

Aligning equality and procurement goals

Guide for the learning and skills sector

Equality and diversity

LSIS LEARNING AND SKILLS IMPROVEMENT SERVICE



Contents

Who this Guide is for	3
Overview	3
Equality legislation and procurement	4
Principles for aligning equality and procurement	5
Equality prompts for procurement process	5
Next steps	7
Further information	7

Aligning equality and procurement goals

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Who this Guide is for

This Guide, for use in the learning and skills sector, aims to provide information to:

- procurement teams
- finance staff
- human resources departments
- managers, clerks and governors
- continuing professional development teams
- those responsible for equality and diversity policy
- those concerned with ensuring corporate social responsibility.

Overview

Procurement matters in the learning and skills sector – millions are spent on goods, services and capital expenditure every year. Procurement can also act as a force of change for suppliers seeking to develop markets and create local employment opportunities. And, ultimately, procurement affects how we provide effective and accessible education opportunities.

Current legislation requires the learning and skills sector to meet duties to promote equality in procurement. The forthcoming Single Equality Bill will reinforce the need to link procurement practice and capital expenditure to addressing equality and social disadvantage.

There are other influences for the learning and skills sector that impact on equality and procurement. For example, the economic downturn is forcing learning and skills providers to ensure better value for money. And there are moves to bring procurement (and commissioning) together for economies of scale and consolidation of contracts. There is also the growing responsibility of learning providers to play a more active role as good corporate citizens in local and regional economies.

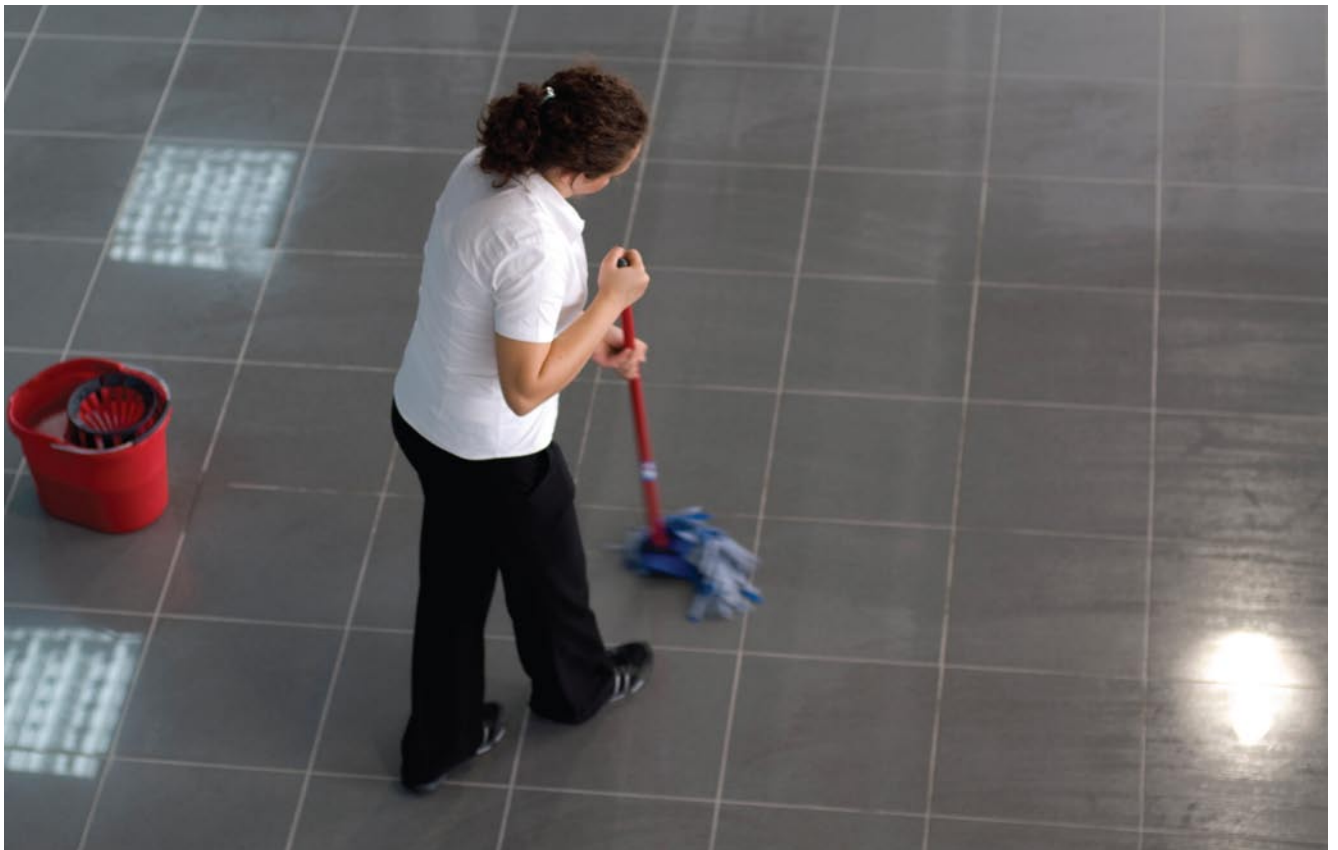
Procurement is a major driver in how we provide effective education. Aligning equality and procurement goals is not only legally required, it can also lead to better procurement.

Equality legislation and procurement

All public bodies have to build equality considerations into their procurement to ensure all functions meet the requirements of equality and human rights legislation. This legislation aims to create a 'minimum threshold standard' beneath which no public body should fall. Legislation the learning and skills sector must comply with is not neatly contained in one act. Public bodies have a statutory duty to promote race, disability and gender equality. There are general and specific duties and areas covered that are more typically associated with equality and diversity – such as staff and workforce – as well as finance and procurement. This legislation is widespread and may have different implications in procurement; it also has implications for suppliers and other stakeholders in the learning and skills sector.

A new Equality Bill will be introduced in 2010, which will include a Single Equality Duty to replace race, disability and gender duties, and will cover gender reassignment, age, sexual orientation and religion and belief. This will provide a clearer and more streamlined legal framework for better outcomes for those who experience disadvantage. The Equality Bill will support wider work to promote equality, including ensuring the public sector has due regard to equality when buying goods and services. Crucially a public body (or a recipient of public monies) cannot discharge their equality responsibilities down the supply chain.

It is also important to note that Ofsted's 2009 inspection criteria includes the addition of a limiting grade for equality and diversity measures, which will impact on overall inspection grades.



Principles for aligning equality and procurement

A number of well-established principles exist to align equality and procurement aims.

- *Relevance*: Equality is more relevant to the provision of some goods, works or services than others; for instance, equality is highly relevant to most service contracts.
- *Proportionality*: Proportionality relates to the nature of the contract and its effect on different groups. It also relates to the size, value and the duration of the contract.
- *Accountability*: Liability for compliance lies with the public body, even if a particular function of the authority is carried out by an external provider.
- *Transparency*: A public body must publish its proposal for complying with equality legislation and duties, consulting with people affected by their policies, and publishing the outcomes when they monitor the impact of their policies.
- *Mainstreaming*: Wherever equality is relevant, public bodies are expected to include it in their policies, plans and processes. Compliance with the duties is mandatory.
- *Appropriateness*: Application of the duties should be made to fit individual circumstances.
- *Complying with the law*: The way equality is applied in a function needs to be consistent with the requirements of EU/EC rules and UK law, such as public procurement directives and regulations.
- *Risk assessment*: The key in planning procurement is to achieve the right allocation of the operational risks and the risk of meeting the equality requirements.

Equality prompts for procurement process

There are a number of key stages in the procurement process. Within each stage a number of prompts can be identified to help align equality and procurement goals. These questions or prompts are not exhaustive but they help frame the support in turning theory into practice. These questions can also help improve the procurement process generally.

Planning

- Is equality a core requirement for this contract?
- How will contract arrangements be affected by equality considerations and how might they be improved?
- Has there been any consultation with the users of the services or goods, suppliers, trade unions and other stakeholders?

Procurement route

- Are full details of equality requirements to be set out in the specification (measurable performance targets and specific requirements, such as consultation, monitoring, and training)?
- Have potential suppliers been asked to detail how they propose to achieve these requirements?
- If a selective quotations route is employed, how have potential suppliers been identified?
- Have a range of advertising media been used to encourage a diverse range of suppliers to bid?
- Will certain types of businesses be discriminated against through the use of particular tendering routes or the use of e-procurement?



Tendering

- Do all advertisements make it clear the contract includes equality requirements?
- Has equality been considered in selecting tenderers (pre-qualification questionnaire, technical capacity, or exclusions for grave misconduct)?
- Has there been an objective, fair and consistent evaluation of all responses?
- Is all relevant information about the equality requirements for the contract (relevant policies, facts and evidence required from the tenderer) included?
- Do the evaluation criteria cover all equality criteria or just one dimension, such as race?
- Have tenderers confirmed they will comply with the equality terms?

Evaluation and award

- Have the equality requirements been in line with tender evaluation criteria?
- Is there an understanding that value for money can mean the ability to meet all equality requirements?
- Has there been a fair, objective, and consistent evaluation of all tenders?

Managing the contract

- Are all the equality requirements clarified with successful/unsuccessful suppliers?
- Have the respective responsibilities of each party in ensuring equality been agreed?
- Have the ongoing monitoring processes been agreed?
- How will legislative provisions be enforced?
- What type of equality clauses in contracts have been used, and what support to suppliers is provided to help them meet these requirements?
- Are there any differences between goods, works and service contracts?

Review and closure

- Did the supplier meet all the equality requirements?
- Were there any areas of improvement and can these be factored into future procurement processes?
- Was the supplier told of good practice in equality?

Next steps

A number of next steps for learning and skills providers can be identified. Although not exhaustive they help ensure providers meet legal obligations.

- Ensure procurement staff understand equality and socio-economic requirements throughout the supply-chain, including positive duties.
- Review the procurement guidelines and contracts clauses in an organisation and ensure they comply with equality legislation.
- Examine all stages in the procurement cycle and how equality and socio-economic issues need to be considered.
- Review current contracts and equality clauses and review how equality data are being monitored.
- Ensure any companies that services are outsourced to, especially in provision of on-site staff, understand legal responsibilities in equality and diversity.
- Include equality (and other socio-economic) criteria in the pre-qualification questionnaire (PQQ) and invitation to tender (ITT).
- Ensure procurement (and equality) staff understand and follow the procurement and commissioning process.
- Use community benefit clauses to promote socio-economic development.
- Ensure 'providers' understand their equality responsibilities and monitor supply chains through creating appropriate key performance indicators (KPIs).
- Examine how contracts are bundled together and procured.
- Undertake equality impact assessments of procurement and commissioning processes.
- Work with suppliers to promote this agenda.

Further information

Factsheets

LSIS is currently developing further factsheets to accompany this briefing. These include:

- Positive action
- Disability equality
- Transgender equality
- Equality and diversity terminology
- The New Equality Bill
- Equality, Diversity and Governance.

To receive any of the factsheets above, please email equalities@lsis.org.uk with your details, together with the subject areas that are of interest to you.

Training

LSIS is pleased to offer bespoke training events, consultancy support and workshops on promoting equality through procurement. The sessions are tailored to meet your specific requirements/organisational needs. For further information about these events, please contact a member of the equality and diversity team on 0870 060 3278 or email equalities@lsis.org.uk

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Learning and Skills Improvement Service (LSIS)

The Learning and Skills Improvement Service's aim is to accelerate the drive for excellence in the learning and skills sector, building the sector's own capacity to design, commission and deliver improvement and strategic change. LSIS's vision is that every learner acquires the skills, knowledge and appetite for learning, living and working and every provider is valued by their community and employers for their contribution to sustainable social and economic priorities.

LSIS's *Strategic Ambitions* demonstrates how we will contribute to delivering core improvement principles and sets out our new ways of working to engage the sector in everything we do to make LSIS a truly sector-led organisation. You can find this document and other information about LSIS activities and services at www.lsis.org.uk

Disability equality policy

LSIS is committed to promoting equality for disabled people and we strive to ensure that our communication and learning materials can be made available in accessible formats. Please let us know if you consider yourself disabled and require reasonable adjustments made to support you.