- targeting training at, or encouraging job applications from, people from racial groups that are under-represented in that area of work. Positive action does not mean selecting an employee or a contractor from a particular racial group because that group is under-represented, and to do so is likely to be unlawful.

procurement

the process by which a local authority enters into a contract with an external supplier to carry out works or provide goods and services. The term encompasses the full range of local authority contracts, including private finance initiative (PFI) projects and public private partnerships (PPP). It does not include the decision to 'buy' from an external supplier.

promote race equality

to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people from different racial groups.

RRA

the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000.

RRA duty

the duty under section 71(1) of the RRA (see above) to have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and good relations between people from different racial groups (also referred to in this guide as 'the duty to promote race equality').

racial discrimination

- direct discrimination means less favourable treatment on racial grounds.
- indirect discrimination means applying a requirement or condition which a considerably smaller proportion of people from one racial group can meet and which cannot be justified on non-racial grounds. From 19 July 2003, in certain activities – including employment, education, housing, and welfare services – indirect discrimination will also mean applying a provision, criterion, or practice which disadvantages people of a particular race, or ethnic or national origin, which cannot be justified as a proportionate way of achieving a legitimate aim.

racial grounds

grounds of colour, race, nationality, or ethnic or national origin.

racial group

a group of people defined by colour, race, nationality, or ethnic or national origin.

service user

the individuals, groups, or institutions for whom a particular service is intended. For example, the service users of domestic refuse collection are householders in the local authority's area.

services

all the activities of a local authority, whether carried out directly or by others on its behalf, excluding activities defined as 'works' (see below). 'Services' includes the exercise of a local authority's powers of regulation, inspection, and law enforcement. It includes activities provided to members of the public or a section of the public, as well as services provided to the authority itself.

small business / firm

a business that employs up to 50 people.

social enterprise

a business with primarily social objectives whose surpluses are principally reinvested in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.

supplier

a private or voluntary organisation that is interested in providing goods, works, or services to a local authority. Also referred to as a 'provider'.

tenderer

a supplier who has been selected to submit a tender for a contract.

value for money

the optimum combination of whole-life cost and quality to meet the requirements of the local authority.

works

the construction or demolition of buildings, both residential and non-residential, repair to the fabric of these buildings, construction of roads, bridges, tunnels, and the installation of gas, electric, and plumbing services.





What local authorities should do

Part I will be of particular interest to:

- members of the council, authority, or joint board;
- chief officers;
- strategic policy officers;
- officers concerned with service improvement and review;
- procurement and purchasing officers;
- officers concerned with service delivery;
- equal opportunities officers;
- legal officers;
- monitoring officers;
- audit and inspection agencies; and
- trade union representatives.

1

Legal framework and basic principles

Legal and policy framework

Race Relations Act 1976

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 (RRA) gives all local authorities a statutory duty in carrying out their various functions, to have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between people from different racial groups (see the glossary).⁵

Complying with your duty under the RRA in carrying out procurement is compatible with your obligations under EC rules, UK, Welsh, and Scottish legislation, including best value, and your general fiduciary duties.

The duty under the RRA is not optional. You must make the promotion of race equality an integral part of your decision-making and actions across all your functions. To do this, you will have to apply the tests of relevance and proportionality, to see where, when, and how promoting race equality needs to be part of what you do. The RRA recognises that promoting race equality will be more relevant to some functions or policies than to others, and your response should reflect this.

Best value

Best value applies to all local authorities. It requires them to secure continuous improvements in the way in which they exercise their functions, having regard to efficiency, economy, and effectiveness.⁶ In seeking to achieve continuous improvement, authorities are expected to review the services they provide, both directly and through external suppliers, and to do so in consultation with users and potential users, including those who have traditionally been under-represented. The '4 C's' methodology – challenge, compare, consult, and compete – should form the basis of best value service reviews.

For best value authorities in England, one of the performance indicators in the corporate health section (BV2 part b) includes an element which looks at whether race equality is clearly integrated in procurement strategies and policies, and best value reviews.

5. Section 71(1).

6. Best value in Scotland requires local authorities also to have regard to 'the need to meet the equal opportunity requirements' (see Appendix 1).

EC rules

EC public procurement directives and UK procurement regulations give effect to the principle of free movement of goods and services. The directives / regulations prescribe procedures for most contracts above certain value thresholds. All contracts not subject to the directives are still subject to EC Treaty-based principles of non-discrimination (between suppliers from different EU member states), equal treatment, transparency, and proportionality (see appendix 1).

Value for money

All procurement by local authorities must be based on value for money, that is, 'the optimum combination of whole-life cost and quality to meet the customer's requirement', where the customer is the local authority. The need to assess 'whole-life cost' enables local authorities to look beyond the contract price, and to consider longer-term costs and benefits. 'Quality to meet the customer's requirement' enables an authority to specify its particular requirements, including those that ensure the authority complies with its duty to promote race equality.

Other policies

All local authorities carry out procurement in the context of other policies and strategies. Some will be your authority's application of national policies or priorities, such as social cohesion, sustainable development, modernisation, and encouragement of small businesses. Others will be policies, priorities, and strategies specific to your authority, for example its community strategy for promoting or improving well-being (see appendix 1).

Basic principles

The recommendations in this guide are based on the following principles or guidelines.

Relevance

This should be your starting point when considering how the promotion of race equality applies to procurement. Could your procurement policies and practice result in racial discrimination, either generally or in relation to particular contracts for goods, works, or services? Or could there be a difference in impact on different racial groups? Promoting race equality will be more relevant to contracts for some goods, works, or services than others. In assessing relevance you need to look at the totality of what is to be provided, since many technical functions may also involve some interaction with members of the public or your employees, when race equality would be relevant.

Proportionality

The more relevant race equality is to a contract, the more you need to consider it at each stage in the procurement process. Proportionality is not about how many people from ethnic minorities are directly served by your authority. It is about the nature and

purpose of the contract, and the effect it could have on different racial groups. Proportionality also relates to the size, value, and length of a contract, as it may be appropriate to consider simpler procedures and requirements for some small, low-value, one-off or short-term contracts.

Accountability

Liability for compliance with the RRA lies with the local authority itself, that is the body or individual who is legally responsible, generally, for the acts or omissions of the authority, which would be the council, the authority, or joint board as a corporate body. The authority may then delegate to officers to take necessary action. You should know who will be responsible for securing compliance with the duty at each stage of the procurement process.

Transparency

EC rules and UK law makes transparency, or openness, a fundamental principle of local authority procurement. Transparency is also a key element in the duty to promote race equality. Local authorities are expected to publish their proposals for complying with the duty, to consult the people who may be affected by their policies, and to publish the outcomes when they monitor or assess the impact of their policies on race equality.

Mainstreaming

Promoting race equality is not an 'extra' that you can choose to add on to your established procurement practice. The RRA means that, wherever race equality is relevant, you are expected to make it part of all the policies, plans, and processes involved.

Appropriateness

While all local authorities are subject to the duty under the RRA, they vary in size and responsibilities. Some functions are common to all, but not all approaches will be equally suitable. You should tailor the recommendations and examples in this guide to suit your circumstances, and to the ways in which you use procurement within your authority.

Complying with the law

The way you meet your duties under the RRA must be consistent with the requirements of EC rules and other UK laws and government policy, including laws and policies of the Scottish Parliament and the National Assembly for Wales.

Risk assessment

Procurement is about the transfer of defined risk from a local authority to an external supplier in exchange for reward (the contract price). In the context of your duty to promote race equality, the risk is proportionate to the relevance, and significance, of

the contract to your duty under the RRA. Although you remain responsible for meeting your duty under the RRA, operational risks can often be transferred. Achieving the right allocation of such risks should be a key aim in planning a procurement project.

Summary

To comply with their duty under the amended Race Relations Act, all local authorities must take race equality into account when procuring goods, works, or services from external providers.

Compliance with this duty is compatible with your obligations under EC rules, best value, value for money, and with other national policies and strategies and those of your authority.

The key principles that apply throughout part I are relevance, proportionality, accountability, transparency, mainstreaming, appropriateness, complying with the law, and risk assessment.

2

Procurement and the duty to promote race equality

This chapter is intended to help you look at how you carry out procurement as one of your functions that is relevant to your duty to promote race equality. In chapters 3 to 11, we discuss when and how you should build race equality into the different stages in your procurement of particular goods, works, or services.

Your duty under the RRA means that you need to be satisfied not only that your procurement policies and practices do not discriminate unlawfully, but also that they promote equality of opportunity and good race relations.

If you have not already assessed your procurement policies and practices for the impact they might have on race equality, we suggest you do this as soon as possible; ideally before considering new major procurement projects.

How can we assess the impact of our procurement function on race equality?

You may find it useful to consider questions along the following lines.

- Within your main procurement objective – to obtain value for money – do your procurement objectives include promoting race equality or, more generally, equality of opportunity? If they do, what effect has this had on current practice?
- Is race equality a factor in your best value reviews of procurement?
- Does your procurement strategy include promoting race equality?
- Is there evidence that your procurement policies or practice have an adverse impact on some racial groups as users of the goods, works, or services provided; as employees (your own as well as those working for contractors); or as suppliers of goods, works, and services?
- Are opportunities to promote race equality being missed, within the context of value for money?
- Does your procurement practice generally include consultation with service users or employees from different racial groups, with trade unions, and with different suppliers (so far as is permitted under EC rules)? If not, how do you take into account any relevant needs, skills, or resources of different racial groups?
- To what extent have you built consideration of race equality into each stage of your procurement process?

- Do your procedures for monitoring contracts include monitoring of any race equality requirements in the specification or contract conditions?
- Within the full scope of procurement undertaken by your authority, is there a consistent approach to race equality? If not, what are the reasons? Is it, for example, the scale of different projects, the nature of the goods, works, or services, or because some procurement is carried out centrally, and some is devolved to service departments?

What should we do with the answers?

Your answers to these questions may show that, across your authority, you have not yet given sufficient attention to race equality in procurement. Where you can trace the impact of your current approach, your answers should tell you if you need to review your objectives or your policies or practice.

- If you find evidence of particularly good results, make sure the lessons are shared.
- If you find evidence of adverse impact on some racial groups, you will need to consider what changes you should or might make.
- If there is evidence of direct or indirect discrimination, you will need to act to prevent discrimination in future.
- If there is evidence of adverse impact on particular racial groups, or evidence that you are missing opportunities for promoting race equality, then, having regard to your other legal and policy obligations, you should consider what changes you could make to your policies or practice .

Example

Leeds City Council includes the following action points in its race equality scheme

- Revise the standard terms and conditions to include information about the Race Relations (Amendment) Act 2000, highlighting responsibilities for contractors and subcontractors.
- Highlight information about the Race Relations (Amendment) Act 2000 and the Council's new legal duties to all contractors on the Council's approved list.
- Brief staff involved in procurement work about the Race Relations (Amendment) Act 2000 and its impact on their area of work.

- If there is evidence that race equality has been omitted from policies and strategies relevant to procurement, you will want to make changes. Some local authorities have been proactive – developing procurement strategies that assist them in meeting their RRA duty.

Example

Extract from Ealing Council's procurement strategy (part of a revised approved list system under development)

The Council will ensure that its procurement policies and practices support its corporate strategies by:

- a) insisting that our appointed contractors share and help deliver our equal opportunities goals;
- b) making sure our selection and tendering processes positively address and include equality considerations;
- c) rigorously monitoring our contracts for compliance;
- d) including appropriate terms and conditions; and
- e) training staff in equalities issues for procurement.

Example

Extract from Nottinghamshire County Council's equality policy statement for the corporate procurement strategy

We aim to achieve a consistent approach to equality in the delivery of all services. We also expect people working on our behalf to practise equal opportunities. They must be clear about the council's position on equality, and be aware of the requirements placed upon them to adhere to our policy ...

All organisations wishing to provide services on behalf of the council must be able to demonstrate that all reasonably practicable steps are taken to allow equal access and equal treatment in employment and service delivery for all.

Within the context of best value and achieving overall value for money, you could:

- **review your policies on how you plan projects**
 - How can you ensure that, wherever race equality is relevant, it is taken into account in deciding overall objectives, the core requirements, and the scale or packaging of proposed contracts?
 - How can you involve (or increase the involvement of) potential users, employees, and external suppliers (so far as is permitted under EC rules) from different racial groups in early decisions regarding the content and scale or packaging of proposed contracts?
 - In planning major, strategic contracts (for example, PFI schemes) in which the external supplier assumes a greater share of the risks, do you need a different approach to ensure that the services provided meet appropriate race equality standards?
 - In planning small-scale contracts, how do you ensure that race equality matters are considered in an appropriate and proportionate way?

- **review your policies on how you advertise, tender, and award contracts**
 - How can you ensure that, wherever it is relevant, race equality is given appropriate weight at each stage of the procurement process?
 - How can you attract a wider range of suitable providers?
- **review the way you manage contracts**
 - How do you ensure that contractors meet your specifications or contract conditions relating to race equality?

Summary

Procurement is one of your functions that is relevant to the RRA duty.

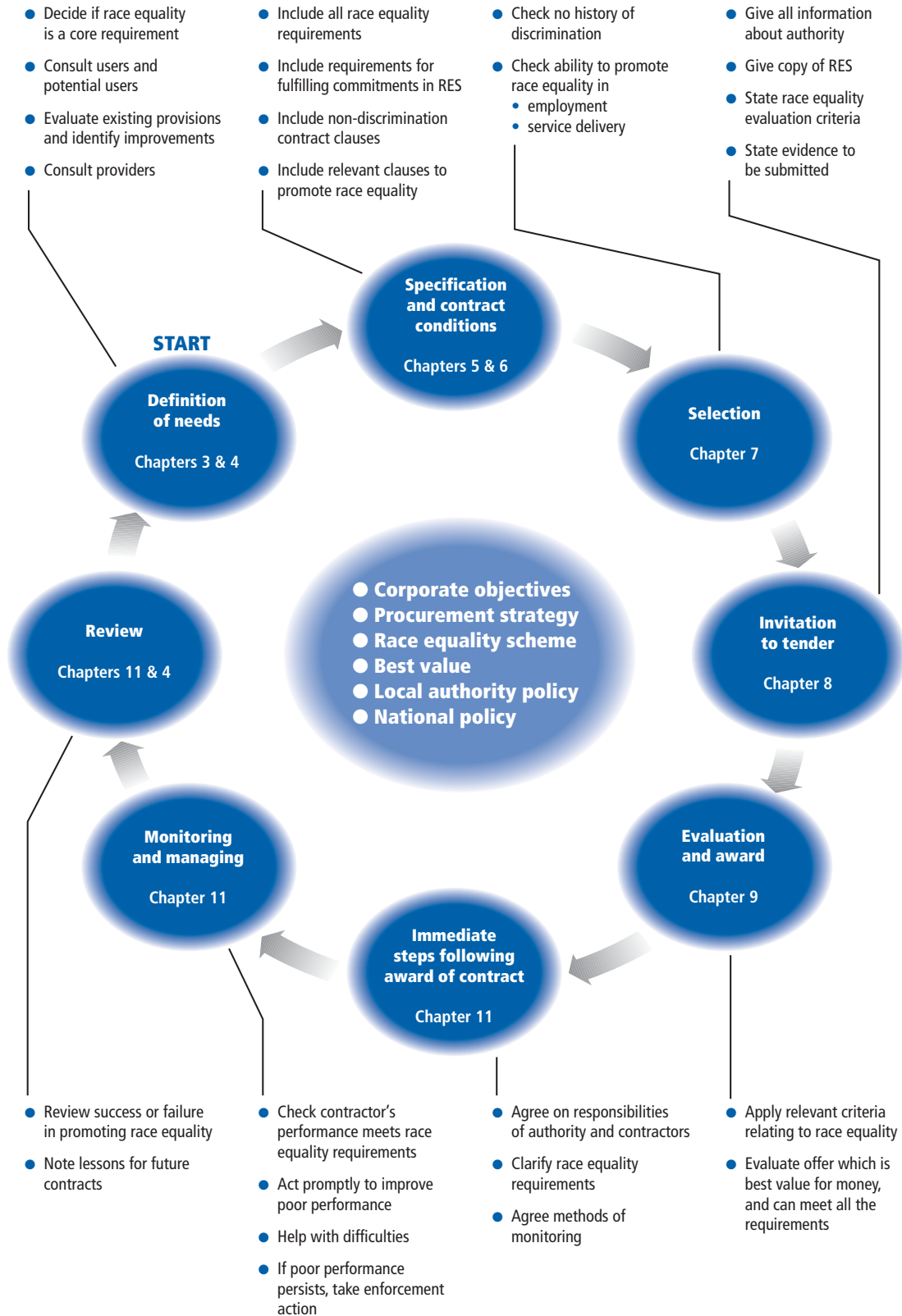
To ensure compliance, you need to assess the impact of your procurement strategy, and your procurement policies and practice, on the promotion of race equality.

An assessment of your procurement function can include looking at your objectives, your general procedures, and the outcomes in terms of involvement of, and impact on, service users, suppliers, and employees from different racial groups.

You may then want to review how you can more effectively build race equality into the planning of procurement projects and in the procedures you follow, as well as your arrangements for monitoring and managing contracts.

Figure 1

Race equality in the procurement cycle



3

Planning procurement projects – race equality as a core requirement

Chapters 3 to 11 look at individual procurement projects, from initial planning to award and post-award monitoring and management. The detailed guidance is particularly relevant if you are involved in a major strategic contract or a large-scale, long-term project. For some short-term or small-scale contracts – such as the routine purchase of goods, regular repairs, and maintenance works – you may decide to adjust or simplify some of the procedures. Chapter 12 gives a checklist, summarising key actions at each stage.

You may be familiar with the 'Gateway' review process, or the IDeA procurement cycle: this guide follows the same stages,⁷ with greater focus on those stages at which consideration of race equality is most important. It also broadly follows the cycle of the Equality Standard. The figure on page 24 shows the stages covered by this guide, and the recommended actions at each stage.

This chapter will help you to determine how relevant race equality is to a particular procurement project, which should influence how you carry out the further stages that we cover in later chapters.

When is race equality a core requirement in a contract?

Race equality is a core requirement (see the glossary) when it is an essential part of the contract. For example, if the purpose of the contract is to provide services directly to the public, a supplier must be able to provide a service that meets everyone's needs.

If race equality is a core requirement, it must be reflected in the specification and conditions of the contract. It must be considered at each stage of the procurement process, and in your arrangements for monitoring and managing the contract.

7. Excluding the 'make or buy' decision that is part of the IDeA procurement cycle.

Five questions

We suggest the following five questions to help you determine whether race equality is a core requirement in any contract for goods, works, or services.⁸

- 1. What is to be provided under the contract?**
- 2. Is the provision of the goods, works, or services in question one of the functions or policies we have assessed as being relevant to meeting the duty to promote race equality?**
- 3. Is the provision of the goods, works, or services in question likely to affect, directly or indirectly, our ability to meet the duty to promote race equality?**
- 4. If the answer to either 2 or 3 is yes, is it necessary to include requirements for promoting race equality in the contract, to make sure we meet the duty?**
- 5. If the answer to 4 is yes, what race equality requirements are appropriate for the contract in question?**

By applying tests of ‘necessary’ and ‘appropriate’, you should be able to define core race equality requirements that reflect the contract’s relevance to promoting race equality – in proportion to other essential elements of the contract.

While race equality is more likely to be relevant to contracts for services, you cannot assume that it will not be relevant to contracts for goods or works. It is important that you consider all aspects of a contract, to make sure you have not overlooked less obvious race equality implications.

Contracts for services

Under the RRA, you are expected to take all reasonable steps to make sure that an external provider of any service that has been assessed as relevant to your RRA duty meets the same race equality standards you would expect to meet if you were providing the service yourself. Of course, different services will be more, or less, relevant to your duty to promote race equality, and your answers to the five questions above will vary accordingly. We offer a rough guide below.

- Services, including enforcement and regulatory services, which are provided directly to members of the public or to a section of the public, are likely to be highly relevant to your RRA duty. In these cases, race equality would be a core requirement. Examples of such services include education, community care, housing, information or advice services, law enforcement, services to victims of crime, management of sports and leisure facilities, and enforcement of street trading or environmental health regulations.

8. In answering these questions you may find it useful to refer to the CRE’s *Code of Practice on the Duty to Promote Race Equality*, and accompanying guidance.

Example

A contract to supply vehicles, drivers, and provide transport to day centres for elderly and disabled people from different ethnic groups requires the contractor to provide suitable training to all staff who will have contact with their passengers, and to take other reasonable measures to ensure that any cultural sensitivities of people from different ethnic groups are respected.

- When the main purpose of a service is revenue collection or the protection of property, but it also involves direct contact with the public, as in parking control, collecting council tax or debts, or security services, then race equality is likely to be a core requirement.
- Race equality is also likely to be a core requirement when a service combines technical performance with direct provision to the public, as in transport services.
- Services involving the repair, maintenance, or cleaning of premises, equipment, or plant that you own or control may appear to have little or no relevance to your duty to promote race equality. However, in some cases, there may be aspects of these services where race equality is relevant. For example, when the service requires awareness of different language, religious, or cultural factors. And, more generally, in terms of staff conduct towards staff of the authority and members of the public.
- Some services, such as legal services, personnel services, IT consultancies, and financial services, are provided on a corporate basis. How relevant each service is to promoting race equality will vary according to the specific service. For example, within personnel, recruitment services would be highly relevant to the duty, whereas the operation of the payroll system would not.
- Services, such as staff canteens, staff sports facilities, and staff training, which are provided for the benefit of your employees will also normally be relevant to your duty to promote race equality.

Example

In a contract for the supply of ready frozen meals, a local council specified the cultural and dietary needs of service users.

Example

A fire authority contract to publish information leaflets on its fire safety campaign required the contractor to identify which languages (besides English and Welsh) were most appropriate for the authority's area – including not only permanent residents (who are most likely to appear in census data), but also people who travel to the area to work, to study, or for holidays, and asylum seekers who have been dispersed to the area.

Contracts for goods

To assess whether the promotion of race equality is a core requirement in a contract for goods, start by asking the five questions on page 26. Your primary concern is likely to be that the goods are 'fit for purpose' and that they meet your quality standards. In certain contracts, to be fit for purpose it will be a core requirement that the goods should be capable of meeting the needs of particular racial groups. Requirements concerning quality and, possibly, arrangements for delivery could also have implications for race equality.

Example

A police authority contract to supply newly-designed police helmets required the contractor to provide cloth of the same colour, with identical insignia, for turbans to be worn by male Sikh officers.

Example

In a contract to publish publicity material on its behalf, a local council failed to specify that words or images should not be offensive or insulting to any racial or ethnic group. The contractor published a leaflet advertising a concert by a Bulgarian Gypsy orchestra that was highly offensive to the local Gypsy community. Aware of its duty to promote good race relations, the council paid for a second leaflet, with an apology for the first, to be printed and widely distributed.

To be fit for purpose, the goods must, of course, be lawful under the RRA, and must be compatible with your duty to eliminate discrimination and promote good race relations.

Contracts for works

In any contract for works, your core requirements are likely to be the completion of the works within specified timescales, at optimum quality standards. However, you should also ask yourself the five questions listed on page 26, since the works may have implications for the duty to promote race equality.

In contracts for works, the conduct of a contractor's employees towards your staff and towards members of the public is relevant to the duty.

Example

In a contract for the installation, repair, and maintenance of heating systems and appliances for their domestic housing stock, North East Lincolnshire Council specified that the instruction booklets and leaflets produced as part of the contract must be available in large print, Braille and community languages.

Example

A council recognised that a contract for repairing and maintaining residential properties would bring the contractor's staff into direct contact with tenants. The council required the contractor to take steps to accommodate any special needs among the tenants, who included people who did not understand English very well, people with disabilities, people who worked anti-social hours, and elderly people.

When is race equality a core requirement in workforce matters?

For all contracts: basic technical capacity

You need to be confident that the supplier will provide a workforce that is capable of providing the goods, works, or services to the specified standards, including race equality standards. This means their workforce should have enough people with the necessary skills and abilities, and that they should be highly motivated, suitably trained, supervised, and managed for the purpose of performing the contract. In workforce matters, equality of opportunity, quality, and value for money are inextricably linked. This has nothing to do with the ethnic profile of a supplier's workforce, but everything to do with the competence of the supplier as an employer and how they treat their workforce. Trade unions may be able to help you identify equality and quality issues in particular contracts.

The issue of how a supplier treats their workforce arises where staff are transferred to the contractor under TUPE (Transfer of Undertakings (Protection of Employment) Regulations 1981). Transferred staff retain their terms and conditions of employment, including those that guarantee protection against discrimination and provide for equality of opportunity.

The Office of the Deputy Prime Minister's (ODPM's) code of practice on workforce matters in local authority service contracts, which applies to local councils in England,⁹ and an identical code that applies in Wales,¹⁰ requires a contractor to offer any new staff who are recruited to work alongside transferred staff, terms and conditions of employment that are, overall, no less favourable than those of transferred staff.

Therefore, a core requirement for all local authority service contracts should be that the supplier offers transferred employees protection in terms of race equality that is at least equivalent to that which they currently have, and, for contracts let by local councils in

9. Annex D to ODPM Circular 03/2003, *Best Value and Performance Improvement*, March 2003, which applies to county, district, metropolitan and London borough councils. The government has announced its intention to extend the code to all other best value authorities, but at the time of writing, the necessary statutory guidance for this purpose had not been issued.

10. *Code of Practice for Welsh local government*, issued by the Welsh Assembly Government on 2 April 2003, applies to county and county borough councils and national parks authorities in Wales.

England and Wales, that the supplier does not offer new recruits less favourable race equality protection.

In contracts where race equality is a core requirement of the goods, works, or services

In such contracts, you need to ensure that the contractor can meet any particular requirements relating to race equality. Trade unions may assist you in defining the requirements in a workforce context.

For example, there may be a requirement for the provider's staff to know another language or be aware of the cultural or religious needs in a particular community, or of needs of particular groups in relation to the services to be provided.

In contracts that are highly relevant to the duty to promote race equality

Where a contract is highly relevant to your RRA duty, which is likely to include most 'front line' services, you need to feel confident that the contractor's staff will provide the service in ways that are consistent with your duty. To do so effectively needs a workplace where the same commitment to race equality exists. Therefore, you could require the contractor to promote equality of opportunity for their workforce engaged in the performance of the contract. For example, you could require them to follow the CRE's code of practice for employment, to the extent necessary for effective performance of the contract.

You should make sure that any requirements you include are proportionate and relevant to the contract and to your RRA duty.

Particular requirements when the contract is performed on your premises or alongside your staff

If a contract is to be carried out, at least partly, on your premises, or if the contractor's employees will be working alongside your employees there or elsewhere, you could require the contractor to comply with your employment policies and codes, particularly those concerned with race equality and equal opportunities. This means policies that are at least as good as yours.

When is race equality an additional requirement?

In some cases where it is not a core requirement, you may find that promoting race equality will add value to a contract in a way that is consistent with best value within

the broader context of your policies on equal opportunities, social cohesion, community well-being, or economic development. For example, in a contract to build a new leisure centre, there will be added value if the contractor undertakes to provide training for people from racial groups that are under-represented among people doing particular jobs.¹¹ The contractor could meet this if they show their employment policy and codes of practice provide race equality protection as good as yours do.

Summary

For each contract, or group of similar contracts, you need to determine the relevance of the contract to your duty to promote race equality.

If race equality is a core requirement of the contract, then at each stage in the procurement process, and in your monitoring arrangements, you must take race equality into account.

Five questions, listed on page 26, should enable you to assess when race equality is a core requirement and what you should include in the contract to comply with your RRA duty.

Examples of contracts for services, goods, and works illustrate where race equality is likely to be relevant. Certain types of contracts for services, involving direct contact with members of the public, are likely to be highly relevant to your RRA duty.

Race equality may also be a core requirement in relation to a contractor's workforce, especially when the contract involves services that are highly relevant to your RRA duty.

11. In certain contracts, such matters could be addressed as a condition of contract (see chapter 6), as an 'additional criterion' (see chapter 8), or could form the basis of a separate voluntary agreement with the contractor after the contract has been awarded (see chapter 11).

4

Planning procurement projects – a step by step approach

In this chapter, we explain how to take race equality into account in planning large or small procurement projects. We are assuming you have already made the decision to purchase the goods, works, or services from an external supplier. However, you may find that some of the steps we recommend will also help you make that decision.

How can we build our strategic objectives into the procurement process?

Your starting point is to consider your authority's wider strategic objectives, including your race equality objectives and your duty under best value, and how these could be translated into the context of a particular contract. You should consider your race equality scheme. If you have a procurement strategy or policy, it may state how you will integrate race equality objectives into procurement. You should then be able to clarify how the particular contract could help you meet your wider objectives, including best value, and fulfil commitments in your race equality scheme.

What steps should we take?

1. Define your needs

To achieve value for money, you should identify clearly what you want to 'buy'. This includes defining the purchase in terms of your duty to promote race equality. You will need to determine the extent to which race equality is a core requirement, following the guidance in the preceding chapter. You should refer to any parts of your race equality scheme that relate to the subject of the proposed contract.

2. Review your current arrangements

Consistent with your best value duty to work for continuous improvement, you will want to review your current arrangements for providing the goods, works, or services (either in-house or under contract) for economy, efficiency, effectiveness, and their contribution to race equality. You will want to challenge, from a race equality perspective, what is being provided, and why. Are there alternative ways to provide the goods, works, or services that would more positively promote race equality, having regard to the needs of service users and employees? You may find it useful to consider some or all of the following steps and questions, depending on the nature of the goods, works, or services.

- Analyse any ethnic monitoring data you have collected, to see if some racial groups are affected disproportionately or are not being served as well as they should be.
- Consult service users. Is the service meeting the needs of those who have used it? Can it be provided better? Where use is voluntary, why have some people chosen not to use the service?
- Consult the current service provider. Did they take any steps to promote race equality? Did they monitor outcomes (in terms of use, participation, or benefits) by racial group? If so, what did the monitoring show? What factors made a difference to the outcomes for each racial group? What problems or obstacles did they encounter?
- Consult the officers responsible for the current arrangements. Did they monitor them for their effects on race equality? What did the monitoring show? Based on their experience, how do they recommend you make sure any future arrangements take full account of race equality?
- Consult trade unions and employees. Do the arrangements raise issues of race equality in employment? How would they suggest dealing with these in the future?

3. Check you have all the necessary information

- Are there changes in the local population that need to be taken into account? For example, do the 2001 census data show significant changes in the diversity of the population you serve? Are there trends for particular racial groups, for example a steep increase in the number of ethnic minority elderly? Or do your records relating to users, or potential users, of particular services show significant changes in the diversity of the populations that will be affected?
- Are there legal or policy changes in the areas of local authority procurement or race equality that need to be taken into account?

4. Consult on possible future arrangements (depending on the nature and scale of the proposed contract)

At this developmental stage, when you are looking for the best solutions, you should make the most of all available sources of information, including the following.

- **People who will ultimately use the service.** Where the proposed contract involves direct provision of services to the public, or a section of the public, consulting representatives of different communities may help you to assess whether your proposed arrangements would have an adverse impact on particular racial groups.
- **External suppliers.** You may find it helpful to explore with external suppliers how your objectives, including your race equality objectives, could be realised. Drawing on the knowledge and experience of different suppliers may suggest a wider range of options for promoting race equality within the context of the contract, as well as any accompanying risks. You must, however, ensure that such discussions do not offer any advantage to any external supplier, and are not seen to do so, for example by basing the specification directly on one supplier's model.

Planning procurement projects

What steps should we take?

Early discussions with suppliers will be particularly useful if:

- you are considering a major, long-term, strategic contract involving a partnership approach; or
- external suppliers have knowledge and experience of the communities you serve, and can help you to develop and plan suitable services.

Example

A local council decided to contract out its advice and information services. These included their information service and a housing benefit advice line. To make sure the contract specification covered the different needs of all possible users of the service, the council discussed its proposal with other advice agencies in the area. These included a national disability charity, and a Pakistani youth and community centre. The council also had talks with a voluntary organisation that had a contract to provide a similar service for another local authority.

Example

A fire authority is seeking to tender for the provision of smoke hoods. It is in discussions with several potential suppliers regarding the design of safe and effective smoke hoods that can be worn by male Sikh firefighters, most of whom have beards that make an airtight neck fastening more difficult.

- **Trade unions.** If you are considering a new approach to service provision, the experience of relevant trade unions may help you to identify any workforce implications, as well as any risks or benefits to race equality in the different options. Further, you are more likely to retain employees' confidence and morale in situations of potential change, if you tell them what you are proposing and ask for their views. If employees are likely to be transferred to a new employer, you will need to involve them and their trade unions from an early date.

5. Consider various options

Your review of current arrangements, and any internal and external discussions, should generate various options, and a basis for selecting the one most likely to offer best overall value for money while meeting your duty to promote race equality, and your duty under best value.

- Should the project be packaged differently from existing arrangements? Does the length of the contract matter?
- Should the specification be wider or narrower?
- How should the race equality responsibilities of the contractor be defined? Will it be sufficient to specify race equality outcomes?

- How should the responsibilities for race equality be divided between the authority and the external providers? Which responsibilities should remain with the authority? What sorts of risks are best transferred to the external supplier?
- Will you meet your race equality objectives more effectively by seeking to attract a wider range of suppliers? Does the project involve distinct services for a particular ethnic minority community, which might be more effectively and efficiently provided by organisations already working with that community?

Summary

To achieve best value and meet your race equality duty, you need to clarify how your race equality objectives can be met, and to define what you want to 'buy' in terms of your duty to promote race equality.

Consistent with best value, you will want to review existing arrangements for providing the goods, works, or services for their success or failure in promoting race equality. This should involve challenging current provision and considering alternative arrangements, and consulting externally and internally.

You should ensure that you have relevant information, including the characteristics of your potential service users.

In developing your race equality proposals, you should make use of experience and knowledge within the authority, different local communities, external suppliers, and trade unions.

You will then be prepared to consider the content, packaging, and tendering options that will best meet your race equality requirements.

5

Race equality requirements in contract specifications

Once you have decided if race equality is a core requirement, and determined what form the contract will take, you can use the contract specification to set out explicitly what you require the contractor to do. You could also consider other equality issues at this stage, including those concerning sex, disability, religion or belief, sexual orientation, and age.

The more carefully you formulate equality requirements in the contract specification, the more likely it is that the contractor will meet your expectations. Conversely, if the specification is not clear, the contractor's performance on race equality could be so inadequate that you are not able to comply with your duty under the RRA. This means the requirements on promoting race equality, like the rest of the specification, should be objective, and stated in terms that are clear, explicit, and not easily misinterpreted.

Example

A local authority recently awarded a contract to a voluntary organisation to provide English language classes for newly-settled adults from India, Pakistan, and Bangladesh. In drafting the contract, the authority considered the different outcomes it might specify, and how each might affect how the contractor would provide the service. The outcomes it considered were:

- number of people attending the classes;
- number of classes provided;
- time of day, length, and location of the classes; and
- pass rates of any examination.

How should we specify our race equality requirements?

As far as possible, we recommend that you specify requirements relating to race equality as a set of outcomes or performance targets, preferably expressed in easily measurable terms – that is, numbers or percentages. However, there may be other, qualitative outcomes that you could reasonably expect the contractor to achieve. For example, you could require a service to be tailored to the needs of distinct groups, such as language or cultural needs, or to needs arising as a result of social isolation. You can ask contractors to set out their own ways of meeting the specified outcomes or performance targets.

Example

A council knows from the latest census and its monitoring of applications for housing benefit that, compared to their numbers in the local population, Chinese and Somali households are significantly under-represented among applicants. The council has decided to let a contract for processing housing benefit applications. The specification requires the contractor to make improvements in applications from Chinese and Somali households, and to report on these every three months. The specification also sets a three-year target, to increase the number of benefit applications from all ethnic minority groups, so that they are in proportion to the estimated number of households from each group in the area that are likely to be eligible to claim housing benefit.

To achieve certain race equality objectives, you may need to specify the processes you consider necessary. These could include:

- consultation with potential service users;
- monitoring the change in use of the service, by the ethnicity of service users; and
- training staff to be aware of the religious or cultural traditions of service users.

You could still express these as 'outputs' – for example, that consultation or training is carried out – but without prescribing the content or process.

Example

A contract for domestic fire safety inspections in people's homes includes a requirement that the contractor will train their staff to be aware of religious observances and cultural traditions among people whose homes they may have to enter.

If you specify the achievement of certain performance targets, you may want to make explicit how you expect the contractor to monitor their performance against these targets. So, for example, you may consider specifying:

- ethnic monitoring of people who use the service;
- surveys of potential users who do not use the service;
- consultations with users of the service;
- consultations with the community at large; and
- consultation with the contractor's staff.

The contract could provide for the contractor to make adjustments in the light of the results of monitoring.

You should also specify that the contractor should have procedures for dealing promptly and sensitively with complaints about discrimination, and for adjusting the service if complaints highlight significant deficiencies.

Example

The specification for the management of a residential care home requires the contractor to:

- set up systems for receiving, recording, and investigating all complaints – from staff, residents, and visitors – of racial discrimination and racial harassment;
- train staff to investigate such complaints;
- monitor the way such complaints are handled; and
- record the action taken in response to all complaints that are upheld.

Should we include arrangements comparable to those in our race equality scheme?

Many contracts will require the contractor to carry out a function that you have assessed as being relevant to meeting your race equality duty. Your race equality scheme should include your arrangements for this function. You should require the contractor to fulfil the relevant commitments in your scheme. For example, to:

- monitor all aspects of the contract for any adverse impact on the promotion of race equality;
- publish the results of such monitoring; and
- make sure people have access to information about the service provided under the contract, and to the service itself.

Can we require the contractor to respond to change?

Yes. If the contract runs for a number of years, as would be the case for services under a PFI scheme, the contract should reflect the need to adjust to change. You could, say, require the contractor to adapt the services to meet demographic or environmental changes that have race equality implications. For example, the arrival of asylum seekers in an area, as part of the government's dispersal policy, may require additional translation or interpreting services, and measures to meet particular welfare needs. Of course, major changes in service provision would need to be agreed with you.

In the case of PFI and other contracts extending over several years, you may want to consider specifying yearly improvements in race equality outcomes, with periodic reviews.

Can we include a requirement to take positive action?

Yes. If you know that some of the communities you serve are particularly disadvantaged because of their ethnic background, that they have distinct service needs, or that they are under-represented among users of your services, you can write certain positive action steps (see the glossary) into the contract specification. This could include providing services to meet special educational, training, or welfare needs of particular racial groups.

Example

A county council serving a primarily rural area has decided to let a contract for two mobile neighbourhood centres, to improve people's access to information and council services. The council knows that Gypsies living in the area are much less likely than any other group to use local services, including services for pre-school children, and that some Gypsy children are disadvantaged when they begin at school. The contract specifies:

- consulting Gypsy families on how information about council services could be more appropriately provided to them;
- so far as practicable, adjusting services of the mobile centres to be more relevant and more accessible to Gypsy families, for example planning itineraries and schedules to be more convenient; and
- encouraging Gypsy families in the area to use the council's services, including facilities for parents and young children, nursery classes, and primary schools.

Should we include race equality workforce requirements in the specification?

In a contract for works or services, to secure effective, efficient performance of the contract, the specification should state that the contractor will be expected, throughout the period of the contract, to:

- a) employ enough highly motivated and suitably qualified and trained staff, and
- b) properly supervise and manage them,¹²

to meet all the requirements and standards of the contract, including those concerning race equality.

12. You will need to consider at which stage you will assess suppliers' ability to meet a) and b), since for some contracts you may decide that these would be more usefully considered at the selection stage as matters of 'technical capacity' (see chapter 7).

Contract specifications

Specifying race equality requirements

When a contract is relevant to your duty to promote race equality, you may want to specify in greater detail how you expect the contractor to meet the race equality requirements. For example, you could specify:

- racism awareness or race equality training requirements for all managers or staff working at different levels;
- language skills:
 - for contracts involving services to the public in Wales, sufficient staff with relevant fluency / literacy in Welsh; and
 - for contracts providing services to the public, including people who have difficulty understanding English, sufficient staff with relevant fluency / literacy in the relevant languages; or
- recruitment of staff from particular racial groups to perform parts of the service, for example counselling for Bangladeshi victims of domestic violence, or detached youth work with young refugees from Somalia, or support for Asian victims of racist crime, where belonging to that racial group is likely to be a genuine determining requirement of the job, which can be justified under the RRA.

You may also wish to include clauses within the conditions of contract setting appropriate race equality standards for the contractor's employment practice (see chapter 6).

There may be contracts where it will be appropriate for you to specify measures to meet the special needs of the staff who will transfer to the contractor, to aid their efficiency and improve morale and productivity in carrying out the contract.

Example

A local authority is proposing to contract out the cleaning of its buildings; their existing cleaning staff will transfer to the contractor under TUPE. As background information, tenderers are given a brief profile of existing cleaning staff, a majority of whom speak Portuguese as a first language. The specification refers to a well-trained workforce, and to the contractor's obligation to have a programme of staff training that takes into account the known language needs of staff.

Summary

You should define your race equality requirements clearly and objectively.

Wherever possible, the specification should be framed as measurable outcomes, allowing the contractor to develop methods for achieving these.

It may be appropriate to specify 'outputs', such as consultation or training, consistent with arrangements in your race equality scheme, to ensure the contractor achieves the desired outcomes.

In contracts that will last a number of years, you may want to require the contractor to achieve year-on-year improvements in race equality performance.

In relation to certain services, it may be appropriate to include positive action measures to meet special needs of particular racial groups.

Specifications may include requirements to ensure the contractor's workforce is able to carry out the race equality service requirements you are specifying.

6

Contract conditions

This chapter gives examples of model contract clauses relating to a contractor's race equality obligations. Many local authorities have already developed contract clauses along these lines, with some variations, reflecting their policies and experience, and the circumstances of particular contracts.

We suggest that those clauses or sub-clauses marked with a star (★) will be suitable for all contracts. For some small-scale, low-value contracts, for example those for routine purchase of goods or for regular repair and maintenance, it would be reasonable to consider fewer and simpler clauses.

The sub-clauses in Clause 1 marked with a star (★) include those that require contractors to avoid unlawful discrimination, and to impose similar obligations on their subcontractors. This gives added force to the non-discrimination provisions of the RRA by making them an enforceable condition of contract.

We recommend that other sub-clauses of clause 1, which call on the contractor to take measures to ensure the promotion of race equality in its employment practice, should be considered whenever the subject matter of the contract is highly relevant to compliance with your RRA duty (see chapter 3). Under EC rules, which do not regulate how a contract is performed, you are able to include contractual clauses requiring the contractor to implement measures to promote equality of opportunity;¹³ therefore, in contracts for services or works, you could include clauses requiring the contractor to implement measures to promote race equality in the employment of staff engaged in the performance of the contract. Contract clauses should not form any part of selection or award decisions.

In all contracts you must ensure that the conditions of contract are non-discriminatory, that is that they are not more difficult for suppliers from different EU countries to meet. For example, any requirement to carry out ethnic monitoring should apply to employees performing the contract in the UK, but not to other employees, as this could conflict with national laws in other member states.

We have not included model contract clauses relating to contract performance or to enforcement mechanisms for poor or inadequate performance or failure to comply with contract conditions, as we would expect such clauses in every contract. However, it will be necessary to make sure that clauses requiring performance of the contract in accordance with specified service levels refer to any race equality performance indicators or outcomes in the contract specification, as appropriate. Any default mechanism for failure to achieve service levels should apply to race equality service levels, as should any bonuses that are payable when service levels are exceeded.

13. Section 1.6, *Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement*, COM(2001)566 final, 15.10.2001.

The model clauses produced below focus only on race equality and racial discrimination, giving effect to your obligations under the RRA. However, in most contracts it will be appropriate to include clauses that cover other equality issues. For example, clauses similar to 1.1.1 (see below) could be used to prohibit unlawful discrimination on grounds of sex and disability. As legislation prohibiting discrimination in employment on grounds of sexual orientation and religion or belief should be in force before the end of 2003, you may want to consider including contract conditions to prohibit discrimination on those grounds too.

Model contract clauses

1. Racial discrimination and the promotion of race equality¹⁴

★1.1 The Contractor:

★1.1.1 shall not:

- (a) discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part II (Discrimination in the Field of Employment) of the Race Relations Act 1976, as amended (the Act);¹⁵ and/or
- (b) discriminate directly or indirectly or by way of victimisation or harassment against any person on grounds of colour, race, nationality, or ethnic or national origins contrary to Part III of the Act (Discrimination in Other Fields); and/or
- (c) contravene Part IV of the Act (Other Unlawful Acts);

where appropriate.¹⁶

1.1.2 shall, for purposes of ensuring compliance with sub-clauses 1.1.1 (a) and (c) above, in relation to Contractor Staff¹⁷ employed in the performance

14. The relevance and application of this clause will vary according to the nature of the agreement and the relationship between the parties, and should be amended as appropriate.

15. This includes a requirement to comply with section 7 of the Act where this is relevant to the contractor's dealings with sub-contractors.

16. The contractor has a statutory duty to meet these provisions. Most agreements would also include at the end of the agreement a standard clause requiring all parties to observe all statutes and laws in force.

17. 'Contractor Staff' should be defined as all persons employed by the contractor to perform the agreement.

of the Agreement,¹⁸ observe as far as possible the provisions of the Commission for Racial Equality's *Code of Practice in Employment*, as approved by parliament in 1983, [a copy of which is annexed at Schedule []], including, but not limited to, those provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy.

1.1.3 shall in performing the contract comply with the provisions of section 71(1) of the Act as if the Contractor were a body within the meaning of Schedule 1A to the Act (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups).¹⁹

★1.2 Where in connection with this Agreement the Contractor, its agents or subcontractors, or the Contractor Staff are required to carry out work on the Authority's premises²⁰ or alongside the Authority's employees on any other premises, the Contractor shall comply with the Authority's own employment policy and codes of practice relating to racial discrimination and equal opportunities, copies of which are annexed at Schedule [].²¹

1.3 The Contractor shall:

1.3.1 monitor the representation among Contractor Staff of persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body), having regard to the Authority's procedures for monitoring representation among its own employees;

18. As a minimum, it is recommended that this sub-clause should apply to all Contractor Staff. As the CRE's code of practice provides guidance on compliance with the Act in the field of employment, contractors should be encouraged to apply this sub-clause and appropriate race equality policies consistently to the whole of their workforce. It should be recognised, however, that where a contractor employs staff in another member state, compliance with this sub-clause must be in the context of any relevant laws of that state.

19. It is anticipated that this sub-clause will be relevant in an agreement for the provision of services that comprise a function of the authority which the authority has assessed as highly relevant to its compliance with the provisions of section 71(1) of the Act. For example, an agreement to manage sports and leisure facilities or to provide social care.

20. 'the Authority's premises' should be defined as any premises and land occupied by the Authority for the purposes of carrying out its functions.

21. This clause, which would not normally be suitable in agreements for goods, could be met by the Contractor demonstrating that its employment policy and codes of practice provide race equality protection equivalent to or greater than do those of the Authority. In such circumstances the Contractor's policies and codes of practice could be annexed to the contract in place of the Authority's.

- 1.3.2 where it appears to the Contractor in relation to particular work of the Contractor Staff, either that the Contractor Staff includes no members of a particular racial group doing that work or that members of that racial group are under-represented amongst Contractor Staff doing that work compared to their representation in the Contractor Staff as a whole or in the population from which Contractor Staff are normally recruited, undertake the following actions as may be appropriate and reasonably practicable:
- (a) the placing and use of job advertisements to reach members of such racial groups and to encourage their applications;
 - (b) the use of employment agencies and careers offices in areas where members of such racial groups live and work;
 - (c) the promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such racial groups; and
 - (d) the provision of appropriate training and the encouragement of members of Contractor Staff from such racial groups to apply for promotion or transfer to do work in which such racial groups are under-represented.
- 1.4 The Contractor shall [12] months from the date of this Agreement and [annually] thereafter submit a report statement to the Authority demonstrating its compliance with Clauses 1.1, 1.2 and 1.3.
- 1.5 In addition to the report statement referred to in Clause 1.4, the Contractor shall provide such additional information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with Clauses 1.1, 1.2 and 1.3.
- ★1.6 Where the Contractor commits a breach of Clauses 1.1, 1.2 or 1.3 which amounts to a failure to meet the Service Levels, the provisions of Clause []²² shall apply.
- ★1.7 The Contractor shall notify the [Authorised Officer] forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Act.
- ★1.8 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of this Agreement being in contravention of the Act, the Contractor shall, free of charge:

22. This sub-clause, which would not normally apply to contracts for goods, should refer to the relevant clause providing default mechanisms for failure to perform the contract in accordance with specified service levels.

- 1.8.1 provide any information requested in the timescale allotted;
 - 1.8.2 attend any meetings as required and permit Contractor Staff to attend;
 - 1.8.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 1.8.4 allow itself and any Contractor Staff to appear as witness in any ensuing proceedings; and
 - 1.8.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- ★1.9 Where any investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Contractor, its agents or subcontractors, or the Contractor Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.
- ★1.10 In the event that the Contractor enters into any Subcontract in connection with this Agreement, it shall impose obligations on its Subcontractors in terms substantially similar to those imposed on it pursuant to this Clause 1.

Summary

Standard clauses for all local authority contracts should require the contractor:

- **not to discriminate unlawfully;**
- **to cooperate with any investigation or proceedings concerning alleged contravention of the RRA in performing the contract;**
- **to indemnify the council or authority in the case of any finding under the RRA arising out of the contractor's acts or omissions; and**
- **to impose the same obligations on any subcontractor.**

Where the contractor's staff work on your premises or alongside your employees, they should comply with your employment and race equality policies.

Other contract clauses, requiring further race equality workforce measures, may be appropriate where the subject matter of the contract is highly relevant to your RRA duty.

Clauses should also provide for enforcement measures for failure to meet race equality requirements, and for bonuses where specified outcomes are exceeded.

7

Selecting tenderers

This chapter will be particularly useful to officers involved in selecting external suppliers to tender for contracts. It applies to drawing up both 'select lists', for major individual contracts, including most that are subject to EC directives. It also applies to selecting tenderers for 'framework agreements' (see the glossary) as well as selection for an 'approved list'²³ (see the glossary). The emphasis in this guidance is on race equality, and you should therefore use it alongside other guidance on compliance with EC rules and best value.

The guidance in this chapter refers primarily to contracts that are subject to the EC directives. As many local authority contracts are not subject to the full regime of the directives, you will have greater flexibility in advertising and in the enquiries you make to select suitable suppliers, although you must still act within basic EC principles and the requirements of UK law.

Should we include race equality requirements when we advertise?

Yes. Your notice in the *Official Journal of the European Union* (OJEU), and your notices in local or national newspapers or specialist journals, must give basic information about the nature of the contract. If the contract relates directly to race equality matters, you should say so in the advertisement, and also indicate the kind of evidence you will be looking for.

Example – Extract from OJEU notice

Description / object of the contract

Provision of an information and publicity service, including use of printed material, posters, and development of the authority's website as a more effective interactive medium for communicating with the diverse population who live or work in the authority's area.

Technical capacity – means of proof required

Experience of providing information and publicity material in print, display, and electronic forms, achieving effective communication with a culturally and linguistically diverse population. Please provide copies of materials used in similar previous or current projects, together with monitoring data or other evidence to demonstrate the effectiveness of such projects in reaching culturally or linguistically diverse communities.

23. Where selection is for an approved list, you should treat references to 'the contract' in this chapter as referring to the particular type of contract for which a list of suitable suppliers is being drawn up.

What can we ask suppliers about race equality?

The EC directives specify the matters you can consider at this stage. Suppliers can be disqualified for specified reasons, one of which is grave misconduct in the conduct of their business. Breach of the RRA, or equivalent laws in other EU member states, could amount to such misconduct. Otherwise, you will need to assess the suitability of suppliers on the basis of their economic and financial standing, and their technical capacity to carry out the contract in question. For this purpose, technical capacity can encompass capacity to meet race relations legislation and any race equality requirements for performance of the contract.

You may already have a standard pre-qualification questionnaire. In the light of your race equality obligations under the amended RRA, and changes to local government legislation, you may want to review the questions you ask. The purpose of your pre-qualification questionnaire is to provide you with all the information you need to select a sufficient number of suppliers who are suitable to tender for your contract. Therefore, you will want to ask some questions about the provider's track record in relation to race equality.

What can we ask about race equality in the workforce?

There has always been scope to consider suppliers' race equality performance at this stage. While the 1988 Local Government Act prevents consideration of workforce matters in local authority procurement generally, it permits local authorities to ask written questions specified by the Secretary of State²⁴ concerning race equality, where consideration of the replies is 'reasonably necessary to secure compliance' with their (original) duty under section 71 of the original Race Relations Act.

Your duty to promote race equality under section 71(1) of the amended RRA is clearer and more comprehensive, and your ability to ask these six 'approved questions' is unchanged. However, since the removal of the restrictions relating to workforce matters,²⁵ where relevant to the contract and for the purposes of achieving best value, you can now ask additional questions to obtain any further information you need to assess the suitability of suppliers in terms of race equality in workforce matters.

We have used the six 'approved questions' as a starting point in drawing up the model questions on pages 50 – 51. You may already be asking similar questions. You should consider what you need to know about potential tenderers for the particular contract. We suggest that, as a minimum, you should include all the questions marked with a star (★) – or similar questions – in every pre-qualification questionnaire. Questions 1 – 3 ask for essential background information. Questions 4 – 7, which are derived from the 'approved questions', ask for information which you will need to meet your RRA duty.

24. The six questions are set out in Annex B, Department of the Environment Circular 8/88, and Welsh Office Circular 12/88.

25. Orders for England and for Wales under section 19, Local Government Act 1999 and for Scotland under section 7, Local Government in Scotland Act 2003.

Where race equality is a core requirement, or you consider it appropriate for the contract in question, we recommend you ask all the model questions, or similar ones.

Before asking these questions, you need to establish what standards you will apply to evaluating answers. The standards must be objective, but you may wish to allow suppliers to demonstrate their capacity in a variety of ways.

You should make sure all providers understand the importance of answering all the questions in full; they are more likely to do so if you explain clearly why you have asked each question, and indicate the kind of evidence you expect.

The box on page 52 gives model explanations for the sample questions on employment.

Model pre-qualification questions relating to equality in the workplace

Note: Questions 1, 2, and 3 are designed to obtain necessary background information.

- ★1. What is the size of your firm? Please state total number of:
 - a) partners; and
 - b) employees (including all full-time and part-time employees, apprentices, and other trainees).
- ★2. Of the total number of employees in 1b, how many are managers?
- ★3. Is your firm part of a commercial group or a consortium? If it is, which of your employment policies are determined by you, and which ones apply to all firms within the group or consortium?
- ★4. Is it your policy as an employer to comply with your statutory obligations under the Race Relations Act 1976, which applies in Great Britain, or equivalent legislation that applies in the countries in which your firm employs staff? Accordingly, is it your practice not to discriminate directly or indirectly on grounds of colour, race, nationality, or ethnic or national origins in relation to decisions to recruit, select, remunerate, train, transfer, and promote employees?
- ★5. In the last three years, has any finding of unlawful racial discrimination in the employment field been made against your organisation by the employment tribunal, the employment appeal tribunal, or any court, or in comparable proceedings in any other jurisdiction?
- ★6. In the last three years, has your organisation 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?

- ★7. If the answer to question 5 is yes or, in relation to question 6, the CRE or comparable body made a finding adverse to your organisation, what steps have you taken as a result of that finding?
8. Is your policy on race relations set out:
- a) in instructions to those concerned with recruitment, selection, remuneration, training, and promotion;
 - b) in documents available to employees, recognised trade unions, or other representative groups of employees; and
 - c) in recruitment advertisements or other literature?
- If your answer to (a), (b), or (c) is 'No', can you provide other evidence to show how you promote race equality in employment?
9. Are staff who have managerial responsibilities required to receive training on equal opportunities?
10. Do you 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?
- ★11. Is it your policy as an employer to comply with your 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 Great Britain – or equivalent legislation in the countries in which you employ staff?
- ★12. In the last three years, has any finding of unlawful sex or disability discrimination in the employment field been made against your organisation by the employment tribunal, the employment appeal tribunal, or any court, or in comparable proceedings in any other jurisdiction?
- ★13. If the answer to question 12 is yes, what steps have you taken as a result of that finding?
- ★14. If you are not currently subject to UK legislation, please supply details of your experience in complying with equivalent legislation that is designed to eliminate discrimination (especially racial discrimination) and to promote equality of opportunity.

Model explanations to accompany model questions above

Before question 1

The following questions and description of evidence are derived from those specified by the Secretary of State under section 18(5) of the Local Government Act 1988, modified and extended as permitted by Orders made under Section 19 of the Local Government Act 1999 [and under section 7 of the Local Government in Scotland Act 2003].

Your firm will be evaluated for race equality in employment on the basis of your answers to these questions. Please ensure that you answer every question. Failure to provide the information requested may result in your firm being rejected. Please provide sufficient information to enable the (*name of authority*) to make a fair and accurate assessment of how, as an employer, you have dealt with race equality issues.

Please supply evidence to support your answers to questions 8 to 10. Such evidence may be examples or copies of documents such as your race equality or equal opportunities in employment policy; documents containing instructions to staff, or outlining arrangements for advertisements, recruitment, selection, access to training, and opportunities for promotion; copies of recruitment advertisements; extracts from staff handbooks; or other materials.

The ... (*name of authority*) is also committed to promoting equality of opportunity for disabled people, and between women and men, and accordingly seeks information regarding your firm's compliance with other anti-discrimination legislation.

Have you read the (*name of authority*)'s race equality scheme, which is available on the (*name of authority*)'s website, ... (*website address*), or in hard copy from ...

Example

Constructionline, a pre-qualification register for construction-related firms in the UK, has been working with the CRE to include the new guidelines in their processes. It now includes the questions marked ★ in the compulsory section A of its prequalification questionnaire. More detailed questions, similar to the other questions in this model, are included in section B. Constructionline encourages its registered firms to complete section B questions. The information supplied is then scanned so that public authority clients can view it free of charge.

How should we evaluate the answers to questions on race equality in the workforce?

What you should look for is evidence that suppliers have taken steps to achieve race equality in employment to an acceptable standard for the contract in question. It is important to consider carefully suppliers' answers to these questions at this stage, since information concerning current workforce matters cannot be used as grounds to terminate the contract once it has begun.²⁶

The bottom line for all contracts must be that a supplier does not discriminate unlawfully. The answers to the questions marked with a star (★) should enable you to determine whether this is the case or whether they should be disqualified, and you may decide that failure to answer these questions is grounds for rejection.

You should not regard a finding of discrimination as decisive grounds for disqualification, if the supplier provides good evidence that they have taken appropriate steps since then. Question 7 asks them to provide this evidence, and the answers to question 8, 9, and 10 could provide additional evidence. In evaluating responses to question 7, you should ensure the supplier gives evidence of improvements that satisfy you that they have remedied their previous discriminatory practice.

You must also ensure that the supplier has the technical capacity to meet the quality standards of the contract. This should include any standards of race equality in employment that you consider necessary to perform a particular contract. A careful evaluation of responses to questions 8, 9, and 10 should help you assess whether

Example

The criteria being developed by Derbyshire County Council are based on the 'risk' to the council being greater where the contractor has more contact with members of the public, and/or where there is a greater service element in the contract as a whole.

- Minimum risk: no specific requirements placed on the supplier, other than being made aware of the council's policies and objectives.
- Low risk: a written equal opportunities policy, and evidence of implementation and non-compliance procedures are required.
- Medium risk: a written policy, staff training programme, risk assessments, and complaints procedure are all required.
- High risk: all of the above documentation is required, together with a comprehensive monitoring system.

26. Section 18(3), Local Government Act 1988. However, there has never been any statutory restriction regarding termination on non-employment grounds.

suppliers have this capacity. You will need to bear in mind the principle of non-discrimination within EC rules: you must not apply selection criteria that will be more difficult for suppliers from other EU member states to satisfy. So, for example, technical capacity should not depend on having systems for ethnic monitoring where any applicants work primarily in countries in which ethnic monitoring is not permitted.

In establishing criteria for particular contracts, one approach is to assess the degree of 'risk' for your authority. How relevant, and how significant, is the contract likely to be to meeting your duty under the RRA? The greater the risk, the greater the need for more explicit race equality policies and more comprehensive implementation.

In assessing technical capacity, it will also be appropriate to take the size of the private or voluntary organisation into account. This is already the practice for many authorities. It is consistent with the CRE's code of practice for employment to expect larger firms, with greater financial and administrative resources, to have more explicit formal race equality policies and procedures.

Example

West Midlands Forum

In 1998, six local authorities in the West Midlands combined to exchange good practice, provide mutual support, share information, and establish a 'common standard' for assessing suppliers' compliance with the RRA and the CRE's code of practice for employment. Suppliers are asked to submit written policy on race equality in employment, or their general equal opportunities policy, with their replies to the six approved questions. Their policy is assessed against the standard set out below, which consists of three levels, corresponding to different sizes of firms.

Details of suppliers that any of the authorities has approved, using the standard, are shared. Once a supplier has been approved, it does not need to be checked again on race relations matters when applying for contracts offered by any member of the forum, for three years. This collaborative approach to promoting race equality in procurement saves time and resources for the authorities and suppliers, and gives a consistent positive message to any supplier seeking contracts from any authority in the region.

The standard is also incorporated into the conditions of the contract. Once a firm is awarded a contract, it is monitored to ensure it actually implements the standard.

Sole traders and firms with fewer than five employees are asked to give written assurances that they will achieve Level 1 before recruiting any more staff.

(Continued on p 54)

West Midlands Forum (continued from p 54)

Level 1: Minimum standard (5 or more employees)

All firms with 5 or more employees must achieve criteria 1 – 4.

1. Written race or general equality policy, covering at least:
 - a) recruitment, selection, training, promotion, discipline, and dismissal;
 - b) victimisation, discrimination, and harassment as disciplinary offences;
 - c) a senior staff member responsible for effective implementation of the policy; and
 - d) communication of the policy to staff.
2. Effective implementation of the policy in the firm's recruitment practices, to include open recruitment methods such as the use of job centres, careers service, or press advertisements.
3. Regular reviews of the policy.
4. Regular ethnic monitoring of job applicants.

Level 2 (50 or more employees)

All firms with 50 or more employees must achieve criteria 1 – 8.

5. Written instructions to managers and supervisors on race equality in recruitment, selection, etc (see criterion 1(a)).
6. Training in race equality or equal opportunities for managers and staff responsible for recruitment and selection.
7. Ethnic monitoring of (i) job applicants and (ii) employees (by section and grade).
8. Where monitoring indicates under-representation of particular groups, action is taken to ensure that criteria 1 – 3 and 6 – 7 are being used effectively, making changes if necessary.

Level 3 (250 or more employees)

All firms with 250 or more employees must achieve criteria 1 – 8, and would also be encouraged to achieve criteria 9 – 12.

9. Regular consultation on race equality issues within the workforce.
10. Regular ethnic monitoring of selection, transfer, training, promotion, discipline, and dismissal.
11. Mention in recruitment advertisements and corporate literature of arrangements for equal opportunities, including race equality.
12. Where monitoring indicates under-representation of any group, the following action is taken:
 - a) check that criteria 1 – 3, 5, 6, 9, and 11 are being used effectively;
 - b) take advice from the CRE, racial equality councils, or the Equality in Employment Advisory Service; and
 - c) take appropriate action (including positive action) as a result of that advice.

You can order a report on the common standard, and training packs on putting the standard into practice from alan.butt@wolverhampton.gov.uk.

What can we ask about race equality in providing services?

Local government legislation has never restricted questions that can be asked in relation to provision of services, although EC rules apply in the same way to service and workforce matters. Where the proposed contract involves provision of a service, and all or part of the service is relevant to the authority's duty to promote race equality, you can also use your pre-qualification questionnaire to assess providers' capacity to meet relevant race equality service delivery criteria.

At this stage, you are looking for a sufficient number of suppliers with an acceptable race equality 'track record' in service delivery, relevant to the service that will be the proposed contract. Where suppliers have no directly relevant previous experience, which may often be the case, look for firms that can provide evidence of their capacity to meet the required race equality standard.

You will need to develop some further questions (see model questions, below), and an objective framework to assess the replies.

Model pre-qualification questions for contracts for services in which race equality is a core requirement²⁷

1. Is it your policy to comply with your statutory obligations under part III of the Race Relations Act 1976 (which applies in Great Britain), or equivalent legislation that applies in any other jurisdiction in which your firm operates. Accordingly, is it your practice not to discriminate directly or indirectly on grounds of colour, race, nationality, or ethnic or national origins in the provision of education, housing, goods, facilities, or services, or other public functions ('provision of services') to the public?
2. In the last three years, has any finding of unlawful racial discrimination in relation to non-employment matters been made against your organisation by any UK court, or in comparable proceedings in any other jurisdiction?
3. In the last three years, has any contract with your organisation been terminated on grounds of your failure to comply with:
 - a) legislation prohibiting discrimination; or
 - b) contract conditions relating to equal opportunities in the provision of services?
4. If the answer to question 2 or 3 is yes, what steps have you taken as a result of that finding or termination of contract?
5. Do you have a written policy on equal opportunities or race equality in relation to the provision of services?

27. In practice, you could combine the employment questions and the service questions in a single questionnaire, provided your explanations make it clear that you are looking for evidence in relation to two different aspects of suppliers' race equality practice.

Selecting tenderers

Questions about race equality in service provision

- 6 a) Is the policy referred to in question 5 set out in:
 - i. instructions to managers;
 - ii. instructions to staff;
 - iii. a staff conduct or disciplinary code; and
 - iv. leaflets or other literature available to the public?
 - b) If you do not have a written policy, how otherwise can you demonstrate that you promote race equality in delivering services?
7. In any previous or current contracts for ... (*specify general type of goods / services in proposed contract, for example, catering*), or any similar activity, did you:
 - a) apply a race equality or equal opportunities policy for access to these services by different racial or other groups; or
 - b) provide goods or services appropriate to the special needs of any particular group?

As for workforce matters, you should provide some explanation of the information you are asking suppliers to provide, and the criteria against which their replies will be assessed.

Example

The ... (*name of authority*) wishes to select firms to tender for a contract for ... (*brief description*). The ... (*name of authority*) is required, under section 71(1) of the Race Relations Act 1976, as amended, to carry out its functions with due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In compliance with section 71(1), the... (*name of authority*) seeks to ensure that services which are carried out on its behalf by external contractors are carried out with the same regard for the promotion of race equality.

On the basis of your answers to these questions, your firm will be evaluated on its compliance with the non-discrimination provisions of the Race Relations Act or equivalent legislation in another jurisdiction. Please make sure you answer every question. Failure to provide the information requested may result in your firm being rejected. Please provide sufficient information to enable the ... (*name of authority*) to make a fair and accurate assessment of how you have dealt with race equality issues in the provision of goods and services.

Where appropriate, please supply evidence to support your answers. In your answers to questions 5, 6, and 7, the evidence may include examples or copies of documents setting out your race equality or equal opportunities policy as it applies to the provision of goods or services, documents containing instructions to staff, extracts from training manuals or staff handbooks, information provided to service users, or other material that demonstrates your firm's capacity to promote race equality in the provision of this service.

How should we assess suppliers' capacity from the answers to questions on race equality in service provision?

You should look for evidence that a supplier is capable of providing the services in question without discrimination. For contracts where race equality is a core requirement, you will also want to know if suppliers are able to promote equality of opportunity and good race relations. As in evaluating employment practice, the bottom line must be that the supplier does not discriminate unlawfully, either directly or indirectly. A previous finding of discrimination should not automatically disqualify a supplier, provided you are satisfied that the firm has since taken effective steps to avoid discrimination and to promote race equality.

You should recognise that for many suppliers these issues may be relatively new. The answers to questions 6 and 7 above should enable you to assess the supplier's awareness of the issues, and offer some indication of their ability to promote race equality in the services you want them to deliver.

How can we ensure fairness and transparency?

Your own commitment to promoting race equality will be seriously undermined if suppliers do not have confidence in your decisions. It is vital that the questions you ask are relevant, and that your assessments of suppliers' answers to the questionnaire are fair, objective, and consistent. This requires clear, well-defined assessment criteria, which are understood by officers involved in the selection process. We strongly recommend that, if possible, only officers who have been trained on the RRA should be asked to assess suppliers' replies to questions about race equality.

It is good practice, and required for contracts subject to the EC directives, to inform suppliers who are unsuccessful. If a supplier was rejected because you had doubts about their ability to meet race equality requirements, you might use this as an opportunity to increase their awareness of race equality issues. Where appropriate, you could refer applicants to agencies offering advice or training, such as Equality Direct (see appendix 3).

Summary

When race equality is relevant to the contract, and therefore to the selection of suitable tenderers, this should be made clear in the OJEU notice and all other advertisements.

Your pre-qualification questionnaire can ask about race equality workforce matters, with scope for wider enquiries where the subject of the contract is highly relevant to your RRA duty.

If race equality is a core requirement, the questionnaire can ask providers about their track record in service provision.

You should only disqualify suppliers who have had a finding of unlawful discrimination against them if they are unable to offer good evidence of measures they have taken to avoid future discrimination.

You may also set higher race equality standards where the contract in question is highly relevant to your RRA duty.

In selecting suitable suppliers, you may require more formal policies and procedures from larger firms with greater resources.

If possible, the evaluation of replies to race equality questions should be done only by officers with appropriate training.



Invitation to tender

The procedures outlined in this guide are based, generally, on the two-stage restricted procedure, as defined in the EC directives. Some contracts will be more suited to either the open or negotiated procedure, and you should have little difficulty in adapting the guidance if you use other formal procedures. You should also be able to adapt the guidance where your contract is outside the EC directives.

What information should we include about our duty to promote race equality in the invitation to tender?

Your invitation to tender should include the information listed below, so that tenderers can submit a tender that encompasses the race equality elements of the specification. Where possible, you should enclose copies of relevant documents, or indicate where they can be seen.

- Relevant policies, including your race equality scheme, and other equal opportunities policies.
- Facts about your area that are relevant to the contract. These could include population data, broken down by ethnic group and, depending on the contract, cross-referred to other factors, such as age, housing tenure, rates of unemployment, languages, and religion.
- Details of the current provision of the service in question, including any information from monitoring, consultation, or other assessment relating to its impact on the promotion of race equality.
- Based on your review of current provision (see chapter 4), what you see as the key challenges to improve race equality performance under the proposed contract.
- If any staff will transfer to the contractor under TUPE, their terms and conditions, including those that guarantee protection against discrimination and provide for equality of opportunity, and, for English and Welsh councils, the code of practice on workforce matters in local authority service contracts.

What should we say about the evaluation process?

Your invitation to tender must state your basic criterion for awarding the contract, namely the tender that offers ‘best overall long-term value for money’ or, for contracts subject to the EC directives, the ‘most economically advantageous tender’.²⁸ As well as

28. It is rarely appropriate for local authorities to award contracts on the basis of ‘lowest price’, as the alternative criterion under EC directives, since this would not enable you to consider factors such as whole-life cost, quality, and service delivery, which are essential elements in value for money, as defined in government policy.

Example

A police force had been given new targets for the recruitment of ethnic minority police constables. The police authority has awarded a contract for recruitment services. The following criteria were stated in the invitation to tender.

- Ability to meet all the requirements of the contract.
- Price of the contract.
- Quality of the service.
- Ability to put into practice proposals for increasing job applications from under-represented ethnic minority groups.
- Ability to recruit, train, and supervise staff to meet the requirements of the contract.
- Ability to develop new measures that will encourage applications from suitable ethnic minority candidates.

stating this basic criterion, your invitation to tender must also set out the specific criteria you will use to evaluate tenders, including any relevant race equality criteria. You should list these in order of priority, as shown in the example on above.

What information should we ask for in evidence of the tenderer's ability to meet race equality requirements?

You must be careful that you do not, directly or indirectly, re-introduce any of the race equality criteria you used to draw up a select list or approved list. If the contract specification includes promoting race equality to certain standards, you must make clear in your invitation to tender what information you expect tenderers to supply in evidence of their ability to meet those standards, as well as the criteria you will use to evaluate it. You may choose to include separate tender documents to describe in more detail the information on race equality you require. A standard format will help ensure that comparisons of different tenders are as objective and fair as possible.

Where appropriate, tenderers could be asked to submit a structured, timetabled 'method statement', which would allow scope for each tenderer to develop their own preferred methods of achieving the race equality outcomes in the specification. In cases where the services to be provided could have a significant effect on particular racial groups, you could ask tenderers to include a race equality impact assessment of their proposals.

Your invitation to tender should make clear what information you expect tenderers to provide about the staff who will perform the contract. This could include information about the qualifications of staff, the levels at which they will be employed, the training they will be given (including race equality training), and the arrangements the tenderer

intends to make for supervising delivery of the contract. Where race equality training is critical to the effective performance of the contract, you could ask tenderers to submit a training schedule indicating not only pre-commencement training, but also race equality training during the course of the contract, to ensure that new staff, and newly-promoted staff, will be able to meet your race equality performance standards.

Where the nature of the service has direct implications for the recruitment, training, and supervision of staff – for example, the need for certain language skills, or knowledge of religious or cultural norms – your invitation to tender should state that tenderers must set out in a method statement how they propose to meet these requirements.

What should the invitation to tender say about race equality contract conditions?

Your invitation to tender should refer tenderers to any clauses in the contract conditions relating to race equality in employment. Tenderers should be asked to confirm that they will comply with these conditions if the contract is awarded to them.

Are we able to apply additional race equality criteria?

For some contracts, there may be factors relating to the promotion of race equality that are not core requirements, but which you consider to be desirable and that would add value to the authority in its duty to promote race equality and other policy commitments. You may be able, in certain contracts, including those subject to EC directives, to take account of tenderers' ability to meet an additional race equality criterion, if you needed to decide between tenders that appear otherwise to offer equivalent value for money. This means that, in the exceptional case where you had evaluated two or more tenders as being equally economically advantageous for the authority, they could be compared against a further race equality factor. You could only do this if this additional criterion had been stated in your invitation to tender or contract notice, and if it does not breach EC law. You should get legal advice before including an additional criterion.

Example

In the example on page 61, the invitation to tender might include the following as an additional criterion:

'The ability to provide anti-racism and race equality training for senior officers and middle-level managers, for the purpose of improving the retention rates of ethnic minority police officers.'

Summary

The invitation to tender and contract documents should provide tenderers with all the information you consider relevant to the race equality requirements of the contract.

In particular, you must state clearly the criteria that will be used to evaluate tenders, and the evidence you will expect tenderers to submit to demonstrate how they will perform the race equality elements of the contract.

Tenderers will be expected to confirm that, if successful, they will comply with the race equality contract conditions.

9

Evaluating tenders

This is a crucial stage in the procurement process, which requires the highest degree of probity, and strict compliance with the standing orders, policy guidelines, and other rules that regulate your contract award decisions. Your task is to evaluate each tender for evidence of the tenderer's ability to meet the requirements of the specification, including those relating to race equality, to the best combination of whole-life cost and quality. You must also be satisfied that the tenderer has accepted and agrees to perform the contract in compliance with the conditions of contract, including clauses relating to race equality.

What preparations should we make for evaluating the race equality aspects?

We suggest that, wherever possible, well in advance of the date for tenders to be submitted, you should resolve the following.

- Who will be responsible for evaluating the aspects of the tenders that relate to race equality?
- What training or guidance do officers need to evaluate proposals for promoting race equality?
- How will tenders be evaluated and compared, particularly in relation to the race equality aspects of the specification and contract conditions?

You should define and agree your (minimum) expectations in writing. We suggest you draw up a template, to make sure that standards are applied consistently and equally in evaluating all the tenders.

What are the basic principles for evaluating tenders for the ability to promote race equality?

The basic principles of evaluation are the same for all aspects of the contract specification. Your object is to find the tender that offers 'best overall whole-life value for money' or, as required in the EC directives, is 'most economically advantageous'²⁹ for you. You must ensure that all the tenders you receive are considered fairly and consistently against relevant, objective criteria.

You must apply the specific award criteria stated in your invitation to tender to evaluate the tenders. Tenders can vary widely in quality on different criteria, with some

29. See footnote 30.

excelling on the criteria relating to race equality, but falling short on others. In line with EC rules and your duty to secure value for money, the emphasis you give to promoting race equality must be in proportion to your objectives for the contract as a whole.

Should you seek to apply an additional race equality criterion, which is not a core requirement, you should do so with care, and only after obtaining legal advice.

When you have published the contract award notice, and informed the successful tenderer of your decision, you should inform all unsuccessful tenderers of the outcome. You could use this as an opportunity to offer advice, or to recommend sources of advice and training to tenderers who scored particularly poorly on any race equality aspects of their bid.

Summary

In advance, you should clarify the evaluation process, and ensure that officers involved in evaluating the race equality aspects of tender submissions have appropriate training.

The task is to evaluate tenderers' ability to meet the race equality requirements of the contract, applying the basic criterion of 'best overall whole-life value for money', and the specific criteria stated in the invitation to tender.

Emphasis given to race equality criteria in evaluating tenders must be proportionate to the significance of race equality requirements in the contract as a whole.

You also need to check tenderers' acceptance of race equality contract conditions.

10

Existing contracts

The Race Relations (Amendment) Act 2000, which gave local authorities their new RRA duty to promote race equality, came into force on 2 April 2001. It is likely that you had several contracts up and running on that date, as well as a number of procurement projects in progress. Your duty to promote race equality applies to these in the same way as it does to future contracts and projects. Therefore, we recommend that you look at your current contracts in the light of your RRA duty, if you have not already done so.

The questions below will help you to decide if there are any contracts that you need to try to amend.

- What is the contract for?
- Is the contract relevant to the duty to promote race equality? If there is no, or little, relevance, you should not have to consider any amendment.
- Is the subject of the contract a high priority for you in meeting your RRA duty?
- How long does the contract have to run?
- Does the contract already include race equality requirements in the specification or contract conditions? Are these sufficient to meet your duty?
- Does the contract say who bears the burden in case of changes in the law?
- What does the contract say about variations you want to make to it?

The next step is to decide whether you need to amend the contract. One question to ask, using a test of proportionality, is: will the benefit outweigh the costs (including time, money, and effect on your relationship with the contractor). Our bottom line should be to ask whether you could find yourself in (significant) breach of your duty under the RRA if you allowed the contract to continue unchanged.

If you decide to negotiate variations to the contract, you will be looking at making amendments to the contract conditions or the specification, depending on the type of contract. This could involve an increase in the contract price, to reflect any extra burden the new provision places on the contractor, and on any subcontractors.

If you are satisfied that the race equality requirements in an existing contract are sufficient – on paper – to avoid a breach of your duty to promote race equality, you should look at how well these requirements are being met in practice by the contractor. It may be that you will need to review how you (and the contractor) monitor and manage the race equality aspects of the contract (see chapter 11).

Example

A district council had awarded a seven-year contract for management of its sports and leisure facilities in January 2001, with a start date in March 2001.

The contract pricing mechanism includes a financial incentive to increase the number of people using these facilities, providing greater income to the contractor as the number of users goes up.

Although the council was aware, from its own survey in 2000, that very few people from the area's small ethnic minority communities used the sports and leisure facilities, this was not mentioned in any of the contract documents. Sports and leisure facilities is a function the council had assessed as highly relevant to its duty to promote race equality. After publishing its race equality scheme in May 2002, the council reviewed this contract and decided that variations to the specification were needed to ensure compliance with its RRA duty, including requirements to monitor the users of different facilities, by ethnic group, and to improve access and use for ethnic minority communities. The council discussed these variations with the contractor, explaining the legal basis and the business case for the contractor if they successfully increased use of the facilities. The contractor agreed to the variations, and the terms for sharing the costs.

Summary

The RRA duty applies to all your relevant functions, including those carried out under a contract that was awarded or developed before 2 April 2001, when the duty to promote race equality came into force.

You are therefore advised to review your existing contracts.

If a contract is highly relevant to your RRA duty, you should consider whether you need to amend the contract to comply with the duty, balancing 'risk' against the costs that may be involved.

If no amendment is needed, you should review how well you are monitoring the race equality requirements, to make sure you are not in breach of the RRA.

11

Monitoring, managing, and enforcing contracts

However good proposals to promote race equality are on paper, you will only know how effective they are when the contractor begins to put them into practice. The success of a project will often depend on the relationship you establish with the contractor, and on how you manage, monitor, and enforce all parts of the contract.

The person who will be responsible for monitoring and managing the contract may not have been involved during the earlier stages, for example where a central procurement unit is responsible up to contract award, but monitoring is devolved to the relevant service department. You should make sure that whoever is responsible for managing the contract understands its race equality objectives and requirements, and receives any race equality training they might need.

Are there any steps we should take before the contract begins?

As soon as possible after award, you should arrange to meet the contractor, including, if possible, the person employed by the contractor to be responsible for the race equality aspects of the contract. Your aim should be to develop a positive partnership, founded on a clear, mutual understanding of basic principles. We suggest you start by clarifying the following matters.

- **The contractor's responsibilities for promoting race equality.** You will want to make sure the contractor fully understands their race equality responsibilities in the contract. It will help if you can give examples of how you expect these elements of the contract to work. You should make clear what you can offer, for example by helping the contractor to identify race equality training needs, or sources of equality advice and information. If the specification calls for timetabled improvements in race equality outcomes, you should make sure the contractor understands exactly what this means in practice. For example, you could clarify and agree the baseline and how improvements will be measured.
- **Responsibilities for monitoring.** If the contractor is required to provide you with results of ethnic monitoring or other information about the service, or about the workforce employed on the contract, you should make sure they understand exactly how to meet this requirement. You may need to explain why you have asked for this information, and how regular monitoring of race equality performance can help meet other requirements of the contract. It may help to give the contractor examples of ethnic monitoring reports. Whether or not the contract stipulates a timetable for reporting, you need to agree reporting dates.

You should tell the contractor how you will monitor the performance of the race equality aspects of the contract, and plan periodic meetings to discuss the contractor's monitoring reports.

- **Contract conditions.** At your initial meeting, you should draw the contractor's attention to the race equality clauses in the conditions of contract, and the circumstances that could lead to defaults or bonuses. You should make sure the contractor understands any references to the RRA, or the CRE code of practice in employment.

Can we ask contractors to take on additional race equality commitments at this stage?

To meet your duty to promote race equality, and other relevant policy commitments, such as social cohesion or sustainable development, you may consider building on your relationships with the contractor to encourage them to take steps, on a voluntary basis, to prevent unlawful discrimination, and to promote equality of opportunity and good community relations.

For example, the contractor may agree to:

- adopt an equal opportunities policy for their organisation generally;
- monitor their UK-based workforce by ethnic background;
- take positive action, as permitted under the RRA, and the Sex Discrimination Act 1975, in relation to under-representation of particular racial groups or of women, and to recruit disabled people (for which there is no restriction under the Disability Discrimination Act 1995); or
- promote subcontracting opportunities for small firms and ethnic minority businesses.

These measures would be wholly voluntary, and distinct from the contract and any of its enforcement provisions.

How should we monitor the contractor's performance of the race equality requirements?

To ensure effective performance of the contract, you will need to carry out regular and systematic monitoring. Your objective, to secure best possible performance, is far more likely to be achieved if, in line with the partnership approach we strongly recommend, you agree monitoring methods and criteria with the contractor. The process for reviewing the contractor's performance must be transparent and trusted by both parties.

Combining the monitoring of race equality requirements with monitoring of the contract generally is less burdensome for you and the contractor, although the officers involved may need additional training to bring them up to speed on race equality issues. You may find it easier to maintain consistent standards if you regularly use the same simple format for recording race equality performance data against the requirements of the contract.

Example

RACE EQUALITY MONITORING

Contract

Start date Expiry date / duration

Monitoring visit date

Regular contract liaison / management meetings held? Yes No

Date of last meeting.

Minutes available on file? Yes No

Is race equality a permanent item on the agenda? Yes No

Is race equality monitoring carried out by the client department / authority on a regular basis? Yes No

Date of last monitoring exercise

Is evidence available? Yes No

Items checked: (insert race equality requirements from specification)

.....

.....

.....

Is there evidence that the contractor is complying with their contractual obligations? Yes No

As well as regular meetings with the contractor, and site visits, where appropriate, you may find it useful to develop other sources of information regarding the contractor’s performance of the race equality requirements of the contract. This will give credibility and force to any recommendations you might make for improvement. You could approach any of the following using questionnaires, surveys, or interviews:

- users (and potential users) of the service from different racial groups, and representatives of users;
- trade unions;
- officers within your authority;
- other local authorities; and
- other public authorities or voluntary organisations.

What can we do to improve poor race equality performance?

If your monitoring suggests that the contractor is not meeting the race equality requirements, you should take the following cumulative steps.

1. Use the notice procedures set out in the contract. You should ask for a meeting with the contractor to review in detail any problem areas, and spell out clearly (again) what you expect from the contractor. You should help the contractor identify the reasons for poor performance, and how to make improvements – for example, through more training or better monitoring systems – and agree the improvements you expect to see by the next monitoring report.
2. If, despite your efforts to help the contractor make needed improvements, there is serious and persistent failure to meet the race equality requirements of the contract, you can invoke the default provision of the contract conditions.

In addition, at any point when there is evidence of poor performance, you could remind the contractor that you may not be willing to consider them for future contracts if their race equality performance remains unsatisfactory.

Are there lessons for future contracts?

From time to time, and especially as the contract nears its end, in line with your duty under best value, you will want to take a step back to review and evaluate the project as a whole for its success, or otherwise, in promoting race equality. As far as possible, you will want to apply the 4 Cs – challenge, compare, consult, and compete. As we suggested in chapter 4, this review is vital to securing continuous improvement and planning how future projects could be more successful in meeting race equality objectives.

You should refer to your monitoring records and any feedback from users, or would-be users, and others. You may want to seek the views of the contractor, trade unions, and representatives of users on how well your race equality objectives have been achieved, or why these objectives have not been fully realised. If your race equality scheme has an action plan, you could compare what has been achieved through the contract with the targets in that plan.

You could then draw up lessons for future projects.

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

Summary

If race equality contract requirements are to have any real effect, you must have effective procedures for monitoring and managing the contract.

Officers with responsibility for monitoring and managing the contract may need briefing on the race equality requirements, and also training.

You are more likely to achieve your objectives if you can establish and maintain a positive partnership with the contractor.

You should ensure that the contractor understands from the outset their responsibilities for race equality performance, including monitoring and reporting.

Prompt and effective action should be taken whenever monitoring indicates inadequate performance of race equality obligations.

After award, it may be possible to secure voluntary agreement by the contractor to take further steps to promote race equality, including workforce matters, positive action, and promotion of subcontracting opportunities for small firms and ethnic minority businesses.

A best value review of the success or failure of the contract in meeting race equality objectives will offer lessons for future contracts.

12

Checklist for local authorities

Steps to take in all contracts

- Determine who will be responsible for evaluating race equality elements at each stage.
- Provide necessary training on the RRA for all relevant staff.

Additional steps to take when race equality is a core requirement

Planning

- Determine whether race equality is a core requirement of the proposed contract.
- Ensure staff responsible for drawing up specifications and contract conditions understand the requirements of the RRA.

- Review the race equality impact of your current arrangements.**
- Consult internally and externally on how better to meet the duty to promote race equality.**

Drafting specification

- Include your race equality requirements in the specification.**

Drafting contract conditions

- Include non-discrimination contract clauses.

- Where relevant, include additional contract clauses on race equality in employment.**

Steps to take in all contracts

Selecting tenderers

- Ask about findings of discrimination in employment and any action taken as a result in the pre-qualification questionnaire.

Additional steps to take when race equality is a core requirement

- State your race equality requirements in OJEU, and any other notice.**
- Where relevant, ask questions about race equality policy, training, and compliance with the CRE code of practice in employment, or equivalent, in the questionnaire.**
- Where relevant, ask questions about race equality in service delivery.**

Invitation to tender

- Refer to the RRA duty, and state race equality evaluation criteria in the invitation to tender.**

Evaluating tenders

- Check tenderers' acceptance of race equality contract conditions.

- Evaluate tenderers' proposals for meeting race equality requirements in the specification.**

Steps to take in all contracts

Additional steps to take when race equality is a core requirement

Managing and monitoring the contract

- ❑ Meet the successful contractor to ensure full understanding of non-discrimination contract conditions, and agree reporting arrangements.
- ❑ Consider a voluntary agreement with the contractor for additional race equality measures.
- ❑ Monitor the contractor's performance of race equality contract conditions.
- ❑ Where race equality performance is inadequate, invoke default provisions or warn the contractor that they may not be considered for future contracts.

- ❑ **Meet the successful contractor to ensure full understanding of your RRA duty and race equality requirements in contract specification, and to agree contract management and monitoring.**
- ❑ **Monitor the contractor's performance of race equality requirements in the specification.**

13

Developing a wider range of suppliers

Having a broad supplier base can lead to a high level of competition, greater choice for you, and improved value for money. This chapter shows the connection between your duty to promote race equality and your supplier base. It highlights some of the advantages of developing a wider range of potential suppliers, including greater involvement of small businesses, ethnic minority businesses, social enterprises, and community organisations, while emphasising that this must be in the context of equal requirements and criteria for all suppliers. It also discusses ways in which local authorities can help to develop the capacity of small businesses and ethnic minority businesses to compete successfully for contracts.

How does our duty to promote race equality relate to selecting suppliers?

In chapter 2 we discussed the need to assess the impact on race equality of your general procurement policies and practice. Do they have an adverse effect on particular racial groups as suppliers, or potential suppliers? If you find that direct or indirect discrimination is occurring, you will need to make appropriate changes to prevent further discrimination. As your duty also involves promoting equality of opportunity and good race relations, then, even if there is no evidence of discrimination, and you find that suppliers from particular racial groups are disadvantaged or are missing opportunities to compete, you should be prepared to review your policies and practice. The review must, of course, be in the context of applying the same criteria to all suppliers.

How should we monitor our suppliers?

The first step is to identify – for example by size, ethnicity of ownership, or other relevant factors – the firms you currently have contracts with, and the firms you have recently invited to tender. This should give you some idea of how your procurement processes affect different types of businesses, including small firms and ethnic minority businesses (see the glossary).

You should know the size of firms from their replies to your pre-qualification questionnaire (see chapter 7). A number of local authorities have begun to monitor the ethnicity of owners of UK firms that apply to go on their approved lists. As the example on page 77 indicates, you should always make it clear that you will not use this information to select tenderers, or for any purpose other than evaluating and improving your own equal opportunities policy. You may also want to advise suppliers that best practice under data protection legislation would involve their asking the owners of their firms to indicate their ethnicity, before passing this information on to you.

Example – extract from a form sent to UK firms applying to be included on a local authority's approved list

Your answer to the following question will not affect your chances of being approved; we are asking for this information solely to help us develop our equal opportunities policy. We will use the information in your replies for statistical purposes only, and will not disclose it otherwise without your consent.

The Commission for Racial Equality defines an ethnic minority business as 'a business 51% or more of which is owned by members of one or more ethnic minority groups, or, if there are few owners, where at least 50% of the owners are members of one or more ethnic minority groups'. For this purpose, ethnic minority means ethnic groups other than 'white British'.

A. Is your enterprise an ethnic minority business according to the above definition?

(Please tick the relevant box)

- | | | |
|-------------------------------------|------------------------------|-----------------------------|
| Yes | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Not known – publicly quoted company | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Not prepared to divulge | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

B. Please tick the appropriate boxes to indicate the ethnic group(s) that best describe the owners or managers of your firm.

(Please see appendix 2 for the ethnic monitoring categories that could be listed.)

Is there a link between small firms and ethnic minority businesses?

Yes. The vast majority of ethnic minority businesses are small businesses, employing fewer than 50 people. This means that any steps you take to remove barriers or increase opportunities for small businesses is likely, at the same time, to improve opportunities for ethnic minority businesses. Looked at as a group, without considering ownership, small businesses, by their very nature, are highly diverse in what they do and how they do it. This same wide diversity is also a feature of ethnic minority businesses.

Can small businesses offer value for money?

Yes. A wider base of potential suppliers (of any size) means greater choice and more competition. Small businesses can enhance value for money in additional ways by offering the following.

Developing a wider range of suppliers

Reaching small firms and ethnic minority businesses

- lower administrative overheads and management costs
- innovative solutions;
- quick response to changing requirements;
- flexibility and willingness to meet specific customer needs; and
- personal service.

In addition, for some contracts, small firms, and ethnic minority businesses may add value for money, as they can offer:

- knowledge and experience of meeting the needs of particular service users; and
- the ability to supply appropriate specialist products or services to meet the needs of particular service users.

By 'buying in' the knowledge or skills of specialist suppliers, you effectively expand the capacity of your authority as a service provider.

Many large firms recognise the benefits that small businesses, ethnic minority businesses, social enterprises, and community organisations can offer. It is often the case that large firms awarded public sector contracts subcontract with small businesses, and with ethnic minority businesses, to provide specialist services. You may find it more advantageous to contract directly with such firms.

How can we widen our supplier base to include more small firms and ethnic minority businesses?

For every contract, your starting point must be the goods, works, or services you want to buy. What matters is not who delivers the contract, but whether they offer best overall long-term value for money. However, if your assessment suggests that small firms and ethnic minority businesses are under-represented as contractors, then, by finding ways of improving opportunities for them, you could also achieve better value for money for your authority.

Your objective should be to find ways of enabling under-represented groups or types of suppliers to be able to compete for your contracts on equal terms with more established suppliers. The object is not to apply different standards or to rely on untested assumptions about the capacity of particular firms. You must not favour one supplier over another, at any stage of the process, even if they are from a group that is under-represented among your contractors.

Achieving greater equality of opportunity involves identifying the barriers and finding ways of overcoming them. Barriers could be a consequence of your policies and practices, or could be due to a lack of resources, knowledge, or skills in under-represented firms. Therefore, a two-pronged approach is needed: reviewing your practices and making suitable changes, and bolstering the capacity of small firms and ethnic minority businesses.

How can we improve our policies and practices so small firms have a greater opportunity to compete?

In this section we suggest several steps you might take. In reviewing your current policies and procedures, you may wish to consult local business organisations, including those representing small firms and ethnic minority businesses.

Packaging

Small firms are not able to bid for every type of contract. At the planning stage, you could consider different packaging options, to open the bidding to smaller suppliers. However, you must act within EC rules – including the one which prohibits the deliberate splitting of a contract to ensure each part is below the value at which the directives apply. Decisions on packaging for every contract must relate to achieving best overall value for money.

As suggested above, there are some situations where contracts with small firms, which can be more responsive to the needs of service users, may present the best option in terms of value for money. Alternatively, in contracts where the number of people with specific needs is small, the bulk of the contract could go to a large supplier, with a niche supplier providing the specific additional service. Often, voluntary organisations with knowledge of the relevant community may be well placed to bid for such specialised services (see the example below).

Example

A police authority, on behalf of its police force, proposed to engage external consultants to provide training for constables and civilian staff in dealing with members of the public, particularly victims of crime. The authority's area is mostly rural and the resident population is mostly white. The population includes relatively isolated Chinese families, most of whom work in restaurants in small towns. The police believe these restaurants and their staff are frequent targets of crime, including racially aggravated offences, although very rarely are these offences reported. The authority is aware of a Chinese community organisation that offers both cultural activities and advice and assistance to local people. In planning the contract, the police authority has decided – in addition to the main training contract – to negotiate with the Chinese community centre to provide specialist training on particular issues relating to Chinese language and culture.

You will need to balance any extra up-front costs such arrangements might entail against their ability to meet more effectively the core requirements of the contract, which, in the longer term, could offer better overall value for money.

Advertising

You could review how and where you advertise proposed contracts, and whether your chosen media attract the widest range of suitable suppliers. You may find it helpful to consult relevant trade or business associations, local chambers of commerce, or voluntary sector umbrella organisations. You could consider the following:

- advertising in a wider range of media, including those likely to be used by small businesses and ethnic minority businesses;
- targeting mailshots at small firms, to alert them to forthcoming contract notices;
- developing a 'selling to' website as a 'noticeboard' for your forthcoming contracts; and
- stating your willingness to accept applications from consortia of suppliers.

Procedures and documents

You could review the documentation you use at each stage of your procurement process, to make sure it is clear, jargon-free, and accessible to firms that are not already engaged in public sector contracts. Some authorities have developed separate plain English guides to the way they carry out procurement, which they make available on their website and send to any new supplier who expresses an interest in any of their contracts.

You should make sure that the information you provide states clearly what you are looking for at the selection stage, so that suppliers do not spend time on inappropriate applications. You should also make very clear any different levels of evidence you expect from firms of different sizes.

Approved lists

You could review your approved lists to ensure they provide sufficient opportunity for small businesses to be considered, based on your assessment of their capacity. This would enable you to include suitable small businesses when you advertise or invite tenders for contracts they might be eligible to compete for. You should be open to considering applications from consortia of small businesses.

It is important to remember that, in selecting firms for approved lists, you must apply the same race equality criteria to small businesses and ethnic minority businesses as to any other external provider. However, as we suggest in chapter 7, in assessing the suitability of providers it is appropriate to take the size of a firm into account in terms of the type of evidence it is reasonable to expect it to supply. You should also bear in mind that there may be newly-established firms that have the capacity to meet your needs, but that may not be able to refer to relevant previous experience.

Following up small firms

You will want to be able to evaluate your efforts to improve opportunities for a more diverse range of suppliers, as well as to use the procurement process to encourage participation by small businesses and ethnic minority businesses.

- You could ask for feedback from firms that did not apply after making inquiries, or failed to submit tenders when you invited them to do so. Their reasons might help you to plan future contracts or review your procurement processes.
- You could offer detailed feedback to unsuccessful businesses at each stage of the process, and advise them on how to improve their bids for future contracts.

The Office of Government Commerce (OGC) and the Small Business Service (SBS) have published guidance, *Smaller supplier – better value?*, which describes the benefits offered by small businesses. It also explains how authorities can make their contracts more accessible to small businesses.

What other steps can we take to create a wider range of suppliers?

If you have policies on economic development or on relieving unemployment or social exclusion, or are part of a partnership concerned with these issues, you may be able – in that context – to encourage and develop the capacity of small firms and ethnic minority businesses to compete for public sector contracts. For example, you could offer training to small firms, including ethnic minority businesses, to improve their technical skills and their understanding of public procurement generally. Such training could include information on the implications of the RRA for local authority procurement. You could provide opportunities for networking between established contractors and small businesses and ethnic minority businesses.

After a large contract has been awarded, you may find there is scope to enter into a voluntary agreement with the successful contractor to create subcontracting

Example

Haringey Council in London has developed a local works programme to help small businesses acquire the skills they need to compete for its contracts. The council believes that it is in its best interest to widen its pool of suppliers, and to achieve best value for local people. The programme includes four initiatives.

- It invites firms to sign up to a database, so that they can be informed of forthcoming contracts.
- It holds training seminars for small and medium-sized firms on all aspects of tendering and procurement, including equal opportunities issues.
- It offers opportunities for 'networking' with businesses, business advice agencies, and the council.
- It works with its main private sector partners, to help them to increase the range of suppliers they use.

For further details, go to www.haringey.gov.uk/data/local_works_project

opportunities for small firms and ethnic minority businesses. For example, you could ask your principal contractor to consider inviting small firms from your approved lists to compete for subcontracts.

Example

The London Borough of Newham awarded a contract for its meals service, valued at £2 million, to an international company. Post-award 'brokerage' by the SRB Provider Development Project negotiated with the company for two subcontracts for the provision of Asian, and African and African-Caribbean meals with local providers, one from the voluntary sector and one from the private sector. Each subcontract was valued at £350,000 per year and resulted in the employment of four people. The company has since invited the local providers to help them meet the demand for culturally appropriate meals in other boroughs.

How can we measure progress?

You will want to assess your progress in widening your supplier base. This will help you develop future action. You could:

- measure progress against actions set out in your race equality scheme; and
- use the Audit Commission's library of local performance indicators at www.local-pi-library.gov.uk/EDLPlevenmorefinalset3April2003.pdf³⁰

30. Indicator LIB ED03, 'Procurement and ethnic minority businesses', is a measurement of the percentage of local authority contracts, by number and value, awarded to ethnic minority businesses. LIB ED05 measures 'support for ethnic minority business', allowing you to measure against a checklist the types of training and assistance you provide, to facilitate competition for all.

Summary

A race equality impact assessment of your procurement policies and practice (see chapter 2) may indicate that you need to review your supplier base.

In some cases, small firms and ethnic minority businesses may be better able to meet your race equality and value for money obligations.

You could consider ways to improve opportunities for a wider range of suppliers – improving choice, competition and value for money – including:

- **packaging;**
- **advertising;**
- **using approved lists; and**
- **following up small businesses.**

This is consistent with government policy on encouraging small businesses.

Some authorities are taking pro-active steps to improve opportunities for local suppliers, including small businesses and ethnic minority businesses.



What suppliers should do

Part II will be of particular interest to managers or employees in private or voluntary organisations responsible for:

- identifying suitable contracts;
- responding to pre-selection questionnaires or preparing tenders;
- negotiating contracts;
- managing contract performance; or
- managing equal opportunities – in employment and, where applicable, in service delivery.

It will also be useful for trade union and other staff representatives.

14

Introduction

This part of the guide, chapters 14 – 19, provides guidance on race equality for external suppliers that are doing business with local authorities (see the glossary), or wish to do so. It is written for firms³¹ of all sizes, in the private and voluntary sectors.

If you want to do business with the public sector, you need to know what your customers will be looking for. This part aims to give you the information on race equality you will need to compete for local authority contracts. It should also help you to develop or improve your policies on race equality or equality of opportunity more generally.

Many firms are now aware of the growing importance of equality. Increasingly, local authorities will want to know that the firms they do business with have good equality policies and practices. But the equality agenda is not just a public sector issue, nor should it be seen as a mere 'add-on' to what private and voluntary sector organisations are already doing. All firms must comply with non-discrimination law, and it is good practice to develop policies and practices that help you to do this. In a wider business context, promoting race equality is a central part of a sound business strategy. It is also central to meeting the objectives of any corporate social responsibility or diversity initiatives.

Chapter 15 explains local authorities' legal duty to promote race equality, and how this duty affects the way they approach the procurement of goods, works, or services from external suppliers. Chapter 16 contains guidance on how you can prepare for, and respond to, race equality matters in individual contracts. Chapter 17 takes a broader view, looking at ways in which you could take positive measures to promote race equality, within the context of local authority procurement, but also to benefit your firm, irrespective of who your customers might be. Chapter 18 has a checklist, which summarises the steps it will be useful for you to take, both immediately and when you are interested in a particular local authority contract.

Like part I, this part is not intended as a comprehensive guide to all the issues that might arise for suppliers, and we recommend that it should be used alongside other guidance on local authority procurement or race equality more generally.

31. A 'firm' is defined as any private or voluntary organisation, such as a company, partnership, charitable trust or other type of body, that is capable of entering into a contract to provide goods, works, or services.

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Doing business with local authorities – a new agenda for race equality

Why should we want to do business with local authorities?

Doing business with local authorities can be an attractive proposition.

- Local authorities can be good customers. EC rules, local government legislation, and their own standing orders require them to have procurement procedures that are open, fair, and non-discriminatory. They have to be honest and professional in the way they choose suppliers, and in any dealings with them.
- Local authority contracts can offer a degree of financial certainty. This could help you to build your reputation and prepare for future contracts.
- To meet their 'best value' duty, local authorities will want to work with you to improve the services you provide on their behalf.
- Many local authorities now base their contract service specification on outcomes, which allows you to develop methods suitable to your firm and ways of working.
- Local authorities are encouraged to work with contractors on a partnership, rather than adversarial, basis.

What's new in local authority procurement?

The main change is a new, clearer, and more explicit legal obligation on local authorities to take race equality into account in carrying out procurement.

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 (RRA) gives the public sector greater responsibilities to promote race equality in Britain. The RRA:

- makes it unlawful for local authorities to discriminate on racial grounds in carrying out any of their functions, including procurement; and
- gives local authorities a positive, enforceable, legal duty to eliminate unlawful racial discrimination, and to promote equality of opportunity and good race relations in carrying out all their functions ('the duty to promote race equality').

The duty to promote race equality applies to procurement. This means that local authorities must now build relevant race equality considerations into their procurement

processes. The duty applies to the local authority whether a function is carried out by the authority or by an external contractor.

In simple terms, to comply with the race equality duty, local authorities will now aim to make sure that public money is not spent on practices that lead to unlawful racial discrimination, but instead on those that support and encourage equality of opportunity and good community relations.

In the next chapter we explain the impact of the duty to promote race equality on each stage of procurement, from the suppliers' viewpoint. For a fuller description from the viewpoint of the local authority, see part I of this guide.

For local authorities, the duty to promote race equality may involve new ways of planning and carrying out procurement to incorporate race equality considerations. This will not alter any of the positive reasons for doing business with local authorities listed above. In fact, you may conclude that this change adds a further positive reason, namely that it gives you an incentive to check and, where necessary, improve your race equality performance, which has a benefit regardless of any public sector contracts.

How does the Race Relations Act apply to our firm?

Your firm, like all organisations in the public, private, and voluntary sectors, is covered by the RRA in that you must not discriminate on racial grounds in employment, education, and housing, in the provision of goods, facilities, and services, and in carrying out public functions. You can take certain positive action measures (see the glossary) and can be subject to proceedings for alleged breach of the RRA. After 19 July 2003, similar non-discrimination laws should apply to public, private, and voluntary sector organisations in all EU member states.

However, unlike local authorities, you do not have a positive duty to promote race equality. It is for this reason that, to comply with their duty, local authorities must now take particular care to introduce race equality into their contractual relationship with external suppliers.

What does the duty on local authorities mean for our firm?

If you are doing business with local authorities, or hoping to do so, you cannot ignore the new context in which they must now operate. If you hope to be selected to tender for, or to be awarded, local authority contracts, you will be expected to meet the race equality requirements for the particular contract. You would therefore be well advised to review your own employment and service delivery policies and practices, if you have not already done so. You will then be able to make the necessary changes to your race equality policies or practice without the pressure of an imminent contract. Your first step should be to make sure you are acting within the law, and that your policies and

practice are not discriminatory. Your next step is to consider ways in which you could go further in promoting equality of opportunity.

Some local authorities now want to know more about the firms that apply to them for contracts, and those that are successful. Wholly separate from any selection or tendering procedure, you may be asked for information about the ethnic origins of the owners of your firm. If you are a publicly-quoted company, for which such questions are inappropriate, you would not be expected to reply. Otherwise, to ensure the accuracy of such information, and as good practice under data protection legislation, you should, if possible, ask each owner to confirm their ethnicity.

Will the duty on local authorities mean a greater burden on our firm?

In the short term, it may mean additional work and costs, but these should be more than compensated for by the long-term benefits. Local authorities' requirements will vary, depending on the nature of the contract – that is, how relevant it is to the authority's duty to promote race equality. While firms of all sizes must meet the same standards, local authorities may accept less detailed documentary evidence from small firms that may not have the resources available to large firms to implement formal equality policies.

Many firms – large and small – already have effective race equality policies covering both their employment of staff, and services to their customers. Such firms should have little difficulty meeting the race equality expectations of local authorities. Other firms may need to make some adjustments to their policies and practice. The 'cost' of these changes should be outweighed by the improved efficiency and quality that greater equality of opportunity will bring.

If your firm is already involved in corporate social responsibility, or diversity initiatives, equal opportunities will help you deliver these objectives.

What benefit do we gain by promoting race equality – is there a business case?

Surveys of employers have shown that when employment is solidly rooted in equality of opportunity, firms can recruit from a wider pool, staff turnover goes down, fewer days are lost, and staff are more committed to their jobs – all of which increases productivity.

Similarly, when an organisation plans and delivers its services to meet the needs of different service users, the results can be positive for everyone – the organisation uses its resources more efficiently, its staff feel more motivated, and the users receive a better, more appropriate service.

Doing business with local authorities

The duty and opportunities for small firms

Many organisations now realise that there is also a strong business case for developing a supply chain that reflects the diversity of the populations they serve. This means trying to attract a wider range of businesses from all communities, as contractors or subcontractors. Greater 'supply-side diversity' makes it easier to meet varied demands and expectations from customers, it increases the skills and knowledge at an organisation's command, and it creates new markets.

There is also a negative business case. The costs of losing a discrimination case in a court or tribunal, or of facing enforcement action by the CRE, can be high, both in financial terms and in damage to reputation.

Will the duty do anything to improve opportunities for small firms and ethnic minority businesses to compete for local authority contracts?

The duty could improve opportunities for more firms to compete, that is to create a more 'level playing field', but local authorities are prohibited from giving preference to any firm, even if they are from a group that is under-represented among current contractors.

To comply with the duty to promote race equality, local authorities should see if their procurement policies and practice are having an adverse impact on suppliers from particular racial groups. If there is evidence of racial discrimination, they would be expected to implement changes to prevent discrimination in future. If it appears that a local authority's procurement processes disadvantage some racial groups as suppliers, the authority would need to consider whether there are ways in which improved opportunities can be provided. The authority's aim would be to remove any barriers that prevent some firms from being able to compete on equal terms. Barriers may either lie within the authority's policies and practice – for example how they package or advertise their contracts, or provide information to suppliers, or compile approved lists – or they may be due to lack of resources or skills among suppliers.

Greater opportunities for small firms and ethnic minority businesses to compete could also occur as a result of local authorities now being more aware of the importance of

Example

Haringey Council has developed a programme to help small businesses acquire the skills they need to compete for its contracts. The authority:

- holds training seminars for small and medium-sized firms on all aspects of tendering and procurement, including equal opportunities issues;
- offers opportunities for 'networking' with businesses, business advice agencies, and the authority; and
- works with its main private sector contractors to help them increase the range of suppliers they use.

Example

The Welsh National Procurement website, www.xchangewales.co.uk – due to be launched in autumn 2003 – will advertise contracts below and above the OJEU threshold for 96 public sector bodies in Wales. Buyers will post information about tenders, along with a named contact point for suppliers.

providing services that meet the needs of users, including any particular needs of different racial groups. So, to secure value for money, it may be appropriate for a local authority in certain contracts to encourage a more diverse range of suppliers, or, in other cases, to tender separately for one part of a contract that requires suppliers with specialist knowledge or experience.

Larger firms may also benefit from this process. If an authority helps to develop greater business skills among 'specialist' firms, these firms could be an asset as subcontractors, helping the main contractor to meet contract requirements involving services to meet the special needs of particular racial groups.

In every instance, suppliers must have the requisite technical capacity, including capacity in terms of race equality in employment and, where relevant, service delivery. And, in every case, decisions must be based on value for money for the authority. As we mentioned above, EC rules and government policy require maximum openness, as well as fairness, in local authority procurement. So, this is not about applying variable requirements, but enabling more suppliers to try to meet the same, consistent requirements. Larger firms that meet an authority's requirements should not be disadvantaged merely by having to compete in a wider field.

Example

A local council serving a multiracial population is proposing to tender for the supply of pre-cooked meals for its 'meals on wheels' and luncheon club services. These will need to include meals that are suitable for the diverse cultural and religious dietary requirements of the elderly and disabled people for whom meals are provided. The council is considering two options:

- to tender a single contract, knowing that the successful supplier will subcontract with small firms with experience in providing specialist meals, for example, halal, kosher, or Chinese meals; or
- to tender a main contract for standard meals, and tender separately among specialist firms for the 'niche' provision of particular types of meals.

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Competing for local authority contracts

This chapter looks at how the duty to promote race equality affects the key stages in the procurement process. It includes guidance on how you can demonstrate your firm's ability to meet the race equality requirements in an individual contract.

How will race equality be included in local authority contracts?

For every contract, the local authority needs to determine whether race equality is a core requirement of the contract. This will depend firstly on whether the goods, works, or services are relevant to the authority's duty to promote race equality, and then on how significant race equality is to the contract as a whole. Where race equality is a core requirement, it will be relevant to every stage of the procurement process.

As a rough rule of thumb, race equality will be a core requirement in contracts that wholly or partly involve services to the public or to a section of the public. This includes education or community care services, information services, law enforcement, and management of leisure facilities and residential homes. It also includes contracts where a significant element involves direct contact with members of the public; for example, security services, housing benefit fraud investigation, and transport services, as well as certain services provided to the authority or for authority staff, including recruitment services, training, and staff catering.

Race equality is unlikely to be a core requirement in contracts that involve no real contact with members of the public or the authority's staff. These might include services of a wholly technical nature, or supplying fuel or materials used in technical processes. Contracts for goods could require the needs of particular racial groups to be met; for example, in providing uniforms or meals. Contracts for works may require measures to accommodate the needs of different groups; for example, where a contractor's staff come into contact with members of the public or with authority staff.

Can we be involved in planning and developing procurement projects?

Yes, subject to EC rules on equal treatment of suppliers. If you have a current contract with a local authority, the authority may seek your views on different aspects, including how well the present arrangements promote race equality. When a local authority is considering how best to incorporate race equality into future arrangements for the procurement of goods, works, or services, they may consult external suppliers with relevant experience. This would be an opportunity to suggest options for

promoting race equality, taking into account the different degrees of risk for the authority and the supplier in different options. However, such involvement will not give you any guarantees of success when the contract is advertised.

Will race equality be a factor in the selection of tenderers?

Yes, all local authorities will want to know that you do not have a history of discrimination, and for certain contracts they will want to know you have the technical capacity to meet the race equality standards necessary to perform the contract. The extent to which your past record on race equality in employment or service delivery will be taken into account will, of course, depend on the contract.

The notice in the *Official Journal of the European Union* (OJEU), and advertisements in newspapers or specialist journals, should indicate if a significant element of what is to be provided by the contractor relates to race equality.

In drawing up a select list or an approved list, a local authority will be looking generally for suppliers who can demonstrate they understand their responsibilities under the RRA, and operate within the law. You will be asked if a court or tribunal has recently made a finding of racial discrimination against you, or whether you have been the subject of a CRE formal investigation, and, if so, what steps you have taken to prevent discrimination recurring. You should answer this question, giving dates and other relevant information. You will not be rejected if you can show you have taken appropriate steps since the finding or investigation. You should provide enough detail to give a clear picture of the changes you have made to prevent discrimination recurring. If the court or tribunal, or the CRE, made recommendations, you should state whether you have implemented them.

If race equality is a core requirement of the contract, you may be asked for additional evidence of good race equality practice, including whether you follow the CRE's code of practice in employment. You may also be asked for information about the way you approach race equality in relation to your customers (see chapter 7 for model questions). Again, it is important to provide detailed answers, so that the local authority has sufficient information to make an accurate assessment of your technical capacity for the contract in question in terms of race equality. You should provide evidence to support your answers. This evidence may include:

- examples or copies of your race equality or equal opportunities policy;
- instructions to staff setting out arrangements for advertisements, recruitment, selection, access to training, and opportunities for promotion;
- copies of recruitment advertisements, and extracts from staff handbooks;
- copies of grievance and disciplinary procedures;
- copies of leaflets for customers; and
- other materials that show your firm's commitment to race equality and equal opportunities.

In assessing your answers and any evidence you submit, the local authority will take account of the scale of the proposed contract and the degree to which it is relevant to the promotion of race equality. It may also take account of the size and experience of your firm.

If you are unsuccessful at selection stage, and one of the reasons is that you did not meet the criteria relating to race equality, we suggest you ask the authority for more detailed feedback. In line with their duty to promote race equality, some local authorities now offer guidance material, or make referrals to specialist agencies, to encourage firms to improve their knowledge of race equality, and their prospects for future contracts.

How should we incorporate race equality into our tender submission?

If you are selected to tender, you will want to have as much information as possible about the background and context of the proposed contract as well as the local authority's race equality objectives.

You should look for the following information in the invitation to tender or other contract documents:

- the authority's race equality scheme;
- facts about the population likely to be affected by the contract, broken down by ethnic group and, where relevant to the contract, by sex, age, or other factors;
- how the goods, works, or service are currently provided, and the results of any monitoring, consultation, or other assessment of the impact on race equality; and
- where staff will transfer under TUPE, their terms and conditions, including protection against discrimination and rights to equality of opportunity.³²

You will also want to know how tenders will be evaluated. Within the basic criterion of best overall long-term value for money (or, for contracts subject to EC directives, the 'most economically advantageous tender'), the invitation to tender will list the specific evaluation criteria, including those relating to the promotion of race equality.

The contract specification will describe how race equality forms part of the services, goods, or works the contractor is expected to provide. Normally, the authority's concern will be the end product rather than the process, so the specification may state the race equality outcomes the authority is looking for, leaving it to you to indicate how you will achieve them.

32. In contracts for services of local councils in England and Wales, the contract documents should include the code of practice on workforce matters in local authority service contracts, which requires any staff you recruit to work alongside staff transferred under TUPE to have terms and conditions that are no less favourable than those of transferred staff, including protection against discrimination.

Example

A local council is proposing to award a contract for the design, print, and distribution of a leaflet explaining the services it offers to families caring for dependent elderly or disabled family members. The council is aware that ethnic minority families rarely take advantage of council services, and may be struggling to cope unassisted with difficult care arrangements. The contract documents include a standard form, which tenderers are asked to use to set out their 'method statement'. This should include their proposals for the following:

- identifying the languages in which the leaflet should be published, to be easily understood by at least 95% of families in the authority's area;
- distributing the leaflet, so that the maximum number of families will receive the leaflet in an appropriate language; and
- developing proposals for print and broadcast media to publicise the leaflet to the diverse target audience.

If a contract concerns a function that is relevant to the authority's duty to promote race equality, and has a high priority, the specification may include requirements to carry out certain measures within the authority's published race equality scheme; for example, to monitor the service for any negative effects it might have on race equality, or to consult people affected by the contract. Your tender should explain how you would do this. You may find it useful to refer to our guide on ethnic monitoring.

If the specification says you are expected to make certain improvements in race equality performance each year (for example, an annual increase in the percentage of people using the service from settled refugee communities), you should say how you expect to meet this requirement.

Where local authority staff will transfer to the contractor under TUPE, your tender should state how you will maintain high standards of employment protection, including protection for race equality.

In completing your tender, you should consider whether the race equality requirements of the contract will have any implications for the staff who will carry out the contract.

For example:

- Will you need people with special knowledge or skills? At what levels? Can you provide this through training, or will you need to recruit specialist staff?
- Will you need to make special arrangements for supervision?
- Will performance of the contract benefit from employing people from a particular racial group (within the strict limits in the RRA)?

Will the contract conditions impose any race equality obligations?

Yes. Local authorities can also use contract conditions to secure race equality standards. For example, local authority contracts are likely to include a condition that you must not discriminate unlawfully under the RRA, or under all current equality legislation, and that you will make sure that your employees, agents, and any subcontractors, also do not discriminate on these grounds. Of course, any person who considers they have been subjected to unlawful discrimination will still be able to bring proceedings, as they would regardless of any contract with a local authority. However, by making compliance with the RRA a condition of contract, the local authority gives it added force, since non-compliance can also be enforced by the authority as a breach of contract.

For firms that already have procedures in place to prevent discrimination, compliance with this condition should not be an additional burden. For firms that have not yet adopted anti-discrimination measures, you should find that by doing so you will not only improve your prospects of securing local authority contracts, but you should also avoid the costs of future complaints and litigation.

Other standard race equality clauses could require the contractor:

- in contracts for works or services, to comply with the authority's race equality policies and codes of practice when their staff work on the authority's premises or alongside the authority's staff (this could be met by showing you have race equality policies at least as good as the authority's);
- to notify the authority of any investigation or proceedings under the RRA, relating to the contract, against the contractor, and to cooperate with the investigation or proceedings; and
- to indemnify the authority in the event of any investigation or proceedings under the RRA arising from acts or omissions of the contractor, their staff, or subcontractors in performing the contract.

If the contract is highly relevant to the local authority's duty to promote race equality, and good race equality employment practice is seen as necessary for effective performance of the contract, you may find additional contract clauses relating to race equality in employment. Such clauses could require that:

- in complying with the non-discrimination conditions, the contractor observes the CRE's code of practice in employment, as far as possible;
- the contractor promotes race equality in performing the contract; and
- the contractor monitors staff engaged in performing the contract and, if there is evidence of under-representation of particular racial groups in certain jobs, adopts measures permitted under the RRA to encourage people from under-represented racial groups to apply for such jobs.

Contract conditions will not form part of tender evaluation. However, if you fail to confirm that you will comply with the conditions of contract, including those relating to race equality, if you are awarded the contract, your tender as a whole could be rejected.

We advise you to consult all the staff who are likely to be involved in the contract, as well as the relevant trade unions, so that you can be confident your response on the race equality requirements of the contract is realistic and achievable.

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After the contract has been awarded

If we are unsuccessful, are there any lessons we can learn?

If you are unsuccessful, you will normally be told why. If one reason for rejection was dissatisfaction with your proposals on the race equality requirements, you should ask the local authority for advice on how your response could have been better. You should also check if the authority, or others with whom it is associated, offers training or special guidance on equal opportunities for providers.

If we are successful, what do we need to do to meet the race equality requirements of the contract?

1. You will want to establish a positive working relationship with the appropriate representatives of the local authority. This will be easier if you are very clear as to your role and that of the local authority.
 - Is the local authority able to offer any support, for example advice on race equality training?
 - How will responsibilities for monitoring race equality performance be divided between you and the authority? What is the authority planning to monitor?
 - In what form, and how often, does the local authority expect you to report monitoring results?
 - What are your respective roles in dealing with complaints of discrimination from employees, subcontractors, users of the goods, works, or service in question, or others?
 - How will you resolve conflicts? For example, if you disagree about the implications of ethnic monitoring data or other measurements of your race equality performance.
2. A first priority should be to identify any race equality training needs of staff who will perform the contract (including staff who will be transferred from the authority). You should remember that, for some staff, the race equality responsibilities of the contract may involve new ways of carrying out familiar tasks, and you should make sure they understand this. We suggest you consider giving special equality training to staff with management or supervisory roles, and to those who will be involved in monitoring race equality performance.

3. You should check that all the systems and procedures you described in your tender for meeting the race equality specifications, and any arrangements you will need to make to comply with the contract conditions, are fully in place before the contract start date. In particular, you should check you have made the necessary technical, organisational, and staffing arrangements for any ethnic monitoring specified in the contract.
4. If, after the contract is under way, you are unclear about any of the race equality requirements, you should seek clarification as soon as possible. If you fail to demonstrate race equality performance to the specified standard, this could lead to enforcement action by the local authority. In the longer term, it could jeopardise your chances of getting public sector special equality training for staff with management or supervisory roles, and for those who will be involved in monitoring race equality performance.

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Doing more to promote race equality

After award of contract, can we be asked to carry out extra race equality measures?

A local authority may be aware of additional steps the contractor could take to promote race equality. After you have been awarded the contract, the authority may, for example, ask you to agree to:

- adopt an equal opportunities policy for your organisation generally;
- take positive action, as permitted under the RRA, and the Sex Discrimination Act 1975, to offer training or to encourage job applications as a way of overcoming any under-representation of particular racial groups, or of women (or men), and to recruit disabled people; or
- promote subcontracting opportunities for small firms and ethnic minority businesses.

You may also be able to suggest other steps to promote race equality, which you could take on a voluntary basis.

Example

A London council awarded a PFI project, involving building eight schools in the area, to a large construction company. The company volunteered to work in partnership with the council, appreciating the value they could add to the local community over several decades. As a result, they agreed to take on small local firms, many of them run by people from ethnic minorities, and to provide training, mentoring, and support. In turn, these firms were encouraged to mentor and train other small firms, and offer them subcontracting opportunities.

Can we help local authorities to develop the race equality aspects of future procurement projects?

Possibly. As local authorities move towards more complex or innovative procurement projects, they may consult businesses and voluntary organisations at the initial development and planning stage. By drawing on the different perspectives, and wider experience, of the private and voluntary sectors, including in the field of race equality or equal opportunities generally, some authorities have developed better ways of defining the scope of a strategic contract.

Any contact at the developmental stage cannot offer any advantage in the tendering process, but could help you to understand the legal and policy contexts within which local authorities operate.

Can we contribute to the development of a wider, more diverse, supplier base for public sector contracts?

Yes. Some major companies have already reviewed their own supply chain arrangements, and have introduced new procedures and new contract packaging that enables smaller businesses, and, in some cases, ethnic minority businesses, to compete. Many companies have developed supplier diversity initiatives, both within and outside public sector contracts.

Finding new suppliers that are able to deliver goods, works, or services to your standards, can offer double benefit:

- these new suppliers have an opportunity to improve their skills, establish a reputation, and gain confidence; and
- your firm increases its capacity to meet diverse needs, and to respond flexibly and quickly to changed circumstances or new demands.

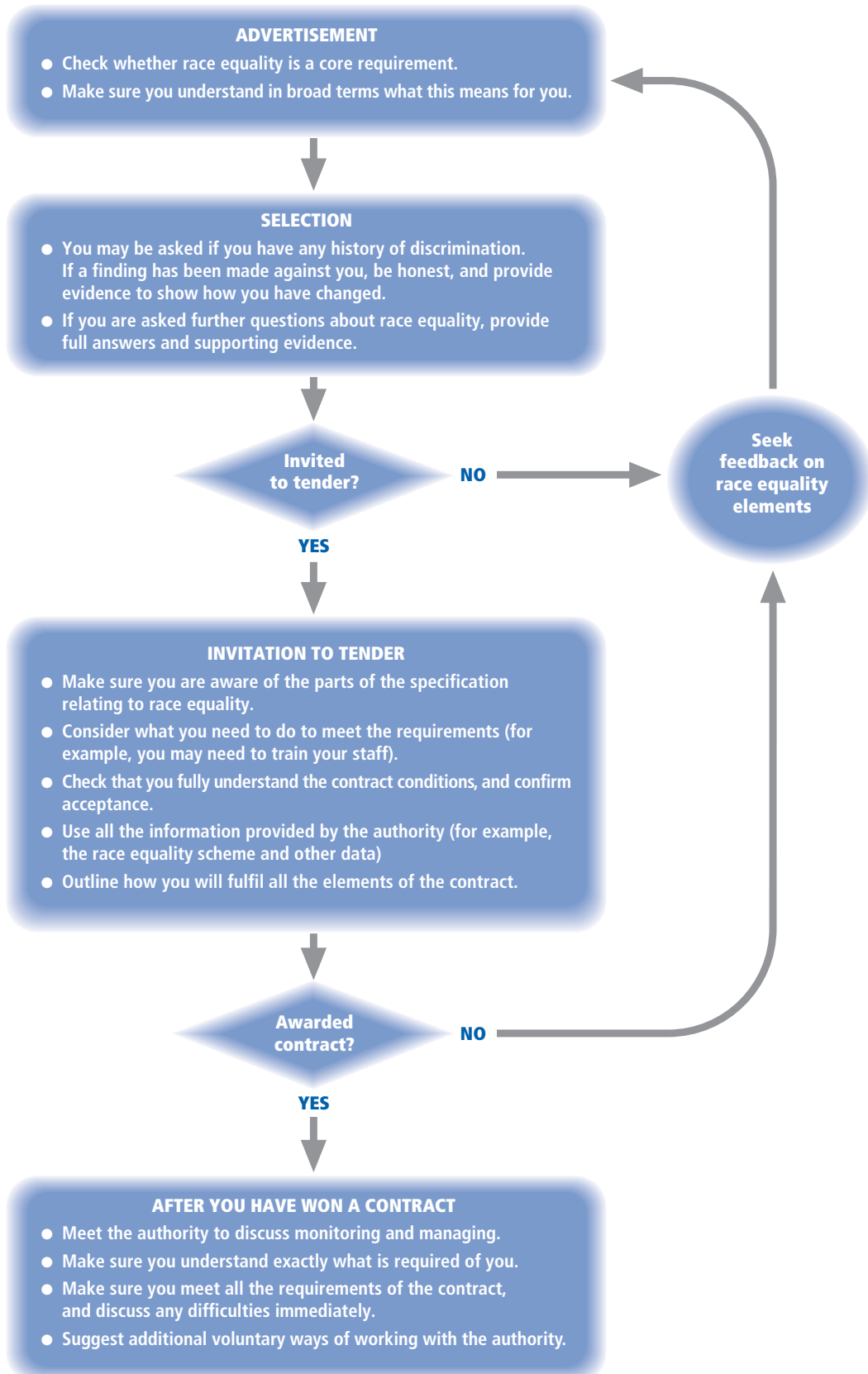
The result should be that these small firms and ethnic minority businesses will be better prepared to compete successfully for local authority contracts.

Example

A large voluntary organisation working in a local area has adopted a policy to use its spending power for local social investment, and aims to spend only in its own locality. The organisation has set itself targets to increase its spending with ethnic minority businesses, and has developed a scheme to mentor local small businesses, including ethnic minority businesses. The organisation runs forums and workshops to help local businesses develop particular skills. This includes assisting firms to diversify and gain accreditation, so that even though they may have little experience, they are not seen by potential clients as 'high risk'. One ethnic minority firm was helped to diversify from cleaning and janitorial work to security services, and is now accredited and operates a successful security business. The organisation's next project is to help groups of ethnic minority businesses offering similar services, for example cleaning, to work together and bid as consortia for large contracts.

Figure 2

The procurement process – for contractors



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Race equality - a summary for contractors

Some necessary steps

- Check your race equality, and general equality, policies, to make sure you are complying with the law.
- If you do not have a formal policy, how else are you meeting your obligations under the RRA? Plan how you can demonstrate this when you apply for contracts.
- Review whether your policy is reflected in practice, and how this could be improved.
- Consider whether you can show evidence of good race equality practice. Do you have data showing how your policies affect different racial groups, or do you need to conduct ethnic monitoring? Do you communicate your commitment to equal opportunities to your staff and customers? Are you committed to any positive action or supplier diversity initiatives, or do you have any other evidence of good practice?

Applying for a contract

The figure on page 102 shows the procurement process from the contractor's point of view.

Appendix 1

Relevant laws and government policy

Race Relations Act 1976

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 (RRA) makes it unlawful for any public or private sector body to discriminate, directly or indirectly or by victimisation, on racial grounds in employment, disposal of premises, and the provision of education, housing, goods, facilities or services. Racial grounds means grounds of colour, race, nationality, or ethnic or national origins.

The Act outlaws racial discrimination by nearly every public authority in carrying out any of its functions, including procurement, or by any private or voluntary organisation when carrying out 'public functions' on behalf of a public authority. Any person who considers they have been discriminated against, contrary to the RRA, can bring proceedings in the employment tribunal or the county court (or sheriff court in Scotland).

The RRA permits positive action to improve employment opportunities, and to meet any special educational, training, or welfare needs of particular racial groups.

The RRA requires public authorities listed in a schedule to the RRA to have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good race relations in carrying out their various functions. Orders by the Home Secretary and the Scottish Executive impose specific race equality duties on the main public authorities. These orders require local authorities, police and fire authorities, central government departments, NHS institutions, and other bodies to publish a race equality scheme. Governing bodies of schools, and of further and higher educational institutions, are required to prepare a race equality policy.

The RRA established the Commission for Racial Equality (CRE), whose powers include supporting individual complaints of discrimination, enforcing compliance of public authorities' specific duties, issuing codes of practice, and conducting formal investigations.

The Race Relations Act 1976 (Amendment) Regulations 2003 come into force on 19 July 2003. These regulations, which amend the RRA, include a new definition of indirect discrimination, a statutory definition of harassment, provision for a shift in the burden of proof, and removal of some exceptions to the Act. These amendments will apply to grounds of race and ethnic or national origins in many, but not all, activities within the scope of the RRA.

CRE statutory codes of practice

The RRA (sections 47 and 71C) permits the CRE, for specified purposes, to issue codes of practice containing practical guidance on compliance with the RRA. A CRE statutory code of practice does not itself impose any legal obligations, but failure to follow recommendations in a code may result in breach of the RRA. A CRE code is admissible in evidence in legal proceedings, and if any provision of any such code appears to be relevant to a matter to be decided by a court or tribunal, it must be taken into account.

CRE code of practice in employment

This code, which was approved by Parliament in 1983, is a practical guide for employers, trade unions, employment agencies, and employees, to help them understand the provisions of the RRA and their implications. It contains recommendations for practical implementation of policies to eliminate racial discrimination and enhance equality of opportunity in the field of employment.

CRE codes of practice on the duty to promote race equality

These codes of practice (one for England and Wales, and one for Scotland), which were approved by Parliament in 2002, contain practical guidance for public authorities on meeting the duty to promote race equality under section 71(1) of the RRA ('the general duty'), and the specific duties imposed by Order. As part of the guidance on meeting the general duty, the codes include the following paragraphs:

Private or voluntary organisations carrying out a public authority's functions

- 2.9 When a public authority has a contract or other agreement with a private company or voluntary organisation to carry out any of its functions (see the glossary), and the duty to promote race equality applies to those functions, the public authority remains responsible for meeting the general duty and any specific duties that apply to those functions. The authority should therefore consider the arrangements it will need. If the authority's race equality duties are relevant to the functions it is contracting out, it may be appropriate to incorporate those duties among the performance requirements for delivery of the service. For example, a contractor could be required to monitor service users by their racial group, to make sure the authority is meeting its duties. This would not involve requirements concerning the contractor's internal practices. Whatever action the authority takes, it must be consistent with the policy and legal framework for public procurement.
- 2.10 In addition to specifications for the general duty and any specific duties, public authorities may promote race equality by encouraging contractors to draw up policies that will help them (contractors) to avoid unlawful discrimination, and promote equality of opportunity. Such encouragement should only be within a voluntary framework, once contracts have been awarded, rather than by making specific criteria or conditions part of the selection process. Public authorities should bear in mind that the general duty does not override other laws or regulations on public procurement. In particular, as above, whatever action the authority takes must be consistent with the policy and legal framework for public procurement.

The EC race directive

EC Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

The EC race directive sets minimum standards for protection against racial discrimination. All EU member states are expected to have laws or regulations in place by 19 July 2003, prohibiting racial discrimination in areas such as employment, access to self-employment, vocational training, education, social security, and access to goods and services, including housing. Member states must make arrangements to ensure that victims can seek redress through judicial or other procedures, and that sanctions for discrimination are effective, proportionate, and dissuasive. Member states may permit positive action to prevent, or compensate for, disadvantages based on racial or ethnic origin.

EC procurement rules

The EC public procurement directives give effect to the EC Treaty principles of the free movement of goods and services in the purchasing by public authorities of goods, works, and services. The directives (which have been transposed into UK law as a series of UK procurement regulations) reinforce the need to:

- apply consistent and objective standards;
- avoid discrimination between UK and non-UK providers; and
- ensure clarity, openness, and timeliness at each stage of the procurement process, by conducting procurements in accordance with specified procedures.

The directives apply to all contracts above certain threshold values, and do not permit authorities to artificially split contracts to avoid the rules. Thresholds are normally revised every two years. There are different thresholds for different public authorities. Current thresholds can be seen on www.ogc.gov.uk/index.asp?id=397

The procurement of certain types of service (known as 'Part B services'), including health and social services, education, recreational and cultural services, personnel placement, and security services, is not subject to all of the service directive's requirements. Public authorities must still ensure their procedures for Part B services, and for contracts below the threshold values, meet the treaty (and treaty-based) principles of non-discrimination and equal treatment, transparency, and proportionality.

The European Court of Justice (ECJ) interprets the treaty and the directives when a legal challenge is brought against a public authority in relation to procurement, as do the UK courts.

At the time of writing, amendments to the EC directives have been proposed and may be adopted during 2003 or early 2004. The amendments are expected to simplify and clarify current requirements, and may clarify the extent to which public authorities can take account of environmental matters and social considerations in procurement.

Local Government Act 1988

Part 2 of the 1988 Act prohibits councils in England, Wales, and Scotland from taking certain non-commercial matters into account in their procurement processes. The Act, acknowledging local authorities' duty under (the previous) section 71 of the RRA, allows them to take race equality into account in certain workforce matters. Under the 1988 Act, in order to comply with their RRA duty, local authorities can ask six 'approved questions' concerning a supplier's race equality employment practice, specified by the Secretary of State in *Department of the Environment Circular 8/88*, and can include conditions for race equality in employment in the contract. The Act excludes race equality workforce matters as grounds for terminating a contract.

Local Government Act 1999

The Local Government Act 1999 imposes a duty of 'best value' on local authorities in England and Wales. This means they must make continuous improvements in the way they carry out their functions, having regard to efficiency, economy and effectiveness. The Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001 removes the restrictions that had prevented English local authorities from taking into account certain matters relating to a supplier's workforce.

Guidance from the Office of the Deputy Prime Minister (see ODPM Circular 3/2003, *Best Value and Performance Improvement*, Annex C: Handling of Workforce Matters in Contracting) indicates how, under best value, workforce matters can be taken into consideration in procurement. It emphasises the connection between the quality of the service and workforce issues. The guidance considers the implications of equal opportunities, and race equality in particular, for each stage of the procurement process, and makes it clear that local authorities in England are no longer limited by the six approved questions, but can ask further questions about race equality in workforce matters, 'where relevant to the contract and for purposes of achieving best value'.

Annex D to ODPM Circular 03/2003 contains the code of practice on workforce matters in local authority service contracts, which should be incorporated into all contracts for works or services of English local authorities that involve the transfer of local authority staff to the successful contractor. Under the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE), these staff retain their terms and conditions of employment. The code provides that staff recruited by the contractor will be offered terms and conditions that are, overall, no less favourable than those of the authority's transferred staff.

Local Government Act 2000

The 2000 Act gives councils in England and Wales the power to take action to promote economic, social, and environmental well-being in their areas. Councils can use the power to make improvements in all or part of their area, and on behalf of the whole of, or sections of, the communities they serve. It also allows councils to work in

partnership. The scope and potential of this broad new power have not yet been fully appreciated. Councils also have a duty under this Act to prepare a community strategy for promoting or improving the well-being of the area, and contributing to sustainable development.

Scotland Act 1998

The Act gives Scottish councils a duty to make arrangements to carry out their functions, including procurement, 'with due regard to the need' to meet the Act's equal opportunity requirements. The 'equal opportunity requirements' are legal requirements relating to the prevention, elimination, or regulation of discrimination on grounds of sex, marital status, race, disability, age, sexual orientation, language, social origin, religion, or other personal attributes.

Local Government in Scotland Act 2003

The Act builds equal opportunities more fully into local authorities' best value duty, their procurement function, and the wide range of other functions covered by the Act.

- 'the need to meet the equal opportunity requirements' is included alongside 'efficiency, effectiveness and economy' as guidelines for best value (section 1).
- The restriction on taking workforce matters into consideration (under the Local Government Act 1988) will not apply where the local authority seeks to ensure that the contractor will perform the contract without preventing or hindering the authority from securing best value (section 7).
- Local authorities, in entering into a contract, must have regard to any guidance issued by Scottish Ministers, who, like local authorities, are bound by the above equal opportunities duty (section 52).
- Scottish Ministers, local authorities, and other organisations, in discharging any functions under the Act (which include community planning and the power to advance well-being), shall do so in a manner that encourages equal opportunities and, in particular, the observance of the equal opportunity requirements, and this duty is additional to the duty to secure best value (section 59).
- Local authorities are given the power to do anything they consider is likely to promote or improve the well-being of the whole of, or any part of, their areas and/or all or some of the persons within their areas (Part 3).

Law and policy in Wales

An Order under section 19 of the Local Government Act 1999 removed the restriction on taking certain workforce matters into consideration for Welsh local authorities and the National Assembly for Wales issued guidance similar to that issued for English authorities, Circular 14/2000. Further guidance is to be published shortly. The guidance advises local authorities to consider what equal opportunities should be addressed in the specification, and emphasises, in relation to service delivery and staff training, the importance of making sure that services are provided in people's preferred language.

Welsh councils have a duty to achieve best value, as defined under the Local Government Act 1999. References in this guide to best value include the Wales Programme for Improvement. Performance indicators for Welsh councils are set by the National Assembly. The two indicators for race equality for 2003/4 are:

- the level of the Equality Standard for local government in Wales which the council has attained (based on self-assessment); and
- the council's race equality scheme, and how well it is 'reflected and integrated in all corporate and service level plans and strategies'.

After publishing Better Value Wales, which reviewed procurement across the public sector, the National Assembly for Wales set up a Welsh procurement initiative team to develop best practice in the public sector. The Assembly has adopted a policy, by which potential suppliers are expected to sign up to its core values, including the promotion of equal opportunities in procurement. The Assembly is now developing a website with the Welsh Development Agency for the Welsh public sector, where suppliers can sign up to the core values.

The Welsh Local Government Procurement Support Unit, set up to 'facilitate the promotion of best practice and joint working' in Welsh local authorities, is taking forward the recommendations in Better Value Wales and the Wales Programme for Improvement.

Under the Welsh Language Act 1993, the Welsh language will be treated as equal to the English language in Wales in all public services.

Local authority policies and strategies

Equal opportunities

Quite separate from their legal duties under the amended RRA, local authorities are likely to have adopted equal opportunities policies covering race, sex, and disability, both in employment and in all their services. Some local authorities' policies cover the full range of grounds, including sexual orientation and religion or belief.

Community strategy for promoting or improving well-being ('community plan')

Under the Local Government Act 2000, local authorities have a duty to prepare a community strategy for promoting or improving economic, social, and environmental well-being in their area. The strategy should be based on the principle of equality of opportunity, and should contribute to improved and 'joined-up' planning and provision of services by all agencies. Local authorities should make every effort to involve all the local communities in developing the strategy.

Local economic development and support for small firms

Many local authorities have adopted policies to stimulate growth in their local economy, and to support new enterprise. The government, too, has a policy to encourage the development of small firms, for example 'Think Small First', through the Small Business Service. These policies are closely linked to other objectives, such as encouraging competition, creating new jobs, and combating social exclusion.

Social cohesion

Building and maintaining social cohesion is a priority for the government, as well as an objective of the EU Treaty, in which local authorities have been given a major role. While the particular problems will vary from one local authority area to another, removing barriers to full social and economic participation will be consistent with a local authority's duty under the RRA.

Sustainable development

Sustainable development seeks to ensure a better quality of life for everyone – both now and in the future – through social progress, the protection of the environment, the prudent use of natural resources, and economic growth.

Procurement strategy

A local authority procurement strategy should set out a framework for the authority's procurement projects, defining the role of procurement in meeting the local authority's strategic objectives, taking account of all other relevant policies and strategies, as well as the local authority's legal duties, including those on equality of opportunity.

Contract standing orders

Every local authority has to adopt contract standing orders. These orders, which regulate the decision-making authority of officers and members of the authority, and lay down procedures for contracts of different values, are intended to ensure value for money, propriety, and the proper spending of public money. It will normally be a disciplinary offence for officers to fail to comply with contract standing orders when letting contracts for the local authority.

Appendix 2

CRE ethnic monitoring categories

The ethnic monitoring categories set out below are from the CRE's publication, *Ethnic Monitoring: A guide for public authorities*. These categories are based on those used in the 2001 census. By using categories which are the same, or very similar to those by which census data have been collated, you can easily compare the groups you are monitoring with their representation in the population as a whole.

Britain's ethnic minority population is not evenly distributed. If your authority provides services at a local rather than national level, or if your workforce is primarily recruited locally rather than nationally, you will want to make sure that your monitoring properly reflects the relevant population. For example, the relevant local population may include a relatively large number of people from particular ethnic groups which are not included in these categories, but which you consider should be separately monitored to reflect local circumstances. We recommend that, in asking people to identify their ethnic origin, and in collating data, you specify such groups as sub-groups of a relevant category. So, for example, Somalis would be a sub-group of Black African, and Irish Travellers, Roma/Gypsies, or Turks would be a sub-group of 'any other white background'.

ENGLAND & WALES

A White

- British
- Irish
- Any other White background,
please write in

B Mixed

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other Mixed background,
please write in

C Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Any other Asian background,
please write in

D Black or Black British

- Caribbean
- African
- Any other Black background,
please write in

E Chinese or other ethnic group

- Chinese
- Any other,
please write in

SCOTLAND

A White

- Scottish
- Other British
- Irish
- Any other White background,
please write in

B Mixed

- Any Mixed background,
please write in

C Asian, Asian Scottish, or Asian British

- Indian
- Pakistani
- Bangladeshi
- Chinese
- Any other Asian background,
please write in

D Black, Black Scottish, or Black British

- Caribbean
- African
- Any other Black background,
please write in

E Other ethnic background

- Any other background,
please write in

Appendix 3

Other sources of information and guidance

CRE codes and guides

Statutory Code of Practice on the Duty to Promote Race Equality (CRE, 2002)

Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment (1984)

Code of Practice in Rented Housing: For the elimination of racial discrimination and the promotion of equal opportunities (1991)

Code of Practice in Non-Rented (Owner-Occupied) Housing: For the elimination of racial discrimination and the promotion of equal opportunities (1992)

The duty to promote race equality: A guide for public authorities (CRE, 2002), and *The duty to promote race equality: A guide for public authorities in Scotland* (CRE, 2002)

Ethnic monitoring: A guide for public authorities (CRE, 2002) and *Ethnic Monitoring: A guide for public authorities in Scotland* (CRE, 2002)

(All the above publications are available from www.tso.co.uk/bookshop, or phone 0870 240 3697 or email cre@tso.co.uk)

Other guidance

Building Equality into Best Value: a guide for Best Value review teams (Improvement and Development Agency, 2003)

Includes specific guidance on building equality into best value in the context of performance improvement and procurement. (Order from www.idea.gov.uk/publications/order)

Skills Framework for Strategic Procurement in Local Government (EO/IDEA/4ps, 2002, www.lg-employers.gov.uk/skills/procurement/)

Describes the knowledge and skills that procurement professionals and project teams need to apply good practice, including race equality competencies.

Government: Supporter and Customer? (Better Regulation Task Force / Small Business Council, May 2003) Download from the internet: www.brtf.gov.uk/taskforce/reports/entry%20pages/smeprocurement.htm

Examines the barriers that small and medium-sized enterprises (SMEs) face in doing business with the public sector, and the wider benefits to the economy of doing business with SMEs.

Smaller Supplier ... Better Value (Small Business Service / Office of Government Commerce)

Recommends ways in which public sector purchasers can engage with small and medium-sized enterprises. For related questions and answers, download www.sbs.gov.uk/content/pdf/OGC_smallersupplier_qa.pdf

Encouraging Responsible Business (SBS, 2002) Download from the internet: www.sbs.gov.uk/content/pdf/sbsbrochure1.pdf

Introductory handbook for small and medium-sized enterprises that promotes the case for corporate social responsibility.

Achieving community benefits through contracts: Law, policy and practice (Richard Macfarlane and Mark Cook, Joseph Rowntree Foundation, 2002)

Clarifies the ways that government departments, local authorities, regeneration agencies and registered social landlords (RSLs) can use their mainstream procurement to increase social inclusion, especially through new jobs. (ISBN 1 86134 424 4, order from The Policy Press)

Interpretative Communication on integrating social considerations into public procurement (European Commission, 2001)

Sets out the extent to which social issues can be considered in public procurement at each stage of the contract process, and in contract conditions. There is a frequently asked questions section at www.europa.eu.int/comm/internal_market/en/publproc/general/01-324.htm which explains issues raised by the interpretative communication.

Standards for measuring progress

The Equality Standard for local government (CRE, EOC, DRC, LGA, EO, Dialog, 2002)

Provides a framework for local authorities in England on delivering equality for employment and service delivery, recognising different levels of achievement. (Order from dialog@lg-employers.gov.uk)

The Equality Standard for local government, guidance 1: audit and self-assessment (CRE, EOC, DRC, LGA, EO, Dialog, 2002)

Supports and guides local authorities in implementing the standard. (Order from dialog@lg-employers.gov.uk)

Racial Equality Means Quality: A standard for racial equality for local government (CRE, 1998, www.cre.gov.uk/pdfs/remq_ew.pdf)

Helps local authorities in Wales, including joint boards and joint committees, to meet the requirements of the Race Relations Act.

Research reports

Working for an Inclusive Britain: An evaluation of the West Midlands Forum Pilot Project (Michael Orton and Peter Ratcliffe, 2003)

Research report examining the impact of a common standard used by six councils in the West Midlands to assess contractors' compliance with race equality legislation in employment. (Order from alanbutt@wolverhampton.gov.uk)

Ethnic Minorities and the Labour Market: Final report (Cabinet Office, March 2003)
www.strategy.gov.uk/2003/ethnic/report.shtml

Examines the labour market achievements of ethnic minorities, and recommends action to tackle the barriers they face. (Recommendation 26, page 126, sets out actions around public procurement.)

Government strategy

A better quality of life: a strategy for sustainable development in the UK (UK government, www.sustainable-development.gov.uk)

UK government's strategy for achieving sustainable development – contains an indicator of 'ethnic minority unemployment' within its Building Sustainable Communities section.

Organisations of particular interest to local authorities

- The Commission for Racial Equality (www.cre.gov.uk)
The CRE has forthcoming guidance on race equality for small and medium-sized enterprises (SMEs), and on partnerships. For details of new publications, visit the Publications area of the CRE website.
- Improvement and Development Agency (www.idea.gov.uk/procurement)
IDeA is producing a range of guidance, covering all elements of procurement
- The Disability Rights Commission (www.drc.gov.uk)
- The Equal Opportunities Commission (www.eoc.org.uk)
- Local Government Association (www.lga.gov.uk)
- Employers' Organisation for Local Government (www.lg-employers.gov.uk)
- Confederation of Scottish Local Authorities (www.cosla.gov.uk)
- Welsh Local Government Association (www.wlga.gov.uk)
- Association of Police Authorities (www.apa.police.uk/apa_home.htm)
- Association of Chief Police Officers (www.acpo.police.uk)
- Association of Chief Police Officers in Scotland (www.scottish.police.uk/main/acpos/acpos.htm)

- The Trades Union Congress (www.tuc.org.uk/equality/index.cfm)
- Scottish Trades Union Congress (www.stuc.org.uk)
- Wales Trades Union Congress (www.wtuc.org.uk)

Organisations of particular interest to contractors

- Equality Direct (www.equalitydirect.org.uk)
Gives business managers advice on a wide range of equality issues.
- The Confederation of British Industry (www.cbi.org.uk/home.html,
www.cbi.org.uk/scotland, and www.cbi.org.uk/wales)
- Small Business Service (www.sbs.gov.uk)
Provides information and advice to help small businesses realise their potential. The OGC and Small Business Service have a new 'supplying government' web portal, www.supplyinggovernment.gov.uk.
- Ethnic Minority Business Forum (www.ethnicbusiness.org)
Works with the Small Business Service and with Business Link franchises to identify the needs of entrepreneurs in ethnic minority communities.
- Business Link (www.businesslink.gov.uk)
National business advice service – provides information to meet business needs, and gives access to a wide network of business support organisations.
- The Federation of Small Businesses (<http://www.fsb.org.uk/>)
Lobbying and benefits group for small businesses.
- DTI social enterprise unit (www.dti.gov.uk/socialenterprise/index.htm)
Promotes and champions social enterprise, takes action to address barriers to growth of social enterprises, and identifies and spreads good practice.

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